

## CHAPTER 4: THE FRANCHISE

This chapter discusses who is eligible to vote in Australia. It sets out the current arrangements, provides an overview of factors relevant to whether eligible voters exercise their vote, and examines options for change.

### INTRODUCTION

- 4.1 This chapter addresses the arrangements governing who is eligible to vote in Australian elections. These are distinct from the arrangements that enable voting to occur, such as enrolment on an electoral roll, appropriate civic education, and polling arrangements, which are covered in separate chapters.

### THE CURRENT ARRANGEMENTS

#### *The Australian Constitution*

- 4.2 The Australian Constitution provides that members of Parliament are to be 'directly chosen by the people',<sup>59</sup> and allows the Parliament to make laws regarding the 'qualification of electors'.<sup>60</sup> It also states that in the choosing of members and Senators, 'each elector shall vote only once'.<sup>61</sup> Beyond these high-level provisions, the Australian Constitution does not clearly define the franchise, affording a large degree of discretion to the Parliament to make laws providing for the qualification of electors.
- 4.3 Parliament's discretion to restrict the franchise is not unlimited. In the High Court of Australia decision *Roach v Electoral Commissioner* (2007) 233 CLR 162, then Chief Justice Gleeson made the following observations about the franchise in Australia:

'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.'<sup>62</sup>

#### *International standards*

- 4.4 It has been noted that 'in international circles, the right to vote is seen as a fundamental right'.<sup>63</sup> As set out in chapter 2, article 25 of the ICCPR, to which Australia is a party, provides that 'every citizen shall have the right and opportunity...without unreasonable restrictions...to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage...' In 1996, the UN Human Rights Committee made the following observations on how the voting rights articulated in the ICCPR should be effected:<sup>64</sup>

<sup>59</sup> Australian Constitution, op. cit., sections 7 and 24.

<sup>60</sup> ibid., sections 8 and 30.

<sup>61</sup> ibid.

<sup>62</sup> *Roach v Electoral Commissioner* (2007) 233 CLR 162 at 174.

<sup>63</sup> A Gray, 'The Guaranteed Right to Vote in Australia', *Queensland University of Technology Law and Justice Journal*, vol. 7, no. 2, 2007, p. 192.

<sup>64</sup> UN Human Rights Committee, *General Comment 25: The right to participate in public affairs, voting rights and the right of equal access to public service*, 1996, available at [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument).

'The right to vote at elections and referenda must be established by law and may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote. It is unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements. Party membership should not be a condition of eligibility to vote, nor a ground of disqualification.

States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed. 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...

...In their reports, States parties should indicate and explain the legislative provisions which would deprive citizens of their right to vote. The grounds for such deprivation should be objective and reasonable. If conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence. Persons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote.'

### *Commonwealth arrangements*

- 4.5 Under the Electoral Act, persons are generally eligible to vote in federal elections if they are Australian citizens who are 18 years of age or older.<sup>65</sup> Certain 'British subjects' may also vote, if they were enrolled immediately before 26 January 1984. Particular exceptions apply, excluding the following persons from the entitlement to enrol and vote in federal elections:
- persons who are serving a prison sentence of three years or more,<sup>66</sup>
  - persons who 'by reason of unsound mind, [are] incapable of understanding the nature and significance of enrolment and voting',<sup>67</sup> and
  - persons who have been convicted of treason or treachery and have not been pardoned.<sup>68</sup>
- 4.6 In addition, certain restrictions apply to the voting rights of Australian citizens living overseas, who may vote as 'eligible overseas electors' if they intend to resume residing in Australia within six years of leaving Australia. Applications must be lodged within three years of leaving Australia; from six years after leaving Australia, citizens who 'intend to resume residing in Australia at some time' may apply to remain on the electoral roll on an annual basis.<sup>69</sup>
- 4.7 Section 30FD of the *Crimes Act 1914* (the Crimes Act) also excludes members of the committee or executive of declared 'unlawful organisations' from the vote; this section was enacted in 1932. The Australian Government has accepted a recommendation of the Australian Law Reform Commission that the provisions of the Crimes Act relating to unlawful associations, including section 30FD, be repealed.<sup>70</sup> The repeal of these provisions is being progressed in the context of a discussion paper on proposed legislative reforms to Australia's

<sup>65</sup> Electoral Act, op. cit., section 93.

<sup>66</sup> This is a result of the High Court of Australia decision in *Roach v Electoral Commissioner* (2007) 233 CLR 162, as discussed at paragraphs 4.49-4.50.

<sup>67</sup> Electoral Act, op. cit., paragraph 93(8)(a).

<sup>68</sup> *ibid.*, paragraph 93(8)(c).

<sup>69</sup> *ibid.*, sections 94 and 94A.

<sup>70</sup> See Australian Government Response to Australian Law Reform Commission, *Fighting Words: A Review of Sedition Laws in Australia*, December 2008, available at [www.ag.gov.au/www/agd/agd.nsf/Page/Publications\\_AustralianGovernmentresponsetoALRCReviewofseditionlawsinAustralia-December2008](http://www.ag.gov.au/www/agd/agd.nsf/Page/Publications_AustralianGovernmentresponsetoALRCReviewofseditionlawsinAustralia-December2008).

counter-terrorism and national security legislation, which was released by the Attorney-General, the Hon Robert McClelland MP, on 12 August 2009.<sup>71</sup>

- 4.8 Both voting and enrolling to vote are compulsory for persons who are eligible to vote in federal elections,<sup>72</sup> as discussed in further detail in chapters 7 and 11. Voting is not compulsory for Australian citizens living overseas.

### *Historical developments*

- 4.9 At federation, voting entitlements for federal elections were those that applied in each state.<sup>73</sup> The *Commonwealth Franchise Act 1902*, which established the first Commonwealth franchise shortly after federation, provided voting rights to persons who were 21 years of age or older, had lived in Australia for six months continuously and were 'natural born or naturalized subjects of the King'.<sup>74</sup> While this franchise included women, it excluded 'aboriginal native[s] of Australia Asia Africa or the Islands of the Pacific except New Zealand',<sup>75</sup> 'non-European' migrants, persons who were under sentence for an offence punishable by imprisonment for one year or longer, those of 'unsound mind' and those 'attainted of treason'.
- 4.10 Since 1902, the franchise has slowly expanded to include more members of the Australian community. For example:
- in 1925, limited numbers of 'non-European' migrants were given the right to vote;
  - in 1949, Indigenous Australians who served in the Defence Forces during World War II or who had been enfranchised under state law were granted the Commonwealth franchise;
  - in 1961, the disqualification of 'aboriginal native[s] of ... Asia Africa or the Islands of the Pacific' was removed;
  - in 1962, all Indigenous Australians were enfranchised; and
  - in 1973, the general voting age was lowered to 18 years.
- 4.11 The franchise has also been limited on certain occasions, most notably in 1984 when, as a consequence of amendments which provided for Australian citizenship to be the primary criterion for the franchise, non-citizens (apart from certain 'British subjects') were excluded from the entitlement to vote.

<sup>71</sup> Further information on this discussion paper is available at [www.ag.gov.au/www/agd/agd.nsf/Page/Consultationsreformsandreviews\\_Nationalsecuritylegislation-Publicconsultation\\_Nationalsecuritylegislation-Publicconsultation](http://www.ag.gov.au/www/agd/agd.nsf/Page/Consultationsreformsandreviews_Nationalsecuritylegislation-Publicconsultation_Nationalsecuritylegislation-Publicconsultation).

<sup>72</sup> Subsection 245(8) of the Electoral Act provides that proceedings against an elector for failing to vote are prohibited if an elector has a 'valid and sufficient' reason for not voting; subsection 245(14) of the Electoral Act states that: 'Without limiting the circumstances that may constitute a valid and sufficient reason for not voting, the fact that an elector believes it to be part of his or her religious duty to abstain from voting constitutes a valid and sufficient reason for the failure of the elector to vote.'

<sup>73</sup> Australian Constitution, sections 8 and 30.

<sup>74</sup> *Commonwealth Franchise Act 1902*, section 3, available at [www.foundingdocs.gov.au/resources/transcripts/cth5i\\_doc\\_1902.pdf](http://www.foundingdocs.gov.au/resources/transcripts/cth5i_doc_1902.pdf).

<sup>75</sup> Section 4 of the *Commonwealth Franchise Act 1902* excluded these persons unless they were entitled to vote under section 41 of the Australian Constitution, which provides that 'No adult person who has or acquires a right to vote at elections for the more numerous House of the Parliament of a State shall, while the right continues, be prevented by any law of the Commonwealth from voting at elections for either House of the Parliament of the Commonwealth'. It was argued in Parliamentary debates on section 4 of the *Commonwealth Franchise Act 1902* that if one or more of the states ever decided to grant voting rights to Indigenous persons, then those persons would be entitled to vote in federal elections. The High Court has subsequently held that section 41 of the Australian Constitution was a transitional provision and is now spent. For a discussion of these issues, see J Norberry and G Williams, 'Voters and the Franchise: the Federal Story', *Research Paper No. 17 2001-02*, Parliament of Australia Parliamentary Library.

- 4.12 The voting entitlements of prisoners have varied since federation, ranging from a disqualification for those serving a sentence of five years (which applied from 1995 to 2004), to a disqualification for prisoners under sentence for an offence punishable by at least one year's gaol (which applied from 1902 to 1983). In 2006, the Commonwealth Parliament attempted to impose a blanket ban on all prisoner voting; the High Court of Australia found that the amendments which inserted these provisions into the Electoral Act were invalid;<sup>76</sup> as a consequence, the provisions of the Electoral Act that were in force prior to the enactment of the invalid amendments now apply, excluding persons who are serving a prison sentence of three years or more from voting.<sup>77</sup>

#### **State and territory arrangements**

- 4.13 Each state and territory sets out, in its electoral act or constitution, the requirements for the franchise. Common across all states and territories is a requirement of Australian citizenship and an electoral majority age of 18. All state legislation also maintains the exception that 'British subjects' who were resident and on the electoral roll in 1984 are also enfranchised. That provision represents the only departure, across all the states and territories, from the rule that citizenship is a requirement for the franchise.
- 4.14 Legislation in each state and territory also sets out certain disqualifications, which include, in some jurisdictions, persons who are of 'unsound mind' and persons convicted of treason or treachery who have not been granted a pardon. The issue of enfranchisement for prisoners is one example of an area in which state systems differ widely from each other and from the Commonwealth: for example, in the ACT, all prisoners may vote,<sup>78</sup> whereas in Western Australia, legislation states that any person who is serving or yet to serve a period of imprisonment is disqualified from voting.<sup>79</sup>
- 4.15 A table comparing key elements of the federal, state and territory arrangements for the franchise is at [Annex 3](#).

## **CHALLENGES, OPPORTUNITIES AND OPTIONS FOR CHANGE**

- 4.16 A number of aspects of the franchise can be examined from the perspective of universality as a key principle for the Australian electoral system.
- 4.17 Before examining these, it is important to recognise that there are practical matters which affect the extent to which those who are empowered to vote do exercise their vote. These are outlined below; more detail is provided in other chapters which canvass options to enhance the electoral engagement and participation of all Australians.

#### **Exercising the franchise**

- 4.18 The degree to which eligible persons exercise their right to vote can be examined in two ways: firstly, the extent to which eligible voters are enrolled to vote, and secondly, the extent to which those on the electoral roll vote in elections.

<sup>76</sup> *Roach v Electoral Commissioner* (2007) 233 CLR 162.

<sup>77</sup> The text of the Electoral Act has not been amended to reflect the decision in *Roach v Electoral Commissioner*.

<sup>78</sup> *Electoral Act 1992* (ACT) section 72.

<sup>79</sup> *Electoral Act 1907* (WA) subsection 18(ca).

4.19 The following table, produced from figures published by the AEC,<sup>80</sup> illustrates that:

- there is a difference between the number of people who are eligible to enrol to vote, and the proportion who do enrol;<sup>81</sup>
- of those who are enrolled to vote, a smaller number 'turn out' to cast a vote on or before polling day;<sup>82</sup> and
- of those who cast a vote, a still smaller number cast a formal vote, meaning that their vote is deemed valid and counted.

**Table 4.1: Enrolment, turnout and formality rates at 2004 and 2007 federal elections**

	2004 federal election	2007 federal election <sup>83</sup>
Number of people enrolled as at close of rolls	13,012,230	13,645,073
Number of enrolled electors as a percentage of the estimated eligible population	91.5%	92.3%
Turnout (number of enrolled electors who cast votes as percentage of total enrolled electors)	94.32%	94.76%
Number of informal votes as a percentage of total votes cast	5.18%	3.95%

4.20 Based on these figures, it would be reasonable to assume that more than 10% of persons who were eligible to vote for each of the 2004 and 2007 federal elections did not cast a (formal or informal) vote. This amounts to more than 1 million persons who were entitled to vote for each election but did not cast a vote.

4.21 While it is difficult to quantify, it has been suggested that members of particular groups in the community may be less likely to exercise their franchise than others. For example:

- there is evidence to indicate that young people are enrolled to vote at lower rates than the broader community;<sup>84</sup>

<sup>80</sup> AEC, submission no. 169 to JSCEM, *Inquiry into the 2007 Federal Election*, p. 9. The AEC discussed the basis for these figures in its second submission to the 2007 federal election inquiry (AEC, submission no. 169.1 to JSCEM, *Inquiry into the 2007 Federal Election*, p. 12). To calculate the estimated eligible population, the AEC uses ABS population projections, adjusted to give a figure for the number of people eligible to be enrolled. Census population data is adjusted for people turning 18, deaths and net migration movements. Further adjustments are made to take account of people becoming Australian citizens, enrolled overseas electors, eligible British subjects, and ineligible Australian citizens over the age of 18.

<sup>81</sup> Some commentators suggest that a smaller proportion of the eligible population are enrolled. Farrell and McAllister assert that the 'enrolled proportion of the age-eligible electorate' has been trending downwards since 1958, 'reaching 81.0 percent in 2004' (D M Farrell and I McAllister, *The Australian Electoral System: origins, variations and consequences*, UNSW Press, Sydney, 2006, p. 123). This figure may be based on the entire voting age population, and not adjusted in line the methodology used by the AEC.

<sup>82</sup> This includes votes cast on polling day as well as pre-poll and postal votes. This turnout figure is still relatively high: according to one comparative study, Australia's average turnout of enrolled electors at parliamentary elections in the period 1945-2001 was the highest in the world: see International IDEA, *Voter Turnout Since 1945: A Global Report*, op. cit., p. 80.

<sup>83</sup> The AEC attributes a proportion of the increase in enrolled electors to the targeted activities it conducted in the lead up to the 2007 federal election, which cost an estimated \$30 million; further details on these activities are provided at paragraphs 7.25 to 7.26.

<sup>84</sup> AEC, *Annual Report 2007-08*, p. 36, available at [www.aec.gov.au/About\\_AEC/Publications/Annual\\_Reports/2008](http://www.aec.gov.au/About_AEC/Publications/Annual_Reports/2008).

- whilst not easily quantified, there are indications that Indigenous Australians remain under-represented on the electoral roll;<sup>85</sup>
  - it has been estimated that between 33% and 90% of eligible Australian voters who are homeless are not enrolled to vote;<sup>86</sup>
  - a lack of proficiency in English has been identified as the major factor contributing to informal voting during recent federal elections;<sup>87</sup> and
  - it has been estimated that less than 15% of Australians who qualify to vote and are out of the country at the time of an election exercise their vote while away (while it is not compulsory for these persons to vote, there are mechanisms to facilitate them voting, as discussed further below).<sup>88</sup>
- 4.22 There are potentially a range of reasons why members of particular groups might not fully exercise their right to vote. Strategies to improve the electoral participation of identified Australians may include:
- options to improve enrolment processes, which are discussed in further detail at chapter 7;
  - options to improve the civic education of particular groups, which are discussed in further detail at chapter 9;
  - options to amend or harmonise the rules governing the casting and formality of votes, which are discussed in further detail at chapter 5; and
  - options to improve and harmonise the accessibility of voting services, which are discussed in further detail at chapter 11.

### *Defining the franchise*

- 4.23 Consideration can be given to a range of matters which are relevant to the franchise for modern Australia. An examination of citizenship and the vote may raise issues about the franchise for non-citizens and Australians living overseas. Options have been proposed to extend the franchise for youth, and voting rights for prisoners have been the subject of considerable debate. Finally, some concerns have been raised about the exception to the franchise for persons of 'unsound mind'.
- 4.24 To assist in considering the matters discussed below, a table comparing key elements of the franchise in the United Kingdom, Canada and New Zealand is at [Annex 4](#). Notable differences in the arrangements in these countries compared to Australia are highlighted below.<sup>89</sup>

### *Citizenship and the vote*

- 4.25 As discussed above, amendments came into effect in 1984 which made Australian citizenship the primary precondition for the franchise at federal, state and territory levels. In enacting these amendments, it was the view of all political parties and governments, at both Commonwealth and state level, that Australian citizenship is the appropriate basis for the franchise.<sup>90</sup>

<sup>85</sup> JSCCEM, *Civics and Electoral Education*, op. cit., pp. 86-87.

<sup>86</sup> Data from Hanover Welfare Services, the Australian Federation of Homelessness Organisations, and the Homeless Persons' Legal Clinic as cited in P Lynch and J Cole, 'Homelessness and human rights: Regarding and responding to homelessness as a human rights violation', *Melbourne Journal of International Law*, vol 4, no. 1, 2003, p. 157.

<sup>87</sup> JSCCEM, *Civics and Electoral Education*, op. cit., pp. 108-9.

<sup>88</sup> The Southern Cross Group, *Primary Submission to the Joint Standing Committee on Electoral Matters Inquiry into the 2007 Federal Election*, 28 May 2008, p. 11, available at [www.aph.gov.au/House/committee/em/elect07/subs/sub158.pdf](http://www.aph.gov.au/House/committee/em/elect07/subs/sub158.pdf).

<sup>89</sup> As noted at [Annex 4](#), one feature that is common to the United Kingdom, Canada and New Zealand is that unlike Australia, voting is not compulsory.

<sup>90</sup> AEC, 'Why are British subjects allowed to be on the electoral roll?', 2007, available at [www.aec.gov.au/Enrolling\\_to\\_vote/British\\_subjects.htm](http://www.aec.gov.au/Enrolling_to_vote/British_subjects.htm).

This position is consistent with international practice: international standards such as the ICCPR are expressed in terms of the rights of *citizens* to vote, and internationally, citizenship is commonly utilised as a primary criterion for the franchise.<sup>91</sup>

- 4.26 2009 is the 60<sup>th</sup> anniversary of Australian citizenship, which was established with the enactment of the *Nationality and Citizenship Act 1948*. The significance of Australian citizenship as a 'bond that unites us all'<sup>92</sup> is recognised in the preamble to the current *Australian Citizenship Act 2007*:

'The Parliament recognises that Australian citizenship represents full and formal membership of the community of the Commonwealth of Australia, and Australian citizenship is a common bond, involving reciprocal rights and obligations, uniting all Australians, while respecting their diversity.

The Parliament recognises that persons conferred Australian citizenship enjoy these rights and undertake to accept these obligations:

by pledging loyalty to Australia and its people; and

by sharing their democratic beliefs; and

by respecting their rights and liberties; and

by upholding and obeying the laws of Australia.'

- 4.27 Being able to vote is one of the range of rights and responsibilities attached to Australian citizenship; the Pledge of Commitment which is taken at citizenship ceremonies includes an undertaking to 'pledge my loyalty to Australia and its people, whose democratic beliefs I share'.
- 4.28 Two issues arise from a consideration of citizenship and the franchise: the voting rights that are currently extended to particular non-citizens; and the voting rights of Australian citizens abroad.

#### *Non-citizens*

- 4.29 Prior to 1984, when Australian citizenship became the primary criterion for the franchise, eligibility to vote was based on 'British subject' status, with 'Australian citizen' being but one of a number of categories of 'British subjects' who were permitted to vote in Australian elections. Prior to the commencement of the citizenship amendment, transitional arrangements were put in place to accommodate the significant proportion of the Australian community who, at the time, did not hold Australian citizenship but who had been enrolling and voting in Australia as 'British subjects'. An information campaign was conducted to alert such electors to the changing rules so that they could take steps to enrol before 26 January 1984.
- 4.30 Today, the sole exception to the rule that Australian citizenship is required to vote is that 'British subjects' are permitted to vote in federal elections if they were enrolled to vote immediately before 26 January 1984. The states and territories have identical or very similar provisions. The AEC has advised that 157,102 people were recorded on its electoral roll as such electors as at 31 May 2009.
- 4.31 To ensure consistency with the principle that citizenship be the primary criterion for the franchise, there may be a case for the 'eligible British subject' category of electors to be abolished, subject to consideration of potential constitutional issues. Citizenship is being

<sup>91</sup> ACE Electoral Knowledge Network, comparative data available at [aceproject.org/epic-en/CDMap?question=VR02](http://aceproject.org/epic-en/CDMap?question=VR02).

<sup>92</sup> Senator the Hon C Evans (Minister for Immigration and Citizenship), 'Australia welcomes more than 14,000 new citizens', Media Release, 26 January 2008, available at [www.minister.immi.gov.au/media/media-releases/2008/ce08008.htm](http://www.minister.immi.gov.au/media/media-releases/2008/ce08008.htm).

increasingly recognised as 'a key factor in nation building';<sup>93</sup> it might therefore be argued that to maintain a category of electors who are non-citizens represents an anomaly in modern Australia. Alternatively, it might be argued that 'eligible British subjects' represent a special class of non-citizens because they are already enrolled and entitled to vote, and that it would be unfair to disenfranchise them.

- 4.32 In supplementary remarks to the JSCEM *Report on the Conduct of the 2007 Federal Election and Matters Related Thereto*, the Chair of JSCEM, Mr Daryl Melham MP, stated that 'in this day and age, continuing the grandfathering arrangements for a special class of British subjects is unfair and unreasonable to non-citizens'.<sup>94</sup> Noting a number of 'legislative and juridical developments' since the grandfathering arrangements were introduced<sup>95</sup> and that, 'It is clear that the continued enfranchisement of British subjects has the potential to affect election outcomes',<sup>96</sup> Mr Melham recommended that the Electoral Act be amended to 'remove all references to the eligibility of British subjects to remain enrolled and to vote in federal elections and referenda by 26 January 2014 – 30 years since citizenship became a necessary qualification'.<sup>97</sup>
- 4.33 If the exception for 'eligible British subjects' is to be maintained, it could be argued that it would be appropriate to examine whether the franchise should be extended to other non-citizens. For example, New Zealand permits permanent residents to vote,<sup>98</sup> and the United Kingdom<sup>99</sup> permits residents who are citizens of Commonwealth or European Union countries to vote.<sup>100</sup>
- 4.34 Arguments in favour of allowing permanent residents to vote in Australia include:
- that 'in a world of international migration it is unreasonable that people should be subject to decisions [of a government] over a long period of time without having the opportunity to influence those decisions';<sup>101</sup>
  - it could 'serve the symbolic value of better defining our political community – of Australia as an immigrant nation in a globalising world – as well as the ideal of political equality for all in the Australian community';<sup>102</sup>

<sup>93</sup> *Moving forward...Improving Pathways to Citizenship*, Report by the Australian Citizenship Test Review Committee, August 2008, p. 3.

<sup>94</sup> D Melham MP, Supplementary Remarks, in JSCEM, *Report on the Conduct of the 2007 Federal Election and Matters Related Thereto*, op. cit., p. 349.

<sup>95</sup> *ibid.*, pp. 341-345: developments cited were the passage of the *Australia Act 1986*, the decision of the High Court of Australia in *Sue v Hill* (1999) 199 CLR 462 regarding the status of the United Kingdom as a 'foreign power' for the purposes of section 44(i) of the Australian Constitution, and the 2002 removal of restrictions on Australians holding the citizenship of another country.

<sup>96</sup> *ibid.*, pp. 345-352: for example, Mr Melham stated that there are eight electoral divisions with more than 2,500 electors with British subject notations on the electoral roll, and noted that 19 divisions at the 2007 federal election had margins of less than 2,500 votes.

<sup>97</sup> *ibid.*, pp. 352-353. Mr Melham also recommended a process by which the AEC should write to each elector with a British subject notation on the electoral roll to ascertain their citizenship status (prior to the enactment of amendments), and a transitional safety net to allow British subjects who are Australian citizens but were removed from the roll in error to cast a provisional vote at the next election.

<sup>98</sup> *Electoral Act 1993* (NZ) section 74.

<sup>99</sup> The Electoral Commission (United Kingdom), 'Who can register to vote?', available at [www.aboutmyvote.co.uk/who\\_can\\_register\\_to\\_vote.aspx](http://www.aboutmyvote.co.uk/who_can_register_to_vote.aspx).

<sup>100</sup> One point of difference between the electoral systems of Australia, New Zealand and the United Kingdom is that Australia has compulsory voting.

<sup>101</sup> M Sawyer, 'Property Voting in Local Government: A Relic of a Pre-Democratic Era?', *Representation*, vol. 43, no. 1, 2007, p. 50.

<sup>102</sup> G Orr, 'Australian Electoral Systems – How Well Do They Serve Political Equality?', *Democratic Audit of Australia*, 2004, p. 8, available at [democratic.audit.anu.edu.au/papers/focussed\\_audits/200402\\_orr\\_electoral\\_syst.pdf](http://democratic.audit.anu.edu.au/papers/focussed_audits/200402_orr_electoral_syst.pdf).

- it might be argued that some migrants may not wish to take up Australian citizenship if it means losing a form of foreign citizenship; and
- if permanent residents have to pay tax in Australia, it is said to be only fair that they should also have the right to vote.<sup>103</sup>

There are an estimated 370,000 permanent residents aged 18 or above in Australia who could be enfranchised by such an amendment.<sup>104</sup>

4.35 Arguments against allowing permanent residents the right to vote in Australia include:

- the 'lure of the franchise' serves as an essential way through which migrants are encouraged to take out citizenship;<sup>105</sup>
- the High Court has commented that citizenship is a valid basis for determining who would be allowed to vote, as citizenship has a 'rational connection with the identification of community membership or the capacity to exercise free choice';<sup>106</sup>
- such an amendment might be argued to result in changes to existing electoral boundaries, as non-citizen residents are usually clustered around major urban centres;<sup>107</sup> and
- the exclusion of non-citizens from the franchise is 'common place' internationally.<sup>108</sup>

#### *Australians living abroad*

4.36 While Australians living abroad are entitled to vote, their franchise is limited by the Electoral Act, which contains relatively complex procedures for enrolment and provides that expatriates can lose their entitlement to vote if they fail to vote at a federal election, or fail to lodge an application to be treated as (or remain as) an 'eligible overseas elector' within the timeframes outlined at paragraph 4.6.<sup>109</sup>

4.37 A low proportion of expatriates are currently enrolled as eligible overseas electors. 22,584 eligible overseas electors were enrolled as at the close of rolls for the 2007 federal election, whereas it has been estimated that at any one time there are around one million Australian citizens living and working overseas.<sup>110</sup> At the 2007 federal election, only 70,059 votes were issued at overseas posts; this number includes votes issued to Australians who were temporarily overseas and not enrolled as 'eligible overseas electors',<sup>111</sup> but does not include postal votes issued from Australia.

<sup>103</sup> G Orr, 'Ballotless and behind bars: the denial of the franchise to prisoners', *Federal Law Review*, vol. 26, no. 1, 1998, p. 57.

<sup>104</sup> Estimate from Department of Immigration and Citizenship, March 2009. This number does not include New Zealand citizens who are in Australia temporarily.

<sup>105</sup> G Orr, 'Ballotless and behind bars: the denial of the franchise to prisoners', op. cit., p. 57.

<sup>106</sup> *Roach v Electoral Commissioner* (2007) 233 CLR 162 at 174 per Gleeson CJ.

<sup>107</sup> ABS publication no. 4102.0, *Australian Social Trends*, 2004, p. 22.

<sup>108</sup> 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](http://apsa2000.anu.edu.au/confpapers/catt.rtf).

<sup>109</sup> Electoral Act, op. cit., subsections 94(1B) and 94(13).

<sup>110</sup> Department of Foreign Affairs and Trade, 'Living and Working Overseas', available at [www.smartraveller.gov.au/tips/working\\_os.html](http://www.smartraveller.gov.au/tips/working_os.html).

<sup>111</sup> Figures provided by I Campbell, Committee Hansard, Senate Standing Committee on Finance and Public Administration, *Additional Budget Estimates*, 19 February 2008, p. 166. Australians who are temporarily overseas may cast pre-poll or postal votes in the same way as Australians who are outside their electorate within Australia.

- 4.38 While there are potentially a range of reasons for this low enrolment and voting rate, two reasons that have been advanced are the complexity of enrolment procedures for overseas Australians, and the perceived lack of information provided to overseas Australians about voting entitlements and procedures.<sup>112</sup> Another reason cited is that some Australians overseas have been disenfranchised because of the enrolment restrictions in the Electoral Act.
- 4.39 In an increasingly globalised society, one question for consideration is the extent to which the franchise for expatriate Australians should be limited. Arguments in support of voting rights for citizens living overseas include:
- that 'many Australians overseas maintain considerable connections with Australia, and are well-informed in relation to Australian current affairs';<sup>113</sup>
  - that because the current provisions exclude some expatriates from voting, a large percentage of expatriates have a 'strong sense of being excluded from the Australian community';<sup>114</sup> and
  - that enfranchising expatriates would be a fuller implementation of the principle of universal suffrage for citizens.<sup>115</sup>
- 4.40 Alternatively, it might be argued against an expansion of the expatriate franchise that:
- it is inappropriate to extend voting rights to individuals who may not be directly affected by the results of elections, particularly if there would be a relatively large number of permanent external electors compared to the number of domestic electors;
  - 'it is not appropriate to divert more resources to an elector group that is not covered by the compulsory enrolment or voting provisions, and away from assisting those that are so covered to comply with the law';<sup>116</sup>
  - 'requirements for eligible overseas electors to regularly update their enrolment and vote in Australian elections are appropriate and form a valid method of measuring whether a continuing interest in Australian political affairs exists';<sup>117</sup> and
  - voting rights for external citizens may raise issues regarding ensuring appropriate transparency and dispute resolution for external election processes.<sup>118</sup>
- 4.41 Options for reforms that have been suggested to enable a greater number of Australian expatriates to vote in Australian elections include:
- removing the requirement that an expatriate intend to resume residing in Australia within a specified time: one alternative could be a requirement that an expatriate has returned to Australia within a specified period such as three years (even for a short visit), as applies in New Zealand;<sup>119</sup>

<sup>112</sup> G Williams, as cited in Senate Standing Committee on Legal and Constitutional Affairs, *They still call Australia home: Inquiry into Australian expatriates*, 2005, p. 57.

<sup>113</sup> Senate Standing Committee on Legal and Constitutional Affairs, *ibid.*, p. 60.

<sup>114</sup> The Southern Cross Group, *op. cit.*, p. 28.

<sup>115</sup> D Nohlen and F Grotz, 'The legal framework and an overview of electoral legislation', in International IDEA, *Voting from Abroad: The International IDEA Handbook*, 2007, p. 75.

<sup>116</sup> JSCEM, *Report on the Conduct of the 2007 Federal Election and Matters Related Thereto*, *op. cit.*, pp. 305-306. JSCEM recommended that the current arrangements for expatriate enrolment and voting be retained.

<sup>117</sup> *ibid.*

<sup>118</sup> D Nohlen and F Grotz, *op. cit.* See also J Grace and J Fischer, 'Enfranchising Conflict-Forced Migrants: Issues, Standards and Best Practices', International Organisation for Migration, Participatory Elections Project, Discussion Paper No.2, 29 September 2003, p. 28, available at [www.geneseo.edu/~iompress/Archive/Outputs/Standards\\_Final.pdf](http://www.geneseo.edu/~iompress/Archive/Outputs/Standards_Final.pdf).

<sup>119</sup> Senate Standing Committee on Legal and Constitutional Affairs, *They still call Australia home: Inquiry into Australian expatriates*, *op. cit.*, p. 65.

- abolishing the automatic disenfranchisement of expatriates who fail to vote at a federal election or fail to lodge relevant application forms by particular dates;<sup>120</sup> and/or
- increasing the information provided to expatriate Australians, and those intending to depart Australia, about their voting entitlements and enrolment procedures.<sup>121</sup>

### Youth

4.42 There have been some proposals that the current voting age of 18 be lowered to enfranchise youth. For example, one idea raised by the 'Future of Australian Governance' stream at the Australia 2020 Summit called for optional enrolment to vote and voting to be introduced for Australians aged between 16 and 18 years.<sup>122</sup> In addition, the communiqué from the 2008 Australia 2020 Youth Summit recommended that:

'to build a more participatory 2020, the age at which people are eligible to vote must be lowered to 16. 16 year olds work, pay income tax, pay GST, drive, and can join the army. They must be enfranchised so they can have a say in Government policies that affect them.'

4.43 Arguments that have been advanced in favour of a franchise for youth include: that youth have a substantial enough stake in the nation's governance to justify being given a voice in how the nation is governed;<sup>123</sup> that 16 and 17 year olds are sufficiently mature and sufficiently educated to vote;<sup>124</sup> and that a reduced voting age may improve the relevance and hence effectiveness of existing civic education programs and lead to more political engagement and participation.<sup>125</sup>

4.44 Arguments against lowering the voting age include that the public do not support lowering the voting age;<sup>126</sup> that internationally, very few countries have lowered the voting age beyond 18;<sup>127</sup> that youth may have insufficient maturity or life experience to vote,<sup>128</sup> or that some young people show high levels of apathy about politics.<sup>129</sup>

4.45 Different proposals to enfranchise youth have suggested that<sup>130</sup>:

- compulsory voting be extended to 16 and/or 17 year olds;
- 16 and/or 17 year olds be permitted to vote on a voluntary basis;
- enrolment be voluntary for 16 and/or 17 year olds, with voting to be compulsory for those who are enrolled;

<sup>120</sup> The Southern Cross Group, op. cit., p. 30.

<sup>121</sup> JSCEM, *The 2001 Federal Election: Report of the inquiry into the conduct of the 2001 Federal Election and matters related thereto*, 2003, p. 78.

<sup>122</sup> *Australia 2020 Summit – Final Report*, 2008, pp. 308, 350.

<sup>123</sup> Victorian Electoral Commission, *Lowering the Voting Age: A discussion of the issues from the Victorian Electoral Commission's perspective*, 2004, pp. 1-2.

<sup>124</sup> The Electoral Commission (UK), *Age of Electoral Majority: Report and Recommendations*, 2002, pp.24-25.

<sup>125</sup> A Folkes, 'The Case for Votes at 16', *Representation*, vol. 41, no. 1, 2004, pp. 52-53.

<sup>126</sup> The Australian Democrats have conducted annual Youth Polls including the question 'Should the voting age be lowered to 16?' Between 2000 and 2003, the 'No' result was consistently – and increasingly – higher than the 'Yes' result, as cited in the Victorian Electoral Commission, op. cit., p. 9. In 2005, 75% of respondents to the youth poll believed that the voting age should not be lowered to sixteen. See [www.democrats.org.au/docs/2005/YouthPollReport2005.pdf](http://www.democrats.org.au/docs/2005/YouthPollReport2005.pdf), p. 13.

<sup>127</sup> The ACE Electoral Knowledge Network, available at <http://aceproject.org/epic-en/vr>, notes that five countries have a voting age of 16 (Austria, Brazil, Cuba, Nicaragua and Somalia), and four countries have a voting age of 17 (Indonesia, North Korea, Sudan and Timor-Leste).

<sup>128</sup> Victorian Electoral Commission, *Lowering the Voting Age*, op. cit., pp. 3-5.

<sup>129</sup> *ibid.*, p. 5.

<sup>130</sup> For further discussion of these proposals, see Victorian Electoral Commission, *ibid.*, and The Electoral Commission (UK), *Age of Electoral Majority*, op. cit.

- the right to vote at 16 and/or 17 be extended to those who are exercising, or affected by, other rights and responsibilities, such as joining the armed forces, working full-time or paying tax; or
- there be different voting ages for different levels of government, as applies in Germany and Italy, where the voting age is lower for local elections than for national elections.

### Prisoners

- 4.46 A question for consideration is the extent to which the franchise for prisoners should be limited, if at all. Different approaches are taken internationally, for example:
- New Zealand does not permit persons serving a sentence of more than three years, or a sentence of preventive detention, to vote;
  - Canada allows all prisoners to vote, regardless of their sentence; and
  - the United Kingdom prohibits all prisoners serving a custodial sentence of any length from voting.
- 4.47 Some have argued that all prisoners should be enfranchised, on the basis that:
- prisoners' conviction and incarceration is sufficient punishment for the crime they have committed and disenfranchisement is unjustified additional punishment;<sup>131</sup>
  - disenfranchisement of prisoners is counterproductive to the purpose of incarceration as social rehabilitation;<sup>132</sup>
  - extending the franchise to prisoners is consistent with Australia's obligations under Article 25 of the ICCPR, which provides that 'every citizen shall have the right and the opportunity, without any [distinction] and without unreasonable restrictions... to vote and to be elected at genuine periodic elections';<sup>133</sup> and
  - disenfranchising prisoners is 'unsupportable on political equality grounds'.<sup>134</sup>
- 4.48 Others contend that it is appropriate to limit prisoners' voting rights, on the basis that:
- the prospect of disenfranchisement may deter persons from committing crimes;<sup>135</sup> and
  - by committing a serious offence against society, prisoners have failed to comply with their civic responsibilities and therefore lost their claim to civic rights such as voting.<sup>136</sup>
- 4.49 In August 2007, a majority of the High Court of Australia found that a blanket ban on prisoner voting was constitutionally invalid.<sup>137</sup> Chief Justice Gleeson held that the 2006 amendments which imposed a blanket ban on prisoner voting broke 'the rational connection necessary to reconcile the disenfranchisement with the constitutional imperative of choice by the people'.<sup>138</sup> The joint judgment of Gummow, Kirby and Crennan JJ analysed the ban in light of the system

<sup>131</sup> G Orr, 'Ghosts of the Civil Dead: Prisoner Disenfranchisement', Democratic Audit of Australia, Discussion Paper, May 2003, p. 1, available at [democratic.audit.anu.edu.au/papers/20030509\\_orr.pdf](http://democratic.audit.anu.edu.au/papers/20030509_orr.pdf).

<sup>132</sup> L Hill, 'Precarious persons: disenfranchising Australian prisoners', *Australian Journal of Social Issues*, vol.35, no.3, August 2000, p. 208.

<sup>133</sup> It can be argued that a restriction on the right to vote of prisoners serving sentences of three years or more is compatible with the obligation in article 25 of the ICCPR.

<sup>134</sup> G Orr, 'Australian Electoral Systems – How Well Do They Serve Political Equality?', *op. cit.*, p. v.

<sup>135</sup> JSCEM, *The 1996 Federal Election, Report of the Inquiry into All Aspects of the Conduct of the 1996 Federal Election and Matters Related Thereto*, 1997, p. 48.

<sup>136</sup> N Minchin, as quoted in L Hill, *op. cit.*, p. 204.

<sup>137</sup> *Roach v Electoral Commissioner* (2007) 233 CLR 162. For a more detailed summary of the court's decision, see D Lewis and D Bennett, 'Prisoners Voting in Federal Elections', Australian Government Solicitor *Litigation Notes*, Number 15, 20 February 2008, available at [www.agps.gov.au/publications/legalpubs/litigationnotes/litnote15.htm#four](http://www.agps.gov.au/publications/legalpubs/litigationnotes/litnote15.htm#four).

<sup>138</sup> *Roach v Electoral Commissioner* (2007) 233 CLR 162, *ibid.*, at 182.

of representative and responsible government mandated by the Constitution, and held the 2006 Act went 'beyond what is reasonably appropriate and adapted (or "proportionate") to the maintenance of representative government'.<sup>139</sup>

- 4.50 The High Court upheld the validity of the law as it stood before the 2006 amendments, which had provided that prisoners serving a sentence of three years or longer for an offence against the law of the Commonwealth or of a state or territory were not entitled to vote. Chief Justice Gleeson held that the three year regime was valid, as it prevented from voting only those involved in serious criminal offending.<sup>140</sup> Gummow, Kirby and Crennan JJ held that the three year regime was valid; having regard to the colonial history and the drafting history of the Constitution, and the use of the length of the sentence as a criterion of culpability, it could not be said that such a system was incompatible with the maintenance of the prescribed system of representative government.<sup>141</sup>
- 4.51 If some limits to prisoners' franchise are considered to be acceptable, the question is where to draw the line: options include restricting voting rights to prisoners serving a sentence of one, three, five or more years, or restrictions limited to particular identified crimes.<sup>142</sup> It might also be argued that arrangements for prisoners' franchise should be consistent across the Commonwealth, states and territories.

#### *Persons of 'unsound mind'*

- 4.52 Some concerns have been raised about the current provisions which exclude from voting 'a person who by reason of being of unsound mind, is incapable of understanding the nature and significance of enrolment and voting'. Criticisms of this exclusion have been largely focused on its potential impact on persons with a disability in the context of compulsory voting; it is arguable that the ageing of the Australian population may also result in more electors suffering from illnesses leading to diminished capacity.<sup>143</sup>
- 4.53 On its face, the exclusion from the franchise for persons of 'unsound mind' could be viewed as the removal of those persons' right to vote. Others might view this exclusion as a necessary way to protect the integrity of the electoral system from the harm that may be caused by votes cast by persons who are not able to understand the nature and significance of voting. In practice, however, no test for 'soundness of mind' is conducted when a person seeks to enrol or approaches a polling booth on election day. In practice the provision is 'used' when a person raises a concern with the AEC about another person, initiating a formal process which may result in the removal of the second person from the electoral roll. These concerns are generally raised by persons close to the elector in question, and motivated by what they see as the best interests of the person concerned, for example protecting them from having to respond to repeated penalty notices for failure to vote at successive elections.
- 4.54 As it stands, this disqualification has affected relatively few electors – the AEC advises that 4,812 people were removed from the Commonwealth electoral roll by objection on the ground of unsoundness of mind between 1 January 2007 and the 2007 federal election.

<sup>139</sup> *ibid.*, at 202.

<sup>140</sup> *ibid.*, at 179.

<sup>141</sup> *ibid.*, at 204.

<sup>142</sup> For example, JSCEM recently recommended that the Electoral Act be amended to reinstate the previous three-year qualification for prisoners, to reflect the High Court of Australia's decision in *Roach v Electoral Commissioner* (2007) 233 CLR 162. JSCEM stated that it 'considers that the previous three-year disqualification is appropriate': JSCEM, *Report on the Conduct of the 2007 Federal Election and Matters Related Thereto*, *op. cit.*, p. 295. This recommendation was the subject of a dissenting report from Coalition members of JSCEM (at pp. 332-333), who stated that 'voting should be denied to those who are currently serving full-time custodial sentences of one year or longer'.

<sup>143</sup> This issue is being addressed by medical researchers overseas: see, for example, the *Facilitating Voting as People Age: Implications of Cognitive Impairment* project being pursued at the Alzheimer's Disease Center, University of Pennsylvania, [www.pennadc.org](http://www.pennadc.org).

The Electoral Act requires the following procedures to be undertaken before a Divisional Returning Officer (DRO) may remove a person from the electoral roll under this exemption:

- a written objection must be lodged by an enrolled elector<sup>144</sup> (often a family member, friend or medical practitioner);
- the objection must be accompanied by a medical certificate 'stating that in the opinion of the medical practitioner, the elector, because of unsoundness of mind, is incapable of understanding the nature and significance of enrolment and voting'<sup>145</sup>; and
- the DRO must give notice of the objection to the person whose enrolment has been challenged, and provide them with a chance to respond.<sup>146</sup>

4.55 This disqualification has been amended twice: in 1983, the term 'unsound mind' was deemed imprecise, and the requirement that a person be incapable of understanding the nature and significance of enrolment and voting was added;<sup>147</sup> and in 1989, the requirement that a medical certificate be provided with an objection to a person's enrolment was added.<sup>148</sup> A DRO's decision to remove a person from the electoral roll for reasons of unsound mind may be appealed to the AEC and the Administrative Appeals Tribunal.<sup>149</sup>

4.56 Concerns that have been raised about this exemption include:

- that it is 'unduly vague', may have offensive connotations, and may leave some vulnerable citizens 'at the mercy of permanent disenfranchisement at the hands of their relatives/ carers';<sup>150</sup>
- that it may operate to disenfranchise people with intellectual or psychiatric impairment who 'are able to understand the ramifications of enrolment and voting but could be judged to fall into this definition inappropriately';<sup>151</sup>
- that it could be argued that certain people of 'sound mind' do not have an understanding of 'the nature and significance of enrolment and voting', but the capacity of persons of 'sound mind' is never questioned;<sup>152</sup> and
- that the exemption is inconsistent with modern approaches to issues of mental capacity, which recognise that intellectual or psychiatric impairments are not always permanent or constant, and are based on a presumption of decision-specific capacity unless otherwise proven.<sup>153</sup>

<sup>144</sup> Electoral Act, op. cit., subsection 115(1).

<sup>145</sup> *ibid.*, subsection 118(4).

<sup>146</sup> *ibid.*, sections 116, 117 and 118.

<sup>147</sup> This was in response to the recommendation of the JSCER that the wording 'unsound mind' be reviewed 'with a view to excluding on the ground only those persons who are incapable of making any meaningful vote. Modern State and Territory legislation in this area may provide a useful guide to more precise description': JSCER, *First Report*, Australian Government Publishing Service, Canberra, September 1983, p. 105.

<sup>148</sup> J Norberry and G Williams, op. cit., p. 25.

<sup>149</sup> Electoral Act, op. cit., Part X.

<sup>150</sup> Democratic Audit of Australia, submission no. 45 to JSCER, *Inquiry into the 2007 Federal Election*, p. 5.

<sup>151</sup> People with Disability Australia, submission no. 68 to JSCER, *Inquiry into the 2007 Federal Election*, p. 2,

<sup>152</sup> *ibid.*, p. 3.

<sup>153</sup> For example, see Disability Council of New South Wales, 'Are the rights of those people whose capacity is in question being adequately promoted or protected?', Submission to the Attorney-General's Department of NSW, June 2006, available at [www.disabilitycouncil.nsw.gov.au/archive/06/capacity.html](http://www.disabilitycouncil.nsw.gov.au/archive/06/capacity.html).

- 4.57 Others have pointed to Australia's international obligations under the UN *Convention on the Rights of Persons with Disabilities*, which Australia ratified on 18 July 2008.<sup>154</sup> Article 12 of the convention provides that parties to the convention 'shall recognise that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life'.
- 4.58 Arguments in favour of retaining an exemption in some form include the concern that 'the votes of those with serious intellectual/mental dependency may be exercised by their relatives/carers without regard to the vote holders' wishes';<sup>155</sup> and the concern that with compulsory voting, there should be adequate protections from punishment for failure to vote for those people who, due to their reduced capacity, are unable to understand the nature and significance of enrolment and voting.
- 4.59 Options that could be considered to amend the current arrangements include:
- abolishing the current exclusion for persons of unsound mind, as has occurred in Canada;<sup>156</sup>
  - introducing a broader medical exemption which could be available for persons who are medically unfit to vote;
  - narrowing the present exclusion: for example, in New Zealand, only people who have been in a psychiatric hospital for more than three years after being charged with a criminal offence are ineligible to enrol;<sup>157</sup> or
  - rather than removing persons from the electoral roll, implementing a process in which a medical certificate stating that a person is at a certain date incapable of understanding the nature and significance of enrolment and voting could be acceptable as a standing 'excuse' for failure to vote thereafter (that is, without prohibiting the person from voting if they wished to do so on a particular occasion).

### Harmonisation

- 4.60 It might be desirable for any amendments to the franchise to occur in a nationally consistent way, as occurred with the reforms which commenced in 1984 to provide for citizenship to be the primary criterion for the franchise. The 1984 reforms highlight that harmonised reforms may take some time to implement across all jurisdictions: while legislation was enacted at the Commonwealth level in 1981,<sup>158</sup> it did not come into effect until early in 1984, because of the need for complementary legislation to be enacted at the state level to retain a harmonised basis for the franchise.

<sup>154</sup> People with Disability Australia, *op. cit.*, pp. 3-4.

<sup>155</sup> Democratic Audit of Australia, submission no. 45 to JSCEM, *Inquiry into the 2007 Federal Election*, *op. cit.* p. 5.

<sup>156</sup> See Canadian Electoral Commission, *The Evolution of Federal Voting Rights for Canadians with Disabilities*, [www.elections.ca/eca/eim/article\\_search/article.asp?id=17&lang=e&frmPageSize=&textonly=false](http://www.elections.ca/eca/eim/article_search/article.asp?id=17&lang=e&frmPageSize=&textonly=false).

<sup>157</sup> *Electoral Act 1993* (New Zealand), subsection 80(1)(c).

<sup>158</sup> *Statute Law (Miscellaneous Amendments) Act 1981*, section 32. The Act did not commence until 26 January 1984: see Government Gazette No. S247, 1981, p. 1.

## DISCUSSION POINTS

- 4.61 This chapter has set out the current arrangements governing who is eligible to vote in Australian elections, and discussed a number of issues and options for the franchise.
- 4.62 Comments are invited on the type of franchise that should appropriately reflect a modern and inclusive Australian society. In particular, submissions are invited on the following questions:
- Are the current arrangements for the franchise appropriate for modern Australia?
  - Should any categories of non-citizens have the right to vote in Australian elections?
  - To what extent should Australian citizens living overseas be permitted to vote in Australian elections?
  - Should the voting age and/or enrolment age for Australian elections be lowered?
  - Should the current exclusions from the franchise be maintained, amended or abolished, in particular for:
    - persons serving a prison sentence of three years or more?
    - persons of unsound mind?
  - Are there any other aspects of the franchise that you consider should be reformed?
  - Should the franchise be uniform across Australia?