

Homelessness and Voting

**Submission to the
Joint Standing Committee on Electoral
Matters
Inquiry into the 2007 Federal Election**

May 2008

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Caroline Adler, Amy Barry-Macaulay & James Farrell
Coordinator/Principal Solicitor, Solicitor and Seconded Solicitor
PILCH Homeless Persons' Legal Clinic
Level 1, 550 Lonsdale Street

Melbourne VIC 3000
P: (03) 9225 6684
F: (03) 9225 6686
E: Clinic@pilch.org.au

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1. Executive Summary and Recommendations

1.1 Summary

This submission is made by the PILCH Homeless Persons' Legal Clinic (*the Clinic*) to the Joint Standing Committee on Electoral Matters Inquiry into the 2007 Federal Election.

The submission examines and discusses the franchise of people experiencing homelessness. In particular, the submission considers:

- levels of electoral enrolment and electoral participation among people experiencing homelessness;
- the importance of recognising, and ensuring realisation of, the right to vote for people experiencing homelessness; and
- the various barriers, disincentives and impediments to electoral enrolment and participation among people experiencing homelessness.

The submission also examines and discusses various strategies and steps, including legislative and administrative steps, to increase levels of electoral enrolment and participation among people experiencing homelessness. In this regard, the submission emphasises the importance of practical education and awareness campaigns, as well as more flexible enrolment and voting processes, so as to ensure the effective realisation of the right to vote.

A summary of recommendations is set out below.

1.2 Recommendations

The submission makes the following 17 key recommendations to improve the franchise for homeless voters:

(a) The need for education, awareness and other practical measures to improve participation in the electoral process

Recommendation 1

The Clinic recommends the adoption of specific and practical measures, such as education and awareness campaigns similar to those introduced in Victoria, to ensure that the barriers to voting and participation, such as poverty, illiteracy and homelessness, are overcome.

Recommendation 2

The Clinic recommends that the Commonwealth Electoral Act 1918 (*Cth*) (***CE Act***) be amended to require that electoral enrolment forms and information be displayed prominently at all times in every Australia Post, Centrelink and Medicare outlet to enable and encourage eligible persons to enrol and vote.

Recommendation 3

The Clinic recommends that:

- the AEC formulate, implement and report against a detailed, ongoing, action plan to promote and encourage enrolment and voting among persons and groups experiencing difficulty because of social circumstance; and

- that such persons and groups should include, but not be limited, to homeless and itinerant persons, illiterate persons, persons with disabilities and residents of isolated and remote areas;
- the AEC consult with and consider the views of organisations and groups representing homeless and itinerant persons, illiterate persons, persons with disabilities, residents of remote localities, and other appropriate bodies, to formulate appropriate strategies, programs and materials for use when the action plan is implemented;
- the AEC report back to the Committee prior to the next Federal Election with details of its action plan and implementation strategies;
- where appropriate, adequate funding be provided to enable the AEC to develop, implement and report against the action plan; and
- that following the next Federal Election, the AEC seek feedback from representative groups and community members regarding the effectiveness of the strategies implemented, and further develops its action plan to incorporate constructive suggestions where appropriate.

Recommendation 4

The Clinic recommends that the AEC continue its consultations with relevant parties well before the next Federal Election, as part of improving access to the franchise by those experiencing homelessness, as a minimum:

- target homeless persons in its public awareness campaigns, informing them about itinerant elector and other voting enrolment and options; and
- ensure that its training programs alert AEC staff to the needs of the homeless and other marginalised citizens.

Recommendation 5

The Clinic recommends the early production and distribution of an information kit containing relevant and accessible information for homeless people and homelessness service providers regarding enrolment and voting procedures for no fixed address and ordinary electors. This information kit should explain the various steps in relation to enrolment and voting, as well as any relevant changes to the CE Act.

Recommendation 6

The Clinic recommends planned and coordinated early distribution of the information kit (including relevant enrolment forms) to high frequency contact points, such as Centrelink and Medicare. The AEC should also engage with Centrelink and Medicare staff to ensure that, where possible, they encourage and assist people to enrol to vote.

Recommendation 7

The Clinic recommends that the AEC actively engage with homelessness service providers and provide the information kit (including relevant enrolment forms), along with education and resources to equip them to inform people experiencing homelessness about the importance of voting, eligibility for enrolment and procedures for enrolment and, where possible, assist them to enrol.

Recommendation 8

The Clinic recommends early implementation of a targeted advertising campaign to raise awareness about the importance of voting and to encourage people experiencing homelessness to enrol and vote at all federal elections. This advertising campaign could take the form of, for example, posters displayed in areas and in services that homeless people tend to frequent (including Centrelink and Medicare). We also suggest that the AEC considers placing some larger scale advertising, such as billboards, in locations and suburbs that homeless people frequent.

Recommendation 9

The Clinic recommends that the AEC establish voting stations at locations that are easily accessible, and appropriate to, people experiencing homelessness. We suggest that, where possible, the AEC employ consumer consultants who are sensitive to the issue of homelessness to assist at polling booths on Election Day.

Recommendation 10

The Clinic recommends early roll-out of training for electoral site managers and volunteers addressing the needs of and issues that affect people experiencing homelessness and how electoral workers might assist people from that group on Election Day.

(b) The need for legislative amendment to improve participation in the electoral process

Recommendation 12

The *Commonwealth Electoral Act 1918* (Cth) should be amended to include a definition of a person experiencing homelessness. The definition of a person experiencing homelessness should relate directly to a person eligible to enrol to vote as an itinerant elector under section 96 of the Act.

Recommendation 13

The *Commonwealth Electoral Act 1918* (Cth) should incorporate a definition of a person experiencing homelessness that is similar to the definition provided under section 3A of the *Electoral Act 2002* (Vic). The provision in the *Electoral Act 2002* (Vic) defines a person eligible to vote as an itinerant voter as:

- (a) a person living in -
 - (i) crisis accommodation; or
 - (ii) transitional accommodation; or
 - (iii) any other accommodation provided under the *Supported Accommodation Assistance Act 1994* (Cth)

Recommendation 14

Section 96(9)(a) of the *Commonwealth Electoral Act 1918* (Cth) should be repealed, until a more flexible voting system is implemented, such as through the adoption of mobile polling booths etc.

Recommendation 15

Section 96(8) of the *Commonwealth Electoral Act 1918* (Cth) should be amended to increase the period of time that an Itinerant Elector may have a 'real place of living' from one month to six months.

Recommendation 16

The Australian Electoral Commission's public awareness campaign targeted at people experiencing homelessness should provide information about Silent Elector enrolment and publicise the fact that the address of Itinerant Electors is not shown on the Roll.

Recommendation 17

Section 104 of the *Commonwealth Electoral Act 1918* (Cth) should be amended to provide that a person who is homeless may make a request that his or her address not be entered on the Roll and that such a request shall be granted where the person can provide evidence of his or her homelessness.

2. Introduction

2.1 Overview of Submission

This submission is made by the PILCH Homeless Persons' Legal Clinic (***Clinic***) to the Joint Standing Commission on Electoral Matters (***Committee***) Inquiry into the 2007 Federal Election (***Inquiry***).

The Clinic would appreciate the opportunity to supplement this submission with oral evidence at any public hearing in relation to this Inquiry.

The submission examines and discusses the franchise of people experiencing homelessness. The submission particularly analyses:

- levels of electoral enrolment and electoral participation among people experiencing homelessness;
- the importance of recognising, and ensuring realisation of, the right to vote for people experiencing homelessness; and
- the various barriers, disincentives and impediments to electoral enrolment and participation among people experiencing homelessness.

Informed by research conducted by the Clinic, the submission makes suggestions for both legislative and administrative reform with a view to increasing levels of electoral enrolment and participation among people experiencing homelessness. The Clinic gratefully acknowledges the assistance of David Ring of St Mary's House of Welcome in providing information about work undertaken at that organisation to enfranchise people experiencing homelessness.

The Clinic notes that in March 2008 Senator the Hon John Faulkner announced that the Rudd Government will conduct an electoral review this year. The issues discussed in this submission and specific to the 2007 federal election will also be relevant to the second part of the proposed electoral review, dealing with "a broader range of options aimed at strengthening... our electoral laws".¹

2.2 PILCH Homeless Persons' Legal Clinic

The Clinic provides free legal services to, and advocacy on behalf of, people experiencing or at risk of homelessness. Since October 2001, the Clinic has provided free legal assistance to almost 3000 homeless people across Melbourne. These legal services, which are provided by pro bono lawyers at 11 crisis shelters, soup kitchens and welfare agencies on a weekly basis to facilitate direct access, are valued at more than \$3.5 million per year.

In addition to direct casework services, the Clinic undertakes significant law reform and advocacy, in recognition of the need to address the underlying structural and systemic issues that cause, contribute and prolong homelessness. The Clinic also undertakes significant community education, public policy advocacy and law reform work to promote and protect the right to housing and other fundamental human rights.

¹ Senator the Hon John Faulkner, 'Electoral Reform' (Press Release, 28 March 2008) <http://www.smos.gov.au/media/2008/mr_062008.html>.

3. Homelessness and voting in Australia

3.1 Nature and extent of homelessness in Australia

In Australia, there is an emerging consensus around the definition of homelessness developed by Chamberlain and MacKenzie² and endorsed by the Australian Bureau of Statistics.³ Chamberlain and MacKenzie argue that homelessness is best defined in relation to common community standards regarding the minimum accommodation necessary to live according to the conventions of community life.⁴ In Australia, the accepted minimum community standard is a small, rented flat with basic amenities such as a bedroom, bathroom and kitchen.⁵ Having regard to this standard, Chamberlain and MacKenzie identify three categories of homeless persons:

- **Primary homelessness:** People without conventional accommodation, such as people living on the streets, sleeping in parks, squatting in derelict buildings, or using cars or railway carriages for temporary shelter.
- **Secondary homelessness:** People who move frequently from one form of temporary shelter to another. It covers: people using emergency accommodation (such as hostels for the homeless or night shelters); teenagers staying in youth refuges; women and children escaping domestic violence (staying in women's refuges); people residing temporarily with other families (because they have no accommodation of their own); and those using boarding houses on an occasional or intermittent basis.
- **Tertiary homelessness:** People who live in boarding houses on a medium to long-term basis. Residents of private boarding houses do not have a separate bedroom and living room; they do not have kitchen and bathroom facilities of their own; their accommodation is not self-contained; they do not have security of tenure provided by a lease.⁶

According to the Australian Bureau of Statistics, on Census night in 2001, there were 99,900 people experiencing homelessness across Australia.⁷ Official statistics from the 2006 census have not yet been released however, based on anecdotal information from service providers across Australia this number is increasing.

This included over 14,000 people sleeping rough or in squats, more than 14,000 in crisis accommodation or refuges, almost 23,000 in boarding houses, and nearly 49,000 people staying temporarily with friends or relatives. A further 23,000 people across Australia were living temporarily or marginally in caravan parks.⁸

² Chris Chamberlain and David McKenzie, 'Understanding Contemporary Homelessness: Issues of Definition and Meaning' (1992) 27 *Australian Journal of Social Issues* 274.

³ Chris Chamberlain, *Counting the Homeless: Implications for Policy Development* (Australian Bureau of Statistics: Canberra, 1999).

⁴ Ibid, 9-11, 49.

⁵ Ibid.

⁶ Ibid, 1, 9-11, 13, 49.

⁷ Australian Bureau of Statistics, *Counting the Homeless 2001* (2003) 2. The Clinic notes that the Australian Bureau of Statistics has not yet released the statistics collected from the 2006 Census.

⁸ Ibid.

According to the Australian Institute of Health and Welfare, approximately 161,200 people accessed homelessness assistance services in 2005-06.⁹

The causes of homelessness are complex and varied. However, they are generally acknowledged to include:

- structural causes (such as poverty, unemployment and inadequate supply of affordable housing);¹⁰
- fiscal, social and public policy causes (such as taxation policy and expenditure on public and community housing, health care, education and vocational training);
- individual causes (such as ill health, mental illness, intellectual disability, substance and alcohol dependency, problem gambling, domestic violence, family fragmentation and severe social dysfunction); and
- cultural causes (such as the provision of culturally inappropriate housing or support services to indigenous communities).¹¹

In many cases of homelessness, these causes are intersectional and related.

3.2 Number of homeless of voting age in Australia

According to the Australian Bureau of Statistics, 64 per cent of people experiencing homelessness on Census night in 2001 were aged 19 or older.¹² Census figures are not available for the percentage of homeless people aged 18 or older.

On this basis, it can be conservatively estimated that there were at least 64,000 people experiencing homelessness who were eligible to vote at the 2007 Federal Election.¹³

3.3 The right to vote

As the Human Rights and Equal Opportunity Commission recently noted,¹⁴ every Australian citizen has the right to vote.¹⁵ This right also requires that the government take steps to ensure that everyone is *able* to exercise their right to vote. In Australia, homeless people continue to face great difficulties in exercising this right. The enfranchisement of homeless people is a key challenge for individuals, organisations and governments concerned with the alleviation and eradication of homelessness in Australia.

The right to vote, and its importance, for homeless people is recognised by international human rights law. Article 25(b) of the *International Covenant on Civil and Political Rights (ICCPR)* provides that all citizens have the right to vote.¹⁶ According to the United Nations Human Rights Committee

⁹ Australian Institute of Health and Welfare, *Homeless People in SAAP: National Data Collection Annual Report 2005-06* (2007) 13.

¹⁰ Following the 2001 Census, the Australian Bureau of Statistics identified unemployment and inadequate income as significant structural factors contributing to and causing homelessness across Australia: Australian Bureau of Statistics, above n 7.

¹¹ See generally, 'The Changing Face and Causes of Homelessness: Symposium' (2002) 15(9) *Parity*.

¹² Australian Bureau of Statistics, above n 7, 3-4.

¹³ Statistics from the 2006 Census, relating to homelessness in Australia, are yet to be released. Given that the recent Report of the National Youth Commission Inquiry into Youth Homelessness: *Australia's Homeless Youth* (April 2008) found that youth homelessness has doubled over the past decade (at page 71), it is likely that the number of people over the age of 19 years who are homeless has increased significantly since 2004. Accordingly, it is highly likely that the estimation that there were at least 64,000 people experiencing homelessness who were eligible to vote, at the time of the 2007 Federal Election, is very conservative.

¹⁴ Human Rights & Equal Opportunity Commission, *Homelessness is a Human Rights Issue* (2008), 11.

¹⁵ *International Covenant on Civil and Political Rights*, article 25; *Convention on the Elimination of All Forms of Discrimination against Women*, article 7; *Convention on the Elimination of All Forms of Racial Discrimination*, article 5(c).

¹⁶ Opened for signature 19 December 1966, 999 UNTS 171 (entered into force generally 23 March 1976 and for Australia 13 August 1980).

(HRC), this right lies at the core of democratic government based on the consent of the people.¹⁷ The right to vote imposes a positive obligation on States to adopt effective measures to ensure that all persons entitled to vote are able to exercise that right. Where citizens are required to enrol to vote, such enrolment must be facilitated and obstacles should not be imposed.¹⁸ In the event that residence requirements apply to enrolment, they must be reasonable, and should not be imposed in such a way as to exclude people experiencing homelessness from exercising their right to vote.¹⁹ The HRC specifies that voter education and enrolment campaigns are necessary to ensure the effective exercise of the right to vote by an informed community.²⁰

Article 2 the *ICCPR* imposes on Australia a range of responsibilities and obligations of realisation in relation to civil and political rights; namely obligations to *respect*, *protect* and *fulfil* human rights.²¹

The obligation to *respect* requires that Australia refrain from interfering, directly or indirectly, with enjoyment of human rights. Prima facie, this prohibits amendment of the *Commonwealth Electoral Act 1918* (Cth) to, directly or indirectly, disenfranchise certain social groups, such as homeless people.

The obligation to *protect* requires that Australia prevent third parties, including organisations and individuals, from interfering in any way with the enjoyment of human rights.

The obligation to *fulfil* requires that Australia take positive steps to promote and support the realisation of human rights and, where necessary, to provide for the realisation of human rights for marginalised or disadvantaged groups. In relation to the fulfilment of civil and political rights, such as the right to vote, the positive action required pursuant to art 2(2) of the *ICCPR* is that Australian governments take all necessary steps to immediately implement the right to vote without discrimination or restriction other than is objective, reasonable, proportionate and necessary.

Accordingly, governments and agencies must adopt specific measures, including voter education and awareness campaigns, so as to ensure that obstacles to voting and participation, such as poverty, illiteracy and homelessness, are overcome.²² Furthermore, Australian legislation that impacts discriminatorily or disproportionately on members of society who are marginalised or disadvantaged and affects their ability to participate and access the political process must be amended so as to ensure the realisation of the right to vote.

In its recent landmark decision in *Roach v Electoral Commission and another*,²³ the High Court of Australia upheld the fundamental right to vote, finding that a blanket ban denying prisoners the right to vote is unconstitutional. In that decision, Gummow, Kirby and Crennan JJ (delivering the majority judgement) stated:

Voting in elections for the parliament lies at the very heart of the system of government for which the Constitution provides... In *McGinty [v Western Australia]*²⁴ Brennan CJ considered the phrase “*chosen by the people*” as admitting of a requirement “*of a franchise that is held generally by all adults or all*

¹⁷ 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 (article 25)*, CCPR/C/21/Rev.1/Add.7 (1996) [2]

¹⁸ Ibid [11].

¹⁹ Ibid.

²⁰ Ibid.

²¹ See also CESCR, *General Comment 15: The Right to Water*, [17]–[29], UN Doc E/C.12/2002/11 (2002). See also CESCR, *General Comment 12: The Right to Adequate Food*, 69, [15], UN Doc HRI/GEN/1/Rev.5 (2001); and CESCR, *General Comment 13: The Right to Education*, 84, [47], UN Doc HRI/GEN/1/Rev.5 (2001).

²² Ibid; *Article 25*, UN Doc HRI/GEN/1/Rev.5 (2001) 157.

²³ (2007) 239 ALR 1.

²⁴ (1996) 186 CLR 140.

adult citizens unless there be substantial reasons for excluding them".²⁵ This proposition reflects the understanding that representative government as that notion is understood in the Australian constitutional context comprehends not only the bringing of concerns and grievances to the attention of legislators but also the presence of a voice in the selection of those legislators.²⁶ Further, in the federal system established and maintained by the Constitution, the exercise of the franchise is the means by which those living under that system of government participate in the selection of both legislative chambers, as one of the people of the relevant state and as one of the people of the Commonwealth. In this way, the existence and exercise of the franchise reflects notions of citizenship and membership of the Australian federal body politic.²⁷

The majority judgment considered that the blanket ban imposed a civil disability on prisoners undergoing any term of incarceration and took the legislation beyond what was reasonably appropriate (i.e. the ban was disproportionate) to the maintenance of representative government. In this sense, the finding of the court was consistent with the right to vote under article 25(b) of the ICCPR, which states that any imposition on a citizens' right to vote must be objective and reasonable.²⁸

3.4 The importance of voting for people experiencing homelessness

The United Nations Office of the High Commissioner for Human Rights (**OHCHR**) has drawn a direct link between homelessness, poverty and the right to vote, stating:

Lack of political rights is both a cause and a consequence of poverty. Socially and politically excluded people are more likely to become poor, and the poor are more vulnerable to social exclusion and political marginalization...Active participation in political decision-making processes plays a role in expanding political freedoms and empowering people, which in turn contributes towards combating social exclusion and political marginalization.²⁹

Having regards to this, the OHCHR has specifically identified the proportion of poor and homeless people going to the polls as a key indicator of the extent to which a state is implementing its fundamental obligations in relation to the right to vote.³⁰ In this regard, the Clinic reiterates its very conservative estimation that at least 64,000 people experiencing homelessness were eligible to vote at the 2007 Federal Election. Further, we note that previous research conducted by the Clinic suggested that at the time of the 2004 Federal Election, up to 76 per cent of the 64,000 homeless people who were eligible to vote did not do so.³¹

At a domestic level, the Preamble to the *Supported Accommodation Assistance Act 1994* (Cth) (**SAA Act**) provides that it is essential that people experiencing homelessness have the opportunity to have a say in decision-making processes and policy development, while the SAA Act requires that the Supported Accommodation Assistance Program (**SAAP**) assist homeless people to participate fully in civil and political life.³²

²⁵ Ibid, 170

²⁶ See the remarks of McLachlin J in *Reference Re Provincial Electoral Boundaries (Sask)* [1991] 2 SCR 158, 183.

²⁷ (2007) 239 ALR 1, 24-5.

²⁸ UN Human Rights Committee, above n 17, [11] – [14].

²⁹ UN Office of the High Commissioner for Human Rights, *Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies* (2002) 48.

³⁰ Ibid, 51.

³¹ PILCH Homeless Persons' Legal Clinic, 'Homelessness and Voting: Submission to the Joint Standing Committee on Electoral Matters Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto' (2005) 38 <<http://www.aph.gov.au/house/committee/em/elect04/subs/sub131.pdf>>.

³² Section 5(4)(d), SAA Act.

The importance of homeless people having a say is also, unsurprisingly, recognised by homeless people themselves. According to research undertaken by the Clinic,³³ at least 54 per cent of homeless people would like to enrol to vote at federal elections, notwithstanding that they confront many other significant issues and concerns in their daily lives to ensure they have stable accommodation, adequate food and access to health and other services.

According to another recent survey of 226 homeless people across Victoria, the right of homeless people to have a greater say in decision-making processes and policies that affect them is 'very important' but also frequently violated. As one homeless respondent said, 'We should have the main say, because it's for us and we know what's really going on.'³⁴

Evidence indicates that there are a significant proportion of homeless people, who are eligible to vote, but who are not voting. People experiencing homelessness, or at risk of homelessness, are entitled to vote just like any other citizen. However, people in these circumstances are generally the most marginalised and vulnerable in society; they are often experiencing very difficult situations and may be dealing with one or a number of issues on a daily basis, in addition to homelessness, such as: mental illness, unemployment, drug and/or alcohol addictions, family breakdown and trauma.

Recommendation 1

That the Australian Electoral Commission develop and implement specific and practical measures, such as education and awareness campaigns similar to that introduced in Victoria by the Victorian Electoral Commission, to ensure that the barriers to voting and participation, such as poverty, illiteracy and homelessness, are overcome.

³³ PILCH Homeless Persons' Legal Clinic, above n 31.

³⁴ Department of Human Services, *Charter of Rights and Enhanced Complaints Mechanism: Report on Consumer Consultations* (2004); see also Tamara Walsh and Carla Klease, 'Down and Out? Homelessness and Citizenship' (2004) 10(2) *Australian Journal of Human Rights* 77.

4. The AEC and the Committee – franchising people experiencing homelessness

4.1 Findings and recommendations of the Inquiry into the conduct of the 2004 Federal Election

On Monday 10 October 2005, the Committee tabled its report on the inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto entitled *The 2004 Federal Election (Report)*.

In the Report, the Committee made a number of recommendations to increase voter participation, improve electoral management and maintain the integrity of the electoral roll.

As you may be aware, in 2005 the Clinic made detailed written and oral submissions to the Committee in relation to the ability of homeless people to exercise the right to vote. Referring to the Clinic's and other submissions, the Report made the following findings in relation to the franchise of homeless voters:

- the right to vote is a fundamental human right that is not exercisable by some people due to disadvantage and social circumstances;
- at the time of the 2004 Federal Election, up to 76 per cent of the 64,000 homeless people who were eligible to vote did not do so;
- at least 64 per cent of homeless people want to vote, but do not due to the complexity of the enrolment and voting process; and
- further impediments to enrolments and voting for homeless people include: social exclusion; lack of information and misinformation about enrolment and voting (particularly itinerant enrolment); inaccessibility of enrolment information; and the inaccessibility of voting stations.

Having regard to these findings and evidence, the Committee made the following recommendations in relation to the enfranchisement of people experiencing homelessness:

- the CE Act be amended to require that electoral enrolment forms and information be displayed prominently at all times in every Australia Post, Centrelink and Medicare outlet to enable and encourage eligible persons to enrol and vote.³⁵
- in consultation with homelessness assistance services, the Australian Electoral Commission (AEC) formulate, implement and report against a detailed ongoing action plan to promote and encourage enrolment and voting among homeless persons and other marginalised and disadvantaged groups. The Committee also recommended that the AEC be adequately funded to develop and implement such a plan.³⁶
- as a minimum and prior to the next Federal Election, the AEC target homeless persons in its awareness campaigns to inform them about itinerant elector enrolment and other voting options, and that the AEC ensure that its training programs alert AEC staff to the needs of the homeless and other marginalised citizens.³⁷

³⁵ Joint Standing Committee on Electoral Matters, Parliament of Australia, *The 2004 Federal Election: Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto* (2005) 14 [Recommendation 1].

³⁶ Ibid, 17 [Recommendation 2].

³⁷ Ibid, 132 [Recommendation 26].

4.2 Implementation of the recommendations for the Inquiry into the 2004 Federal Election

In the Clinic's view, the Committee's recommendations in relation to homeless voter enfranchisement were generally not implemented and where implementation was attempted, it was inadequate and too late.

Contrary to the Committee's recommendation, the CE Act was not amended to require that electoral enrolment forms and information be displayed prominently at all times in every Australia Post, Centrelink and Medicare outlet to enable and encourage eligible persons to enrol and vote. In fact, there is still no reference to 'homeless person' or 'homelessness' in the CE Act.³⁸

Contrary to the Committee's recommendations, the AEC did not formulate, implement and publicly report against a detailed ongoing action plan to promote and encourage enrolment and voting among homeless persons (**Action Plan**). The Clinic has applied for access to the Action Plan under freedom of information legislation, but the AEC has advised that there is no document that matches this description. However, the Clinic notes the helpful research and preparatory work of the AEC, in conjunction with the Victorian Electoral Commission (**VEC**), dating from 2003, discussed below at 4.6.

The Committee recommended that the AEC target homeless persons in its awareness campaigns to inform them about itinerant elector enrolment and other voting options in general and particularly in the lead up to the next Federal Election. As far as the Clinic is aware, in October 2007, the AEC sent information, including a letter from the Commissioner and updated enrolment forms and fact sheets, to SAAP funded homelessness service providers. The purpose of this information was to promote the availability of no-fixed address enrolment, in particular.

In terms of the utility of the materials provided, the Clinic considers that the AEC's fact-sheet was not appropriately focused for its intended audience as its content was too lengthy and complex. In our view, electoral information must be set out clearly and in simple English – a one page step-by-step process would more helpfully assist people wishing to enrol as a 'no fixed address' voter. The materials provided were insufficient for the purpose of engaging people experiencing homelessness in the electoral process. One letter asking already under-resourced homelessness agencies (already a limited range of organisations) to distribute materials and educate their service users about various voting options is simply not enough to adequately comply with the Committee's recommendation to target homeless persons in the AEC's awareness campaigns; it creates no awareness in the community and does not form part of a broader educative strategy to increase participation in political processes in Australia. The Clinic considers that the provision of such information to a limited selection of organisations was insufficient to result in a significant increase in new 'no fixed address' enrolments.

Finally, the Clinic notes that the writs were issued on 17 October 2008, meaning that the AEC campaign lasted for a matter of weeks. The AEC's commitment to undertake such limited dissemination in early October 2007, only 6 weeks before the Federal Election, provided insufficient time for an effective awareness campaign to be conducted. Thus, while the AEC has technically adopted this recommendation of the Committee, its implementation was neither timely nor appropriately adapted to respond to homeless people's high barriers to participation in the electoral process.

³⁸ Taking into account amendments up to Act No. 157 of 2007.

Recommendation 2

The Clinic recommends that the CE Act be amended to require that electoral enrolment forms and information be displayed prominently at all times in every Australia Post, Centrelink and Medicare outlet to enable and encourage eligible persons to enrol and vote.

Recommendation 3

The Clinic recommends that:

- the AEC formulate, implement and report against a detailed, ongoing, action plan to promote and encourage enrolment and voting among persons and groups experiencing difficulty because of social circumstance; and
- that such persons and groups should include, but not be limited, to homeless and itinerant persons, illiterate persons, persons with disabilities and residents of isolated and remote areas;
- the AEC consult with and consider the views of organisations and groups representing homeless and itinerant persons, illiterate persons, persons with disabilities, residents of remote localities, and other appropriate bodies, to formulate appropriate strategies, programs and materials for use when the action plan is implemented;
- the AEC report back to the Committee prior to the next Federal Election with details of its action plan and implementation strategies;
- where appropriate, adequate funding be provided to enable the AEC to develop, implement and report against the action plan; and
- that following the next Federal Election, the AEC seek feedback from representative groups and community members regarding the effectiveness of the strategies implemented, and further develops its action plan to incorporate constructive suggestions where appropriate.

Recommendation 4

The Clinic recommends that the AEC continue its consultations with relevant parties and prior to the next Federal Election, as part of improving access to the franchise by those experiencing homelessness, as a minimum:

- target homeless persons in its public awareness campaigns, informing them about itinerant elector and other voting enrolment and options; and
- ensure that its training programs alert AEC staff to the needs of the homeless and other marginalised citizens.

4.3 Recommendations by the Clinic

The Clinic, together with other organisations such as the Council to Homeless Persons (**CHP**), the Salvation Army and Hanover Welfare Services, consulted with the AEC at a roundtable discussion in March 2007. The Clinic, working in collaboration with the CHP, provided written resources to the AEC at that roundtable discussion and recommended a comprehensive action plan to improve

electoral participation of people experiencing homelessness. These recommendations are attached at **Attachment A**.

In summary, the Clinic and CHP recommended the following actions:

- early production and distribution of an information kit containing relevant and accessible information for homeless people and homelessness service providers regarding enrolment and voting procedures for no fixed address and ordinary electors;
- provision of information, education and resources to equip homeless service providers to inform people experiencing homelessness about the importance of voting, eligibility for enrolment and procedures for enrolment;
- distribution of an information kit (including relevant enrolment forms) to high frequency contact points, such as Centrelink and Medicare;
- implementation of a targeted advertising campaign to raise awareness about the importance of voting and to encourage people experiencing homelessness to enrol and vote;
- training for electoral site managers and volunteers addressing the needs of and issues that affect people experiencing homelessness and how electoral workers might assist people from that group on Election Day;
- ensuring that voting stations are established at locations that are easily accessible to, and appropriate to, people experiencing homelessness; and
- planning for the installation of mobile polling booths at locations frequented by people experiencing homelessness (including Centrelink and homelessness service providers).

Minutes of the March 2007 meeting were distributed, but the AEC did not contact the Clinic again until October 2007, when the AEC wrote to the Clinic and said that it was 'seeking to promote the availability of no fixed address enrolment'. This letter provided an example of the materials the AEC intended to send to SAAP funded homelessness agencies, also in October 2007. As discussed above at section 4.2, the letter and the attached materials were too little too late.

The Clinic submits that the AEC must be more proactive and innovative in its approach to attracting and retaining people without a fixed address to register to enrol to vote. The AEC must develop a long-term commitment to improving participation of people experiencing homelessness, or at risk of homelessness in the electoral process (and the political process more generally). There is much more work to be done.

It is important to have increased education and awareness of the electoral process "*to have informed citizens who actively participate in the democratic processes of electing our representatives and voting in referendums on Constitutional change*".³⁹ This statement, which comes from the AEC website, must translate from talk into action. The Clinic urges the AEC to implement the Committee's Report and to adopt the recommendations of the Clinic so as to promote and ensure the effective realisation of the right to vote for people experiencing homelessness.

Recommendation 5

The Clinic recommends the early production and distribution of an information kit containing relevant and accessible information for homeless people and homelessness service providers regarding enrolment and voting procedures for no fixed address and ordinary electors. This information kit

³⁹ <http://www.aec.gov.au/About_AEC/AEC_Services/education_services.htm>.

should explain the various steps in relation to enrolment and voting, as well as any relevant changes to the CE Act.

Recommendation 6

The Clinic recommends planned and coordinated early distribution of the information kit (including relevant enrolment forms) to high frequency contact points, such as Centrelink and Medicare. The AEC should also engage with Centrelink and Medicare staff to ensure that, where possible, they encourage and assist people to enrol to vote.

Recommendation 7

The Clinic recommends that the AEC actively engage with homelessness service providers and provide the information kit (including relevant enrolment forms), along with education and resources to equip them to inform people experiencing homelessness about the importance of voting, eligibility for enrolment and procedures for enrolment and, where possible, assist them to enrol.

Recommendation 8

The Clinic recommends early implementation of a targeted advertising campaign to raise awareness about the importance of voting and to encourage people experiencing homelessness to enrol and vote at all federal elections. This advertising campaign could take the form of, for example, posters displayed in areas and in services that homeless people tend to frequent (including Centrelink and Medicare). We also suggest that the AEC considers placing some larger scale advertising, such as billboards, in locations and suburbs that homeless people frequent.

Recommendation 9

The Clinic recommends that the AEC establish voting stations at locations that are easily accessible, and appropriate to, people experiencing homelessness. We suggest that, where possible, the AEC employ consumer consultants to assist at polling booths on Election Day.

Recommendation 10

The Clinic recommends early roll-out of training for electoral site managers and volunteers addressing the needs of and issues that affect people experiencing homelessness and how electoral workers might assist people from that group on Election Day.

Recommendation 11

The Clinic recommends that the CE Act be amended to allow for the installation of mobile polling booths at sites frequented by people experiencing homelessness (including Centrelink and homelessness service providers). Where possible, this would also involve the employment of consumer consultants to assist at mobile polling booths on Election Day.

4.4 Comparative review of the work of the Victorian Electoral Commission

The work done by the VEC in relation to homelessness provides an interesting counterpoint for comparison with that of the AEC. Indeed, over the last 3 years, the VEC has been proactive in seeking to enfranchise the homeless in the electoral process.

In the lead up to the 2006 State Election, the VEC worked very hard to engage with homelessness service providers and with people experiencing homelessness themselves in an attempt to engage them with the electoral process. A number of initiatives were developed, including the following:

- enrolment days at a number of homelessness service providers including St Mary's House of Welcome (**SMHOW**), Front Yard, St Kilda Crisis Centre, Sacred Heart Mission and St Kilda Drop-in Centre. Lunch was provided at each enrolment day, as well as transport to and from the location for those that required it. Information about the enrolment days were sent to all homelessness service providers in Victoria.
- Development and wide distribution of posters specifically targeting people experiencing homelessness and very simple one page fact sheets in relation to no fixed address enrolment.
- Training for electoral workers who staffed the polling stations on Election Day in relation to homelessness and effective communication.
- Provision of mobile polling at homelessness service providers for organisation that were able to guarantee attendance by 20 people.
- Establishment of a homelessness and voting advisory committee, including representatives of homelessness service providers as well as consumers themselves.
- Assistance with development and printing of information kits and brochures by service providers, including the Clinic.
- Attended the Melbourne homelessness festival *Home is Where the Heart Is* in 2007 to provide information and assist people to enrol to vote.

The VEC worked particularly closely with SMHOW in the following ways:

- a mobile polling booth was located at SMHOW on 17 September 2006 to increase participation of homeless people in the State Election - around 80 people experiencing homelessness exercised their right to vote at the SMHOW mobile polling booth;
- teams of electoral officers attended SMHOW on three separate occasions (twice in February 2007 and once in August 2007) to assist homeless people to enrol to vote for the Federal Election – the sessions resulted in over 100 new enrolments;
- the VEC provided for a group of SMHOW clients to attend its Melbourne office on 21 November 2007 to vote in the Federal election (as the AEC was unable to advise SMHOW where pre-polling would take place, with enough time to engage and encourage homeless people's participation in the election).⁴⁰

Compared to the proactive work done by the VEC to engage with homelessness service providers and homeless people by the VEC, the AEC's attempts to engage and enfranchise homeless voters are disappointing and fail to take into account the needs of this group. This is despite the findings

⁴⁰ See Victorian Electoral Commission, 'Report to Parliament on the 2006 Victorian State election' (2007) 35; 'Homeless not voteless' (2007) 12 *Selection* 7.

and recommendations contained in the Committee's 2004 Report. The Clinic's submission provides a series of recommendations to remedy the AEC's failure in this regard. The work undertaken by VEC is also a useful starting point for the AEC to consider when establishing policies and practices that aim to facilitate the inclusion of people experiencing homelessness, or at risk of homelessness, in the political and voting processes.

The Clinic is very committed to ensuring that people experiencing homelessness are able to exercise their right to vote.⁴¹ To ensure this outcome, we are very happy to work closely with both the AEC and the VEC to implement the Committee's recommendations and any recommendations arising from the 2008 Inquiry.

4.5 Findings and Recommendations of the Inquiry into the Conduct of the 2001 Federal Election

The Committee tabled its *Report of the Inquiry into the 2001 Federal Election* in Federal Parliament on 23 June 2003. The franchise of homeless people was considered in some detail in the Report. The Committee made several recommendations in relation to the enfranchisement of homeless people, including:

- that the Itinerant Elector provisions outlined in section 96 of the *Commonwealth Electoral Act 1918* (Cth) be amended to clearly apply to homeless people;
- that the AEC simplify its Itinerant Elector application form to assist homeless people; and
- that the AEC target homeless people in a public awareness campaign, informing them about Itinerant Elector enrolment.⁴²

In response to these recommendations, the AEC undertook to include homeless people as a target group in its public awareness campaign for the next Federal Election (in 2004). The AEC also foreshadowed that it would work with welfare agencies to ensure that enrolment forms and registration assistance are available on-site.⁴³

4.6 Implementation of the Recommendations of the Inquiry into the 2001 Federal Election

In the Clinic's view, again, implementation of the Committee's recommendations in relation to homeless voter enfranchisement arising from the 2001 Federal Election has not been adequate or timely.

To date, the Commonwealth Government has not amended, nor announced an intention to amend, section 96 of the CE Act to ensure that it effectively applies to and enfranchises homeless people. This is to be contrasted with action taken by the Victorian Government to amend the *Electoral Act 2002* (Vic) to add section 3A 'Homeless Persons' to clarify that the Itinerant Elector provisions under section 22(4) of that Act apply to and include homeless persons.

The Clinic notes that despite the difficulties outlined above, since late 2003, the AEC, in conjunction with the VEC, has undertaken a range of activities intended to improve the franchise of the homeless. This has included conducting a series of consultations with homelessness service providers and homeless people themselves. The AEC and VEC have also conducted a joint project with researchers from the Swinburne University Institute of Social Research to conduct quantitative

⁴¹ See eg 'HPLC Voting Campaign' (2006) 22 *Street Rights* 1; PILCH Homeless Persons' Legal Clinic, 'Voting against homelessness' (Press Release, 30 October 2006).

⁴² Joint Standing Committee on Electoral Matters, Parliament of Australia, *The 2001 Federal Election: Report of the Inquiry into the Conduct of the 2001 Federal Election and Matters Related Thereto* (2003) 82-93 [Recommendation 7].

⁴³ *Ibid*, 93.

and qualitative research on the circumstances and reasons for the non-enrolment of so many homeless persons so that effective strategies may be developed to enhance their enfranchisement.⁴⁴

Unfortunately, however, just as many of the AEC strategies being considered and developed to improve homeless voter education, enrolment and participation, including simplification of the Itinerant Elector Application Form, were not implemented in time for the 2007, nor were they implemented for the 2004 Federal Election before it. In particular, the Clinic notes that, prior to the 2004 Federal Election; the AEC did not develop a 'simplified Itinerant Elector application form to assist homeless people' or directly targeted homeless people in a public awareness campaign informing them about Itinerant Elector enrolment. Although the AEC did develop new materials and application forms before the 2007 Federal Election, as discussed above in sections 4.2 and 4.3, the Clinic submits that it has yet to fully grasp its responsibilities in relation to people experiencing homelessness and their participation in the electoral process.

The Clinic reiterates that it is committed to working closely with the AEC and VEC to implement the Committee's recommendations from 2001 and any further recommendations arising from the 2008 inquiry.

5. The CE Act – preventing the franchise of people experiencing homelessness

While education and awareness campaigns are very important to encourage greater participation in the electoral process, it is also imperative that participation is encouraged and supported within the legislation that governs the administration of such processes. There are a number of amendments that can be made to the CE Act to strengthen its recognition of the right to vote for people experiencing homelessness or at risk of homelessness. These changes would encourage greater participation in the political process and would ensure that the law is more inclusive of members of society who are marginalised and disadvantaged. Reform is particularly necessary in order to rectify the regressive amendments made to the CE Act in 2006 by the former Commonwealth Government, which have further impaired the ability of people experiencing homelessness to access and participate in the political processes of a democracy. The Clinic's proposed amendments to the CE Act are discussed below.

5.1 Amendments to the *Commonwealth Electoral Act 1918* (Cth)

In 2006, the then Commonwealth Government amended the CE Act,⁴⁵ in a manner that served to reduce the already limited participation of financially and socially disadvantaged people, particularly homeless people, in Australian electoral processes. These provisions were in force for the 2007 Election and in the Clinic's view would have significantly impacted on the ability of people experiencing homelessness to participate in that election. Of particular concern are the following amendments to the CE Act:

- applicants for enrolment must provide proof of identity in order to make an application for enrolment or to update their details on the Roll (section 98AA);
- closure of the Roll to new electors at 8pm on the day that an election is announced (section 102); and
- closure of the Roll for enrolled electors wishing to update/transfer their enrolment at 8pm 3 days after the election is announced (section 155).

⁴⁴ See 'Bringing Democracy Home' at <<http://www.sisr.net/cag/projects/bdh/welcome.htm>>.

⁴⁵ *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* (Cth).

The impact of each of these provisions on people experiencing homelessness is discussed below.

(a) Requirement of proof of identification and evidence of residence to claim enrolment

The *Electoral and Referendum Amendment Regulations 2006* (No 1) (Cth) (**Amendment Regulations**) came into force on 16 April 2007, amending the *Electoral and Referendum Regulations 1940* (Cth) (**Regulations**) and imposing proof of identity requirements on voters. Accordingly, for the purpose of voting at last year's Federal Election, an applicant for enrolment on the Electoral Roll was required to satisfy the proof of identity requirements via one of the following three options:⁴⁶

- provide details of the applicant's driver's licence number and the Australian State or Territory in which the licence was issued;
- if the applicant does not hold an Australian driver's licence, the applicant must show a prescribed elector a prescribed kind of document that identifies the applicant. The prescribed elector must complete the declaration on the enrolment form stating that the prescribed elector is on the roll of electors and has sighted the original of a prescribed document. A list of prescribed electors is set out in Schedule 1 and a list of prescribed documents is set out in Schedule 2 of the Regulations; or
- have the application countersigned by two electors who are able to:
 - confirm the applicant's name; and
 - confirm that they have known the applicant for at least one month.

The Clinic submits that these amendments significantly impair the ability of people experiencing homelessness (among other disadvantaged groups) to participate in the electoral process.

The first option, which requires that the applicant provide driver's licence details to prove their identity, is problematic for a person experiencing homelessness, many of whom are unlikely to hold, or have in their possession at the time of enrolment, a driver's licence.

The second option of showing to a prescribed elector a prescribed document presents two challenges for homeless people. Firstly, a homeless person may not have many (if any) identification documents. People who are homeless will often lead a transitory lifestyle, moving from one place of short-term accommodation to another. As such, they may not possess identification documents due to misplacement of them (in the process of moving from place to place), or they may have had their possessions stolen, or they may not have possessed such documents in the first place. Secondly, asking a prescribed elector for a signature may be quite challenging for a person experiencing homelessness. This is because a person who is experiencing homelessness may not know or have contact with prescribed electors, a group that includes, among other people: accountants, registered nurses, medical practitioners, psychiatrists, police officers, lawyers etc. This requirement assumes that people making an application to enrol to vote can easily access such prescribed electors. However, people experiencing homelessness are on the margins of our society and often struggle to access basic services in the community. The additional burden of seeking a signature of a prescribed elector creates yet another barrier which makes it more difficult for people experiencing homelessness to participate in the political process.

⁴⁶ *Commonwealth Electoral Act 1918* (Cth) s 98AA; and *Electoral and Referendum Regulations 1940* (Cth) reg 12.

The third option provides a more appropriate method for a homeless person to satisfy the proof of identity requirements. This option requires that two electors confirm that they have known the person for at least one month. With this option, it is arguable that the proof of identity requirements, in themselves, are not necessarily onerous as any elector, homeless or not, is likely to be able to obtain confirmation from 2 electors who have known the applicant for 1 month. However, this option still presents some difficulties for people experiencing homelessness, as it requires *electors* to confirm that they have known the applicant for more than a month. Given the low number of homeless people who are enrolled to vote, it may prove difficult for a homeless person to locate two people they know and have known for a month or longer, who are currently enrolled to vote, to countersign their application. In addition, people experiencing homelessness are often in transitional housing and may move from one short-term accommodation option to another. Even if they have a caseworker, it is not guaranteed that that relationship will last a month. The effect of a transitory lifestyle is that it is very difficult to build a life and develop a community. In such circumstances, it may be difficult for a person experiencing homelessness to obtain the signature of two people that they have known for longer than one month to sign their enrolment application form.

(b) Closure of the Electoral Roll at 8pm on the date that writ is issued

Section 155 of the CE Act previously required that the electoral roll remain open for seven days after the election writ is issued. This was already a very small window of opportunity for an elector to lodge a claim updating his or her information. For example, in the week following the announcement of the 1998 Election, the AEC received a total of 351,913 enrolment forms which included new enrolments, re-enrolments and transfers of enrolments.⁴⁷

While the CE Act requires that electors update their information on the roll within 21 days of a change of address, it is recognised that many people (homeless or not) do not discharge this requirement. It is only when a Federal Election is announced that most individuals notify the AEC of their changed circumstances.

The early closing of the electoral roll acts as a practical impediment to homeless people exercising their right to vote by removing or significantly reducing the opportunities for updating address details or registering as itinerant voters. The premature closing of the roll will have a disproportionate and discriminatory effect on homeless people because:

- most people experiencing homelessness do not have a consistent or stable place of residence, instead moving frequently from one form of temporary shelter to another. Homeless people are therefore far more likely to have incorrect details recorded against their name on the roll, or to have been removed from the roll due to the AEC becoming aware of inaccuracies in address or contact details;
- homeless people are often outside the mainstream media loop and may not become immediately aware that a Federal Election has been announced; and
- a higher proportion of the homeless population has reduced literacy and this impacts on their knowledge of current events and also their ability to complete the required AEC forms within a limited time frame.

⁴⁷ Joint Standing Committee on Electoral Matters, Parliament of Australia, *Report of the Inquiry into the Conduct of the 1998 Federal Election and Matters Related Thereto* (June 2000) 14.

The Clinic considers this regressive amendment of the CE Act by the former government to be a deliberate and provocative act to exclude voters, including homeless people, from full participation in the democratic and electoral process.

5.2 Other issues with the CE Act

The Clinic notes that the CE Act presents other issues for concern that predate the 2006 amendments to the CE Act. These issues have been highlighted by the Clinic in previous submissions to the Committee (in relation to the 2001 and 2004 Federal Elections).⁴⁸ The most significant of these issues relates to the Itinerant Elector provisions contained within section 96 of the CE Act. The Clinic maintains that these provisions can be substantially amended and improved to enhance the franchise of people experiencing homelessness.

(a) Section 96 should be amended to include a definition of homelessness

At the 2004 Federal Election only 2.8 per cent of homeless people voted as Itinerant Electors.⁴⁹ The very purpose of section 96 of the CE Act is to encompass people who are experiencing homelessness and do not have a permanent address so as to enable them to enrol to vote. However, the provision is not effectively directed towards that purpose and there is insufficient awareness of this provision amongst people experiencing homelessness. In this regard, the Clinic recommends that the AEC undertake further education and awareness with respect to this provision in a proactive way that seeks to encourage people experiencing homelessness to enrol to vote. In addition, the provision should expressly incorporate a definition of homelessness and reference to people experiencing homelessness as being eligible persons under the CE Act who can enrol to vote (under section 96).

The Clinic notes that in 2004, the Victorian Government introduced the *Electoral Legislation (Amendment) Act 2004* (Vic). This piece of amending legislation introduced a definition of homelessness under section 3A of the *Electoral Act 2002* (Vic). This provision defines a person eligible to vote as an itinerant voter as:

- (a) a person living in –
 - (i) crisis accommodation; or
 - (ii) transitional accommodation; or
 - (iii) any other accommodation provided under the *Supported Accommodation Assistance Act 1994* (Cth).

(b) Section 96(9)(a) – allows “itinerant” voters to be removed from roll if they don’t vote

Australian citizens aged 18 or over who do not ‘reside’ in a Subdivision may be entitled, pursuant to section 96(1) of the CE Act, to enrol to vote as Itinerant Electors at Federal Elections. Persons enrolled to vote as Itinerant Electors at a federal level also have an entitlement, under section 22(4) of the *Electoral Act 2002* (Vic), to enrol and vote in Victorian State Elections as Itinerant Electors.

Under section 96(9)(a) of the CE Act, if a person fails to vote at a Federal Election, they cease to be an Itinerant Elector and their name falls off the electoral roll. A general elector

⁴⁸ See eg PILCH Homeless Persons’ Legal Clinic, above n 31, 27-29; PILCH Homeless Persons’ Legal Clinic, ‘Giving Voice to the Voiceless: Submission to the Inquiry into the 2001 Federal Election’ (2002) 20-24 <<http://www.aph.gov.au/house/committee/em/elect01/subs/sub145.pdf>>.

⁴⁹ PILCH Homeless Persons’ Legal Clinic, above n 31, 38.

who fails to vote may be penalized by a fine up to the amount of approximately \$50.00, however, if the elector can show reasonable circumstances for their failure to vote they can avoid the fine. Failure to vote at a Federal Election does not result in a general elector being removed from the electoral roll.

It is unduly harsh and unfair to penalise an itinerant voter for failing to vote at an election by removing them from the electoral roll. Given the difficult personal circumstances that homeless people using the itinerant elector provisions would experience, by virtue of their homelessness and marginalization in the community, there should be a more flexible voting system that takes into account the barriers that they face in enrolling to vote and attending voting stations. Until a more flexible voting system is implemented, such as through the adoption of mobile polling booths etc, that takes into account the barriers experienced by homeless people, this provision should be repealed.

(c) “Real place of living” for Itinerant Electors

Under section 96(8) of the *Commonwealth Electoral Act 1918* (Cth), a person ceases to be entitled to enrol as an Itinerant Elector if that person resides in a Subdivision for one month or longer.

It is very common for people experiencing homelessness to live in temporary accommodation such as on a friend's couch, or in a caravan, a crisis shelter or a domestic violence refuge for up to six months. Indeed, the mean period of stay in SAAP accommodation (crisis or emergency accommodation) in 2005-06 was 48 days.⁵⁰ Notwithstanding the temporary and insecure nature of these accommodations, they constitute 'real places of living' within the current definition in the CE Act (discussed further below) and people who stay in such accommodation for more than one month are therefore ineligible to enrol as Itinerant Electors. The Clinic submits that people experiencing homelessness should be able to reside in a 'real place of living' for up to six months rather than only one month before they become ineligible to enrol as an Itinerant Elector.

(d) Concern about consequences of name and address appearing on a publicly available Electoral Roll

Over the years, people experiencing homelessness have expressed concern to the Clinic that, following enrolment, their name and address may appear on a publicly available Electoral Roll.⁵¹ This concern should be understood in the context of 32 per cent of homeless people reporting an immediate past history of domestic violence or family dysfunction⁵² and almost 25 per cent of clients of the Clinic reporting that they are the subject of unexecuted arrest warrants.

Pursuant to section 104(1) of the CE Act, where a person considers that having his or her address shown on the Roll would place the personal safety of the person or of members of the person's family at risk, he or she may lodge a request, in the approved form, with the claim for enrolment (including a provisional claim for enrolment) or transfer of enrolment, that his or her address not be entered on the Roll. Under section 104(3), such a request must set out the particulars of the relevant risk and be verified by a statutory declaration.

⁵⁰ Australian Institute of Health and Welfare, above n 9, 41.

⁵¹ PILCH Homeless Persons' Legal Clinic, above n 31, 32.

⁵² Australian Institute of Health and Welfare, above n 9, 35.

Recommendation 12

The Commonwealth Electoral Act 1918 (Cth) should be amended to include a definition of a person experiencing homelessness. The definition of a person experiencing homelessness should relate directly to a person eligible to enrol to vote as an itinerant elector under section 96 of the Act.

Recommendation 13

The Commonwealth Electoral Act 1918 (Cth) should incorporate a definition of a person experiencing homelessness that is similar to the definition provided under section 3A of the Electoral Act 2002 (Vic). The provision in the Electoral Act 2002 (Vic) defines a person eligible to vote as an itinerant voter as:

- (a) a person living in -*
 - (i) crisis accommodation; or*
 - (ii) transitional accommodation; or*
 - (iii) any other accommodation provided under the Supported Accommodation Assistance Act 1994 (Cth)*

Recommendation 14

Section 96(9)(a) of the Commonwealth Electoral Act 1918 (Cth) should be repealed, until a more flexible voting system is implemented, such as through the adoption of mobile polling booths etc.

Recommendation 15

Section 96(8) of the Commonwealth Electoral Act 1918 (Cth) should be amended to increase the period of time that an Itinerant Elector may have a 'real place of living' from one month to six months.

Recommendation 16

The Australian Electoral Commission's public awareness campaign targeted at people experiencing homelessness should provide information about Silent Elector enrolment and publicise the fact that the address of Itinerant Electors is not shown on the Roll.

Recommendation 17

Section 104 of the Commonwealth Electoral Act 1918 (Cth) should be amended to provide that a person who is homeless may make a request that his or her address not be entered on the Roll and that such a request shall be granted where the person can provide evidence of his or her homelessness.

Attachment A – Action Plan prepared for the AEC

AUSTRALIAN ELECTORAL COMMISSION - 2007 FEDERAL ELECTION ACTION PLAN FOR ENABLING AND EMPOWERING HOMELESS PEOPLE TO PARTICIPATE IN THE ELECTORAL PROCESS

Information about Homelessness and Voting

On 10 October 2005, the Federal Joint Standing Committee on Electoral Matters tabled its *Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto*. The Report made the following findings in relation to homelessness and voting:

- The right to vote is a fundamental human right that is not exercisable by some people due to disadvantage and social circumstances.
- At the time of the 2004 Federal Election, up to 76 per cent of the 64,000 homeless people who were eligible to vote did not do so.
- At least 64 per cent of homeless people want to vote, but do not due to the complexity of the enrolment and voting process.
- Further impediments to enrolments and voting for homeless people include: social exclusion; lack of information and misinformation about enrolment and voting (particularly itinerant enrolment); inaccessibility of enrolment information; and the inaccessibility of voting stations.

Our Campaign

The PILCH Homeless Persons' Legal Clinic (**Clinic**) and the Council to Homeless Persons (**CHP**) have been working together for a number of years to address the numerous legislative and practical barriers that prevent people experiencing homelessness from participating in the electoral process in Australia. Integral to this work has been a focus on public awareness and education strategies to better enable and empower homeless people to exercise their right to vote.

In the lead up to the 2006 Victorian Election, the Clinic and CHP worked closely with the Victorian Electoral Commission (**VEC**) on public awareness and education strategies as well as some more practical mechanisms to assist homeless people to participate in the electoral process. This consultation and partnership with the VEC resulted in the implementation of several important initiatives in the lead up to the 2006 Victorian Election. We note that our collaboration with the VEC has continued past the 2006 Election and we are currently working on a number of joint projects.

We are very pleased that the Australian Electoral Commission (**AEC**) has identified people experiencing homelessness as a target group for the forthcoming Federal Election and that steps have been taken towards establishing an action plan to better enable and empower homeless people to exercise their right to vote. For the benefit of the AEC and on the basis of our experience with the VEC, we have set out below a list of recommended actions for the 2007 Federal Election.

Recommended Actions

The Clinic and CHP urge the AEC to commit to the following public awareness and education strategies in the lead up to the 2007 Federal Election. We recommend that the AEC consults with the VEC and draws on the expertise that it has already developed in this area. More importantly, we would like to emphasise the need for the AEC to engage genuinely and directly with people experiencing homelessness as well as with the homelessness sector more broadly in relation to these issues.

Enrolment

- Early production and distribution of an information kit containing relevant and accessible information for homeless people and homelessness service providers regarding enrolment and voting procedures for no fixed address and ordinary electors. This information kit should explain the various steps in relation to enrolment and voting, as well as the recent changes to the Commonwealth Electoral Act regarding proof of identity and closure of the electoral roll. It is crucial that this information kit is developed as early as possible this year. We attach a number of brochures and fact sheets produced by the VEC and by our organisations in the lead up to the 2006 Victorian Election for your information.
- Engagement with homelessness service providers and provision of information, education and resources to equip them to inform people experiencing homelessness about the importance of voting, eligibility for enrolment and procedures for enrolment and, where possible, assist them to enrol. For example, on 22 February this year, with the assistance of the VEC, St Mary's House of Welcome in Fitzroy hosted an Enrolment Day at which 56 people enrolled to vote.
- Planned and coordinated early distribution of an information kit (including relevant enrolment forms) to high frequency contact points, such as Centrelink and Medicare. The AEC should also engage with Centrelink and Medicare staff to ensure that, where possible, they encourage and assist people to enrol to vote.
- Early implementation of a targeted advertising campaign to raise awareness about the importance of voting and to encourage people experiencing homelessness to enrol and vote. This advertising campaign could take the form of, for example, posters displayed in areas and in services that homeless people tend to frequent (including Centrelink and Medicare). We also suggest that the AEC considers placing some larger scale advertising, such as billboards, in locations and suburbs that homeless people frequent. We would be happy to assist you to settle appropriate locations in Victoria.

Voting

- Provision of information, education and resources to homelessness assistance services to equip them to inform people experiencing homelessness about the process for voting, to accompany people experiencing homelessness to voting stations, and to provide people experiencing homelessness with assistance to cast their ballots.
- Ensuring that voting stations are established at locations that are easily accessible, and appropriate to, people experiencing homelessness. We suggest that, where possible, the AEC employ consumer consultants to assist at polling booths on Election Day. We would be happy to assist you to settle appropriate locations in Victoria.
- Early roll-out of training for electoral site managers and volunteers addressing the needs of and issues that affect people experiencing homelessness and how electoral workers might assist people from that group on Election Day.

- Although we note that mobile polling is restricted to hospitals and nursing homes, prisons and remote areas within the current Commonwealth legislative framework, ideally we would advise that the AEC plan for the installation of mobile polling booths at frequented by people experiencing homelessness sites (including Centrelink and homelessness service providers). Where possible, this would also involve the employment of consumer consultants to assist at mobile polling booths on Election Day. The success of mobile polling has been demonstrated in the Victorian context. At the Victorian Election last year, a mobile polling booth was placed at St Mary's House of Welcome in Fitzroy. Over the course of the day 85 homeless people used the polling booth at St Mary's House of Welcome to exercise their right to vote.

Questions for the AEC - Amendments to the Electoral Act

We note that the amendments to the *Commonwealth Electoral Act* regarding proof of identity requirements and the closing of the electoral roll will significantly impair the ability of people experiencing homelessness (amongst many other groups) to participate in the electoral process. Set out below are three points on which we seek clarification.

- Please clarify the amendments and the dates on which these will take effect, particularly those around proof of identity requirements.
- Please confirm how the AEC proposes to deal with these changes and in particular how you propose to communicate these changes to people experiencing homelessness?
- Please confirm the strategies and programs that the AEC has developed to ensure that homeless people are not further disenfranchised by these amendments?

Where to from here?

We urge the AEC to implement the action plan set out above in the lead up to the 2007 Federal Election. It is crucial that the steps in relation to enrolment are implemented as quickly as possible given the recent legislative amendments regarding closure of the electoral roll and proof of identity requirements. These changes will only compound the difficulties experienced by homeless people already face when attempting to engage with the electoral process.

Furthermore, we urge the AEC to ensure that this work is not a one-off initiative but sits within a long-term action plan and ongoing commitment on the part of the AEC to enabling and empowering homeless people to enrol to vote, exercise their right to vote and meaningfully participate in the democratic process.

For more information, please contact:

Caroline Adler, Policy Officer, Homeless Persons' Legal Clinic, Public Interest Law Clearing House
Ph: (03) 9225 6680

Anna Forsyth, Youth Homelessness Policy Officer, Council to Homeless Persons
Ph: (03) 9419 8699

Attachment B – Information sheet for people experiencing homelessness

Voting at the Federal Election

In late 2007 or early 2008 there will be a Federal Election. This is your opportunity to have a say about who represents you in the Federal Parliament. The Federal Parliament is responsible for policies and programs in areas including homelessness, housing, health care, human rights, anti-discrimination, social security and income support.

Why is it important to enrol and to vote?

1. Voting is empowering.
2. If you don't vote, you let other people decide what is best for you.
3. Your vote could determine the election result. Many seats are won by a handful of votes.
4. Voting is one of the simplest and most effective ways of having your voice heard.
5. Politicians and political parties collect statistics and track information about whether members of various community groups are enrolled to vote and exercise their right to vote. In 2001, it is estimated that up to 80 000 homeless people were not enrolled or did not vote. Politicians and political parties are more likely to act in the interests of homeless people if they know that homeless people will exercise their power to vote.
6. Voting is a legal obligation.

The more homeless people that enrol and vote, the more power and influence that homeless people and advocates will have.

Who is eligible to vote?

- You have the right to vote if:
 1. you are 18 years of age or more; and
 2. you are an Australian citizen; and
 3. you are enrolled to vote.
- You do not need to have a home, a fixed residential address or even a postal address to enrol and vote.

How do you enrol to vote?

- You can enrol to vote by completing and submitting an enrolment application form.
- You can enrol to vote at any time, but if you want to vote at the next Federal Election **you must complete and submit your form on or before the day the government calls the election.**

- If you are already enrolled but have moved since then, you must submit your form within 3 working days after the government calls the election for those changes to be counted for that election.
- If you think you may already be enrolled but you're not sure, enrol to vote anyway because your application form will be used to update your enrolment details.
- Since we do not know when the government will announce the next election, the only way to ensure that you can vote at the next Federal election is to **submit your application form as early as possible.**
- You can get enrolment application forms from any post office, by visiting www.aec.gov.au or by calling 13 23 26.
- If you require assistance with filling out the enrolment forms, contact a PILCH Homeless Persons' Legal Clinic Lawyer (92256684), the Council to Homeless Persons Homeless Advocacy Service (freecall 1800 066 256) or a support worker at any homelessness assistance service.

Enrolment options for homeless people

- **If you do not have a fixed residential address (for example, you are homeless and sleeping rough, staying in crisis accommodation, couch surfing, or staying in boarding houses or rooming houses for short periods of time) and you have stayed for less than 1 month at the address you are currently at, you may be eligible to enrol as a No Fixed Address Elector.**
- If you have stayed at your current address for at least the last month, you can enrol as an Ordinary Elector.
- If you enrol to vote as an Ordinary Elector, your name and any address details will be included on a publicly available electoral roll. If you don't want your address shown on the roll because those details could put you or your family at risk of violence or harm, you can apply to be a Silent

Public Interest Law Clearing House (vic) Inc.

Level One, 550 Lonsdale Street, Melbourne Vic 3000 DX 38227/Flagstaff

Telephone: [03] 9225 6684 Fax: [03] 9225 6686 Email: projects.pilch@vicbar.com.au

Elector. Call 13 23 26 for a Silent Elector Application form.

- If you enrol to vote as a No Fixed Address Elector, your address will not appear on the electoral roll.

New Proof of Identity requirements?

- Every voter who enrolls or changes his or her address or other details on the electoral roll is required to provide proof of their identity. This can be done in one of 3 ways:
- **Option 1:** Provide details of your driver's licence on the enrolment application; or
- **Option 2:** Show a Prescribed Document (see below) to a Prescribed Elector (see below) and have that person sign your enrolment application; or
- **Option 3:** You can have two people who have known you for at least one month and who are enrolled to vote confirm your name on your application form. This may include, for example, your friends, family, or support worker.
- A *Prescribed Document* includes: an Australian birth certificate (issued at least 5 years ago); Certificate of Australian Citizenship; current Centrelink concession card; current Department of Veteran Affairs concession card; or Medicare card.
- A *Prescribed Elector* includes: a full-time or permanent part-time employee of the Commonwealth, State or Territory (such as a Centrelink employee); manager of a community, ethnic or remote resource centre; manager of a women's refuge, or of a crisis and counselling service that provides counselling or assistance to victims of domestic violence, sexual assault or sexual abuse; a pharmacist; a doctor; a dentist; a lawyer; a minister of religion (priest, rabbi etc).

How do you vote?

- Call 13 23 26 or visit www.aec.gov.au to find out where your closest voting centre is.
- If you need assistance to vote, you may ask a friend, relative, worker or polling official to help you.
- If you can't get to a polling place, call 13 23 26 before Election Day and the Australian

Electoral Commission (AEC) can help you to cast a pre-paid postal vote.

What happens if you don't vote?

- If you are enrolled as an Ordinary Elector and you don't vote, the AEC will write to your last known address to ask why. If you provide a reasonable excuse, such as illness or disability, you may not be fined. If you can't provide a reasonable excuse you may be fined \$20 or a maximum of \$50.
- **If you are enrolled as a No Fixed Address Elector and you don't vote, you will not be asked to provide a reasonable excuse; you cannot be fined for failing to vote and only risk being removed from the electoral roll. You will, however, miss the opportunity to have your say!**

Some important facts about voting

- The AEC has no power to fine you for failing to enrol and vote in past elections. They can only fine you if you enrol as an Ordinary Elector, but fail to vote in forthcoming elections. It's not important that you haven't voted at past elections, but it is important that you enrol and vote now.
- If you enrol to vote, you are no more or less likely to receive a visit from the police or sheriff about things like old fines or warrants. The police and sheriff have their own databases and very rarely check the electoral rolls.
- Your vote and the votes of your friends count! If 80 000 homeless people in Australia enrol and exercise their right to vote, the government will be forced to do more about homelessness.

