



DAREBIN COMMUNITY LEGAL CENTRE INC.

ABN 89 024 520 609 Reg. No. A0017302L

27 November 2009

Electoral Reform Secretariat
Department of the Prime Minister and Cabinet
PO Box 6500
CANBERRA ACT 2600

By email: electoralreformsecretariat@pmc.gov.au

Dear Madam / Sir,

Submission to the *Electoral Reform Green Paper – Strengthening Australia's Democracy*

Thank you for the opportunity to comment on the Electoral Reform Green Paper – Strengthening Australia's Democracy ("the Green Paper").

Darebin Community Legal Centre ("DCLC") is a generalist community legal centre providing free legal services to disadvantaged people who live, work or study in the Darebin LGA. Alongside its generalist legal service provision, community legal education and dedicated Indigenous Outreach, Family Violence and Victims of Crime programs, DCLC maintains an outreach program to people in Victorian prisons, providing legal information, advice and pre- and post-release support to prisoners and their families.

The following brief comments will be limited to the issue of prisoner franchise raised in the Green Paper, and in particular to the question articulated at discussion point 4.62 as follows:

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?

....

DCLC is strongly of the view that the current federal exclusions from the franchise for persons serving a prison sentence of three years or more should be abolished and that the right to vote should be protected and actively facilitated for all prisoners in all Australian jurisdictions.

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We make the following comments in this regard:

- The right of imprisoned persons to exercise their vote is established at international law.
 - Article 10 of the International Covenant on Civil and Political Rights (“ICCPR”) provides that prisoners must be accorded all their civil and political rights including the right to vote, subject only to restrictions that are ‘unavoidable in a closed environment’.
 - Article 5 of the UN Basic Principles for the Treatment of Prisoners provides that ‘all prisoners shall retain their human rights and fundamental freedoms except to the extent that a limitation is ‘demonstrably justified by the fact of incarceration’.¹
- Policies that promote civic engagement, social inclusion, as well as participation in civil, political, social and cultural life are more likely to reduce and resolve marginalization. Factors like poverty, disadvantage and marginalization are often causal factors contributing to recidivism.² In light of the fact that one of the purported aims of incarceration is rehabilitation,³ it stands to reason that treatment of imprisoned persons so far as possible as a part of the wider community of citizens may help in the rehabilitative process and that, conversely, exclusion from the most basic and fundamental form of civic participation and from the key civil and political right which enables it can only increase feelings of alienation from the broader community.
- The High Court of Australia in *Roach v Electoral Commissioner*⁴ recognized the unconstitutionality of a blanket ban on imprisoned persons’ right to vote. The Court majority focused on the importance of representative government in Australia. Although the Court accepted that the restrictions now in place (preventing persons serving sentences of three years or more from voting) are not unconstitutional, there is a compelling argument that conditioning an imprisoned person’s right to vote on the length of their imprisonment is not compatible with international human rights norms by which Australia is bound, including Article 25 of the ICCPR, and reflects long outdated and counterproductive notions of “civil death” as an incident of imprisonment.
- Exclusions on prisoner franchise are indirectly discriminatory. The Australian Bureau of Statistics reports that in Australia, an Indigenous person is 13 times more likely to experience imprisonment than a non-Indigenous person. Despite the fact that the Indigenous population constitutes about 2.5 per cent of the population, Indigenous people represent 24 per cent of the total prisoner population.⁵ Abrogation of prisoners’

¹ United Nations General Assembly Resolution 45/111 (1990), available online at <http://www.un.org/documents/ga/res/45/a45r111.htm> (accessed 27 November 2009).

² Tony Vinson, *Dropping Off the Edge: the Distribution of Disadvantage in Australia*, Jesuit Social Services and Catholic Social Services Australia 2007.

³ See art 10(3) of the ICCPR.

⁴ [2007] HCA 43.

⁵ Australian Bureau of Statistics (2008) *Prisoners in Australia*, pp. 6 & 12.

right to vote also impacts disproportionately on other groups who are overrepresented in the prison system, including people with mental illness or intellectual disability.

Please do not hesitate to contact us on (03) 9484 7783 if you have any queries relating to this submission.

Yours sincerely

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Per:

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