



**Comment  
on:  
Electoral  
Reform Green  
Paper:  
Strengthening  
our Democracy**

**November  
2009**

**INTRODUCTION**

ACTCOSS acknowledges that Canberra has been built on the traditional lands of the Ngunnawal people. We pay our respects to their elders and recognise the displacement and disadvantage they have suffered as a result of European settlement. We celebrate Aboriginal and Torres Strait Islander cultures and ongoing contribution to the ACT community.

The ACT Council of Social Service Inc. (ACTCOSS) is the peak representative body for not-for-profit community organisations, people living with disadvantage, and low-income citizens of the Territory. ACTCOSS is a member of the nationwide COSS network, made up of each of the state Councils and the national body, the Australian Council of Social Service (ACOSS).

ACTCOSS' objectives are a community in which all people have the opportunities and resources needed to participate in and benefit from social and economic life and the development of a dynamic, collaborative and viable community sector.

The membership of the Council includes the majority of community based service providers in the social welfare area, a range of community associations and networks, self-help and consumer groups and interested individuals.

ACTCOSS receives funding from the Community Services Program (CSP) which is funded by the ACT Government.

ACTCOSS advises that this document may be publicly distributed, including by placing a copy on our website.

## Introduction

ACTCOSS welcomes the opportunity to respond to the Electoral Reform Green Paper. Law and policy changes by governments to areas including housing, welfare, taxation and health services can have huge impacts on the lives of people experiencing disadvantage. For this reason it is vitally important people are given a voice in the democratic process, not excluded from it.

Young people, prisoners and mental health consumers all have a substantial interest in the governance of Australia. Decisions about health services and funding, education, climate change mitigation and industrial relations will potentially have a large impact on young people. Policies around law, corrections and health and community support services will be of particular interest to prisoners and other people experiencing disadvantage.

ACTCOSS will focus our comments in this submission on the importance of universal suffrage and enfranchising three groups of peoples restricted from voting under the current provisions.

Article 21 of the *Universal Declaration on Human Rights* (UDHR), of which Australia is a signatory, states 'everyone has the right to take part in the government of his country, directly or through freely chosen representatives' and 'the will of the people...shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage.' The right to vote without discrimination is also set out in the *International Covenant on Civil and Political Rights* at Article 25.

Despite this the Australian Constitution provides no guarantee of a universal franchise, where every adult Australian has the right to vote. Currently there are a range of people who are not permitted to vote. ACTCOSS argues restricting the rights of young people, prisoners and mental health consumers is unjustified and an unreasonable limitation on the rights contained in the UDHR.

## Young People

ACTCOSS supports the argument that many young people aged 16 and 17 years are sufficiently mature and educated to make an informed vote.

Consultations held by the Youth Coalition of the ACT for the ACT Legislative Assembly Standing Committee on Education, Training and Young People Inquiry into lowering the voting age in the ACT showed almost 75% of young people believe 16-18 year olds have the ability to make complex decisions.<sup>1</sup> Many of the young people consulted also

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<sup>1</sup> Youth Coalition of the ACT, *Submission to the Legislative Assembly Standing Committee on Education, Training and Young People Inquiry into Lowering the Voting Age in the ACT*, 2006.

reported they care about politically relevant issues including education, use of public space, public transport and employment.<sup>2</sup>

Young people aged 16 and 17 are affected by many government decisions and policy making. Education and public transport policy, for example, have a particularly high impact on young people. Young people are permitted, under Australian law, to work full time and pay taxes. Without a vote however, they have no voice in how those taxes are spent. Young people aged 16 and 17 can be considered legally independent and receive welfare benefits, access the hospital system, legally consent to sex and potentially become pregnant. However without a vote they have no voice in the debate about health care reform, tax reform and the 'baby bonus'.

Young people should have the opportunity, should they choose to exercise it, to participate in the democratic processes of Australia and influence those decisions and policies that will impact on them. ACTCOSS supports a model where enrolment is voluntary for young people aged 16 and 17 years. Voting could then be compulsory for young people who are enrolled.

**Recommendation:** Allow for voluntary enrolment of young people aged 16 and 17 years.

In partnership with lowering the voting age, young people require more education and information about civics and citizenship, to promote engagement with the political and democratic system. The Youth Coalition's consultations revealed many young people were not able, without guidance, to identify the relevance of voting to those issues they cared about.<sup>3</sup> Support is required to assist young people to understand the link between voting and their own lives.

Education is also required to support the wider population to make an informed vote and promote greater understanding of and engagement with the democratic system.

**Recommendation:** Invest in community education and awareness campaigns to increase community involvement and engagement with the democratic system.

## **Prisoners**

Currently people in prison serving a sentence of three years or more cannot vote in federal elections. Similar provisions apply in Victoria and those states where entitlement to vote is linked to qualification to vote at federal elections (such as Queensland and the Northern Territory). The ACT, in 2008, passed legislation to allow all prisoners in the Territory to vote in ACT elections regardless of their term of imprisonment.

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<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

ACTCOSS welcomed the move of the ACT Government to permit prisoners to vote in ACT elections and encourages the Commonwealth to extend to all prisoners the right to vote in federal elections.

Permitting prisoners to vote is in line with the rehabilitative goal of imprisonment that attempts to support prisoners to become functioning members of the community after release. People are sent to prison as punishment, not for punishment. Denying prisoners the right to vote is an extra layer of punishment to that set as appropriate by the courts. The arguments for restricting the rights of prisoners to vote are based on outdated and vague ideas of the 'social compact' and 'civil death' which do not reflect the rehabilitative and restorative aims our corrective system should be striving for.

### **Aboriginal and Torres Strait Islander prisoners**

Aboriginal and Torres Strait Islander people are 12 times more likely to be imprisoned than the rest of the ACT population.<sup>4</sup> Australia-wide, Aboriginal and Torres Strait Islander people are 13 times more likely to be in prison than a non-Aboriginal and Torres Strait Islander person.<sup>5</sup>

Because of the over-representation of Aboriginal and Torres Strait Islander people in the Australian prison population, disenfranchisement of prisoners has a disproportionate effect on the ability of the Aboriginal and Torres Strait Islander population to participate in the democratic process.

A disproportionate number of people in prison also have a mental illness or live with an intellectual disability. The disenfranchisement of prisoners undermines our democratic process, by restricting the voices of a range of minority groups.

<p><b>Recommendation:</b> Permit and make it possible for all prisoners to vote, regardless of the nature and length of their sentence.</p>
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It is very important that people in prison are given the opportunity to vote in elections. The Electoral Commission must take adequate steps to ensure all prisoners receive timely information about the individuals and parties contesting elections, as well as when, where and how to cast their vote validly.

### **Mental Health Consumers and People with Disabilities**

ACTCOSS is of the opinion the current provision excluding a person of 'unsound mind' from the electoral role has a potentially discriminatory effect on mental health consumers, people with dementia or people with disabilities. This provision could disenfranchise people living with a mental illness, who remain capable of casting an informed and meaningful vote.

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<sup>4</sup> ABS, *Prisoners in Australia*, 2007.

<sup>5</sup> Ibid.

ACTCOSS has a number of concerns about the current provision. The term 'unsound mind' is vague and undefined and is not a generally accepted term in the community for someone experiencing mental illness or dementia. It also appears from the Green Paper once someone is identified as being of 'unsound mind' they are permanently removed from the electoral role. This assumes a static model of mental health, however medical and consumer evidence shows people can experience periods when they are well and periods when their condition is more serious.

The restriction on people of 'unsound mind' should be removed as it is no longer in line with community understanding of mental health and is unjustifiably restrictive on mental health consumers and people with dementia.

While recognising the right of mental health consumers and people with disabilities to participate in the democratic process, there should also be protections for people with mental illness or other health concerns who are unable to vote at a particular election as a result.

ACTCOSS supports the option suggested in the Green Paper, that rather than removing people from the electoral role, a process be implemented in which a medical certificate stating a person is incapable at a certain date of understanding the nature and significance of enrolment and voting could be acceptable as a standing 'excuse' for failure to vote. The person then has the option of voting in the future if they wish to do so.

**Recommendation:** Implement a process by which a medical certificate stating a person is incapable at a certain date of understanding the nature and significance of enrolment and voting is an acceptable 'reasonable excuse' for a failure to vote.

## **Harmonisation**

The situation described above regarding the voting rights of prisoners in different jurisdictions and for different levels of government is evidence of the confusing nature of current electoral laws.

It would be preferable if there was a consistent system across all Australian jurisdictions and levels of government.

This would make the system less confusing for people who may find the current provisions complicated, including people from culturally and linguistically diverse backgrounds and people with lower levels of literacy or education.

**Recommendation:** Investigate implementing harmonised electoral law across Australia.