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27<sup>th</sup> November 2009

Dear Electoral Reform Secretariat,

**Public Submission of Liberty Victoria on the Electoral Reform Green Paper—  
Strengthening Australia’s Democracy (September 2009)**

Thank you for the opportunity to make this submission on the *Electoral Reform Green Paper—Strengthening Australia’s Democracy* (“the Green Paper”).

The Victorian Council for Civil Liberties Inc—Liberty Victoria—is an independent non-government organization which traces its history back to the first civil liberties body established in Melbourne in 1936, and is one of Australia’s leading human rights and civil liberties organizations. Liberty works to defend and extend human rights and freedoms in Victoria, and seeks to promote Australia’s compliance with the rights and freedoms recognised by international law.

Following the structure suggested in the Green Paper under Chapter 15: Issues for Discussion and Comment, Liberty makes the following comments in relation to the Green Paper:

**The Franchise**

**Issue 4 (c) To what extent should Australian citizens living overseas be permitted to vote in Australian elections?**

Liberty Victoria recommends that the *Commonwealth Electoral Act 1918* (Cth) be amended to allow a greater number of expatriate citizens to enroll and maintain their electoral enrolment. Liberty also suggests an amendment to remove the requirement that an expatriate needs to intend to resume living in Australia within a specified time in order to be eligible to enroll and vote.

- Currently, the *Commonwealth Electoral Act 1918* (Cth) places restrictions on expatriate voters which effectively disenfranchise a significant number of Australian citizens.
- s. 1.27 of the Green Paper recognizes that Australia's population is highly mobile, with Australian citizens living, working and travelling internationally, as well as having economic, social and political interests in other countries.<sup>1</sup>
- The Commonwealth Legal and Constitutional References Committee inquiry *They still call Australia home: Inquiry into Australian Expatriates* (2005) estimated that in 2005 there were at least three-quarters of a million Australians living overseas permanently or long-term.<sup>2</sup>
- The Committee also suggested 'the Australian Government needs to make greater efforts to connect with and engage the expatriate community, and that Australian expatriates could be better recognized and included in the democratic system'.<sup>3</sup> This point is reflected in the Australian Electoral Commission's findings that only 5,822 Eligible Overseas Electors voted in the 2001 Federal election.<sup>4</sup>
- Liberty suggests that enhanced coordination of policy on the issue of expatriate voting, amendments to the Electoral Act and the utilization of the internet as a medium to communicate with expatriates should assist in simplifying the enrolment and voting process for Australian expatriates.

#### **Issue 4 (d) Should the voting age and/or enrolment age for Australian elections be lowered?**

Liberty Victoria proposes that persons under 18 should be allowed to register on the electoral roll. Those who choose to register on the electoral roll should be allowed to vote on a voluntary basis.

- Liberty appreciates the opportunity to discuss this issue, as its inclusion in the Green Paper signals an intention by the Government to engage with young people and to discuss their involvement and participation in public life.
- Australia ratified the Convention on the Rights of the Child (CROC) in 1990. This Convention identified one of four key principles that define a human rights based approach in relation to youth as participation in issues that affect them.<sup>5</sup>
- Article 12 of CROC requires that relative to their age and level of maturity, the views of young people ought to be considered in matters that affect them. A range of other rights enshrined in CROC encourage youth having

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<sup>1</sup> Electoral Reform Green Paper, para 1.27.

<sup>2</sup> Commonwealth Legal and Constitutional References Committee inquiry, *They still call Australia home: Inquiry into Australian Expatriates* (2005), 5.

<sup>3</sup> *Ibid.*, 5.

<sup>4</sup> AEC, *Submission 186* to the JSCEM inquiry into the 2001 Federal Election, p. 6.

<sup>5</sup> Convention on the Rights of the Child, art 12.

involvement in, and the opportunity to influence decision-making processes on matters that affect them. As many persons under 18 work casual jobs, use public transport and education services it stands to reason that they should be able to respond to these policy issues by voting if they so desire.

- Allowing young persons under 18 to enroll and vote on a voluntary basis recognizes that children mature at different rates, and that children's capacity to comprehend, participate and to make decisions grows with time. The fundamental principle is that children's views should be taken into account in accordance with their individual degree of maturity and understanding. By tying the ability to vote to the action of actually enrolling, the child's capacity is demonstrated by the very process of enrolling. Only a child with the interest and capacity to vote will undertake the process of enrolment and voting.
- Young people studying relevant subjects at school may be assisted in their studies by engaging in the electoral process and be motivated by the process of enrolment to become more engaged citizens. This engagement could help to counter the lack of involvement of youth in voting processes, with as many as 400,000 eligible Australians aged 18–25 not enrolled to vote.<sup>6</sup>
- An objection that may be raised, namely that giving the vote to a child simply represents giving an extra vote to the child's parent, is misguided. Australia has a secret ballot, enforced by serious penalties for breach.<sup>7</sup> A child who has the interest and understanding required to enroll and attend a voting place is demonstrating a desire to be involved in the democratic process. In any event, when the child lodges their vote, it will be in secret, regardless of what their parents urge them to do.

**Issue 4 (e) 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?**

Liberty Victoria recommends that the current enrolment exclusions under the *Commonwealth Electoral Act 1918* (Cth) for persons serving a prison sentence of three years or more be abolished.

- The loss of voting rights by prisoners constitutes extrajudicial punishment and serves only to further stigmatize and isolate incarcerated persons from the wider community.<sup>8</sup> Additionally, one of the aims of incarceration is rehabilitation of the offender to prepare them adequately for their return to society upon their release. Restricting the franchise of imprisoned persons runs contrary to that aim.

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<sup>6</sup> Green Paper, para 9.28.

<sup>7</sup> For example, *Electoral Act 2002* (Vic) s. 154.

<sup>8</sup> Orr, G (1998) 'Ballot-less and Behind Bars: the Denial of the Franchise to Prisoners', 26 *Federal Law Review* 55.

- The Green Paper notes that one of the several key principles of the Australian electoral system is universality, where qualifications for voting should be universal and non-discriminatory.<sup>9</sup>
- Australia, as a party to the *International Covenant on Civil and Political Rights*, is under an obligation to provide that every citizen should have the right and opportunity to vote, on terms of equality and without unreasonable restrictions.<sup>10</sup> Such a principle is also reflected in the *Basic Principles for the Treatment of Prisoners* which state that the rights and freedoms set out in the ICCPR should be available to prisoners.<sup>11</sup>

## **Representation and Voting Systems**

### **Issue 5 (c) For the Senate, should preferential above the line voting be introduced? Should preferential voting below the line be introduced?**

Liberty recommends that preferential above the line voting should be introduced in the Senate.

- The Constitution indicates that the Senate 'shall be composed of Senators for each State, directly chosen by the people of the State'.<sup>12</sup> Above the line voting in the Senate currently does not provide for voters to directly vote for Senators. The current system lacks transparency and distorts and misdirects voters' intentions.
- In the current system of electing Senators, voters are given the opportunity to vote above the line or below the line on the ballot paper. Above the line voting means that voters have the option of choosing a party, rather than ranking the candidates who are up for election. The issue is that the parties are the ones determining how their preferences flow to other parties. Above the line voting puts the voter in the hands of the chosen party but makes it difficult for the voter to understand what the implications of their vote are.<sup>13</sup> This is particularly troubling given that in the 1998 Federal election 94.9 per cent of voters utilized the above the line option on the ballot paper.<sup>14</sup>
- The current system of preference flows has resulted in situations where, in 1984, a candidate with first preference votes over 77 per cent of a quota failed to win a Senate seat,<sup>15</sup> contrasted with a situation in the 2004 Federal Election

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<sup>9</sup> Green Paper, para 2.10.

<sup>10</sup> ICCPR, part 3 article 25, and subject to article 2 (non-discrimination in all rights).

<sup>11</sup> *Basic Principles for the Treatment of Prisoners*, para. 5, Resolution 45/111 of 14 December 1990.

<sup>12</sup> Australian Constitution, s. 7.

<sup>13</sup> Australian Collaboration, collaboration of national community organisations...

<sup>14</sup> Parliament of Australia Parliamentary Library Research Note 6 1999–2000, Senate Group Voting Tickets, Gerard Newman Statistics Group 21 September 1999, from <http://www.aph.gov.au/library/Pubs/RN/1999-2000/2000rn06.htm> accessed 25 November 2009.

<sup>15</sup> In 1984 Peter Garrett failed to win a Senate seat in NSW for the Nuclear Disarmament Party, despite winning ten per cent of the primary vote (77 per cent of a quota). The seat went to the Australian Democrats, as a result of preference flows.

where a candidate with first preference votes of 0.13 per cent of a quota won a Senate seat as a result of preference deals made between the political parties.<sup>16</sup>

- One of the key principles noted in the Green Paper for an electoral system is that balloting processes should enable voters to truthfully express their choices between candidates and political parties.<sup>17</sup> Liberty advocates for reform in this area to ensure that voters are able to accurately express their voting intentions.

### **Enrolment and Participation**

#### **Issue 7 (g) What changes should be made to the special enrolment arrangements for silent electors, homeless persons and youth?**

Liberty recommends that the *Commonwealth Electoral Act* be amended to remove the barriers which prevent the full participation of persons experiencing homelessness.

- The Green Paper states that all people qualified to vote should have equitable access to enrolment and voting, and that appropriate processes and facilities should cater for electors whose specific needs make voting burdensome.<sup>18</sup>
- The Green Paper correctly recognizes that between 33 per cent and 90 per cent of eligible Australian voters who are homeless are not enrolled to vote.<sup>19</sup> The *White Paper on Homelessness* 2008 also recognizes that participating in elections and exercising voting rights is central to social inclusion.<sup>20</sup>
- Liberty supports Recommendation 19 of the *Report on the 2007 Federal Election* to amend the *Commonwealth Electoral Act* to incorporate a definition of homelessness in line with that contained in the *Victorian Electoral Act* 2002 (Vic) in order to facilitate the enrolment of persons experiencing homelessness.
- Liberty supports Recommendation 20 of the *Report on the 2007 Federal Election* to amend the *Commonwealth Electoral Act* to allow increased flexibility around the provision of mobile polling and/or pre polling facilities to be provided to further engage persons experiencing homelessness.

#### **Issue 7 (h) What 'close of rolls' period do you think is appropriate?**

Liberty recommends an extension of the close of rolls period to seven days from the issue of the writs.

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<sup>16</sup> In the 2004 Federal election, Steve Fielding of the Family First Party won a Senate seat on only 0.13 per cent of a quota. Family First won the seat on preference flows between the parties.

<sup>17</sup> Green Paper, para 2.10.

<sup>18</sup> Green Paper para 2.10.

<sup>19</sup> Green Paper, para 4.21.

<sup>20</sup> Department of Families, Housing, Community Services and Indigenous Affairs, *The Road Home: A National Approach to Reducing Homelessness*, 2008.

- The Green Paper correctly recognizes that the objective of enabling eligible electors to vote is frustrated if close of roll procedures become a barrier to the exercise of the right to vote.
- The current arrangements regarding closure of the rolls are inadequate. The fact that Australia does not have fixed date Federal elections means that the closing date of the electoral roll is a critical issue.
- During the 2004 election (when there were seven days from the issue of the writs in which to enroll), the Australian Electoral Commission stated in their *Behind the Scenes Report* that a large number of people used the close of rolls week to enroll for the first time or to check their enrolment details. The AEC received a total of 423,975 enrolment cards in the week between the announcement of the 2004 election and the close of rolls date. Of the enrolment cards received in the last week, 78,816 were new enrolments.<sup>21</sup>
- The current close of rolls period disenfranchises new voters, especially young people, as well as disproportionately impacting on people living in remote areas, the homeless and members of other marginalized communities who find it difficult to respond quickly to close of roll deadlines.

### **Education for Electoral Participation**

#### **Issue 9 (a) Do you think that any changes should be made to existing electoral education?**

Liberty supports civic and electoral education strategies directed towards the general community, youth, people experiencing homelessness and Indigenous Australians.

- The Green Paper recognizes that electoral education initiatives have a role to play in improving rates of electoral understanding and participation.<sup>22</sup>
- In light of the fact that surveys indicate Australians aged between 15 and 35 have limited knowledge of or interest in political affairs,<sup>23</sup> Liberty supports the establishment of civics education as part of the core curriculum in secondary schools across Australia.
- Liberty understands that the Federal Government announced in the 2009–10 Budget that it will provide an amount of money over four years for a targeted Indigenous Electoral Participation Program, which will commence in July 2010. Liberty commends the Federal Government for tailoring a program specifically to meet the needs of Indigenous Australians.
- As noted previously in this submission, Liberty advocates for the removal of procedural and definitional barriers that limit the ability of persons experiencing homelessness to participate fully in the electoral process. Liberty

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<sup>21</sup> AEC, *Behind the Scenes: The 2004 Election Report*.

<sup>22</sup> Green Paper, para 4.43.

<sup>23</sup> Joint Standing Committee on Electoral Matters, *Civics and Electoral Education* 2006, op. cit., p. iii.

advocates for the delivery of electoral education to homeless persons in appropriate locations such as service providers, Centrelink offices and drop-in centres.

If you have any queries on the above please contact me on 04 1279 5491 or email [jamie\\_gardiner@iosphere.net.au](mailto:jamie_gardiner@iosphere.net.au).

I would like to thank Kate Mallinson for her substantial work and contribution to Liberty Victoria's submission.

Yours sincerely,

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Vice President