

**Submission  
No 15**

**PROPOSALS TO INCREASE VOTER ENGAGEMENT, PARTICIPATION AND  
CONFIDENCE**

**Organisation:** Human Rights Law Centre

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# Submission to the inquiry into proposals to increase voter engagement, participation and confidence.

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The Human Rights Law Centre

The Human Rights Law Centre uses strategic legal action, policy solutions and advocacy to support people and communities to eliminate inequality and injustice and build a fairer, more compassionate Australia. We work in coalition with key partners, including community organisations, law firms and barristers, academics and experts, and international and domestic human rights organisations.

The Human Rights Law Centre acknowledges the people of the Kulin and Eora Nations, the traditional owners of the unceded land on which our offices sit, and the ongoing work of Aboriginal and Torres Strait Islander peoples, communities and organisations to unravel the injustices imposed on First Nations people since colonisation. We support the self-determination of Aboriginal and Torres Strait Islander peoples.

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## 2. Introduction

The Human Rights Law Centre welcomes the opportunity to contribute to the Parliament of New South Wales' Joint Standing Committee on Electoral Matters' inquiry into proposals to increase voter engagement, participation and confidence.

Elections are one of the key ways in which Australians can participate in their democracy and influence the decisions made by their governments. The right to vote is a cornerstone of human rights law, enshrined in international instruments such as the *Universal Declaration of Human Rights*<sup>1</sup> and in Article 25 of the *International Covenant on Civil and Political Rights (ICCPR)*.<sup>2</sup>

Article 25 of the ICCPR provides that:

*Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 23 and without unreasonable restrictions:*

- *To take part in the conduct of public affairs, directly or through freely chosen representatives;*
- *To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;*
- *To have access, on general terms of equality, to public service in his country.*

While the Australian Constitution does not express the full extent of the rights recognised in Article 25 of the ICCPR, the High Court of Australia has found a degree of implied Constitutional protection for these rights, in particular the implied freedom of political communication, which has been interpreted by the Court as indispensable to citizens being able to exercise a free and informed choice as electors.<sup>4</sup>

New South Wales allows the vast majority of Australian citizens 18 years and over who have resided in New South Wales for at least one month, and non-citizen British subjects provided that they were enrolled on 25 January 1984, to vote in state elections; with some exceptions. These include people convicted of treason who are not yet pardoned, those living overseas with no intention of returning to Australia, or a person serving a custodial prison sentence of 12 months or more.<sup>5</sup>

After the 2022 federal election, which was described by the Australian Electoral Commission as “the largest and most complex in Australian history”,<sup>6</sup> the Human Rights Law Centre established the Barriers to Voting Register (**Register**) in an attempt to understand the most common issues faced by voters.

This submission is informed in part by the responses that were provided to the Register, in addition to a number of other high priority concerns. While those concerns are certainly not unique to New South Wales,

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<sup>1</sup> Article 21.

<sup>2</sup> Article 25.

<sup>3</sup> Article 2 of the ICCPR provides that each state Party to the Covenant undertakes to respect and to ensure to all people within its jurisdiction all of the rights contained in the Covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Similarly, Article 2 requires that each State Party to the Covenant undertakes all the necessary steps to adopt all measures to give effect to the rights in the ICCPR and that there are competent redress mechanisms for individuals whose rights are breached. See: Article 2(1)-(3) of the ICCPR.

<sup>4</sup> *Unions NSW v New South Wales* [2013] HCA 58; *Australian Capital Television Pty Ltd v The Commonwealth* [1992] HCA 45; *Lange v Australian Broadcasting Corporation* [1997] HCA 25 as quoted in: Australian Human Rights Commission, *Right to take part in public affairs, voting rights and access to public service* (Website, accessed 31 July 2024) <<https://humanrights.gov.au/our-work/rights-and-freedoms/right-take-part-public-affairs-voting-rights-and-access-public-service>>.

<sup>5</sup> State Library of New South Wales, ‘Who Can Vote’ (Website, Accessed 13 August 2024)

<<https://www.sl.nsw.gov.au/find-legal-answers/books-online/hot-topics-voting-and-elections/who-can-vote>>.

<sup>6</sup> Australian Electoral Commission, *Delivering the 2022 Federal Election*, March 2022, 2.

it is pertinent that New South Wales is able to learn from previous elections and implement tangible changes to increase voter engagement, participation and confidence.

Political integrity and the health of our democracy, both at a federal and state level, remain front-and-centre issues.

The work of this Committee will be instrumental in achieving much needed reforms with respect to, among other things:

1. Maintaining confidence in the integrity of electoral processes;
2. Reducing barriers to participation, in particular for voters with disabilities and voters from groups with historically lower enrolment and turnout rates; and
3. Implementing options for technology assisted voting (**TAV**) as set out in the NSW Electoral Commission's November 2023 report on TAV.

This submission addresses each of these areas from the Committee's terms of reference, with recommendations that are grounded in human rights law and principles.

### 3. Recommendations

The Inquiry presents an opportunity for the Committee make a number of recommendations to the Parliament of New South Wales to meaningfully increase voter engagement, participation and confidence.

The Human Rights Law Centre makes the following recommendations:

1. That the Committee recommend that more funding be provided to the NSW Electoral Commission to ensure polling booths are accessible to all communities, particularly Aboriginal communities living on homelands.
2. That the Committee recommend that the NSW Electoral Commission collect and publish statistics of the rates of Aboriginal and Torres Strait Islander voter enrolment *and* participation.
3. That the Committee recommend the deployment of mobile polling booths to remote homelands, similar to the practice of visiting declared institutions, to facilitate voting access for Aboriginal and Torres Strait Islander communities.
4. That the Committee recommend mobile polling visits prioritise people living in crisis accommodation, shelters for unhoused people, and those sleeping rough, to ensure that all people, regardless of their housing situation, have the opportunity to vote.
5. The Committee recommends that the New South Wales Government prioritise funding and resourcing for programs that increase Aboriginal and Torres Strait Islander enrolment and participation in elections.
6. The Committee recommends the New South Wales Government resource the NSW Electoral Commission to work directly with Aboriginal and Torres Strait Islander community organisations to increase enrolment of and participation by Aboriginal and Torres Strait Islander people, particularly on homelands.
7. The Committee recommends that the NSW Electoral Commission be adequately funded to develop accessible and culturally appropriate voter education and information, including in Aboriginal and Torres Strait Islander languages, in the lead up to and during elections.
8. The Committee recommends that the New South Wales Government properly resource the provision of accredited interpreters of Aboriginal and Torres Strait Islander languages, particularly on homelands, in the lead up to and during elections. Where possible and appropriate, interpreters should be employed locally.
9. The Committee recommends that the New South Wales Government work with the Australian Electoral Commission to conduct Direct Enrolment and Update trials in New South Wales.
10. That the Committee recommend that the voting age be lowered to 16 years of age in New South Wales.
11. The Committee recommends that the NSW Electoral Commission undertake a review, in partnership with the Equal Access to Democracy (Disability) Reference Group, into the accessibility of voting in New South Wales and the barriers faced by voters with disability. The NSW Electoral Commission and Parliament should commit to acting on all findings of the review, with sufficient time to be effective prior to the next state election.
12. The Committee recommends that the NSW Electoral Commission undertake a review, in partnership with the Equal Access to Democracy (Disability) Reference Group, into the accessibility of voting in New South Wales and the barriers faced by voters with disability. The NSW Electoral Commission and Parliament should commit to acting on all findings of the review, with sufficient time to be effective prior to the next state election.
13. The Committee recommends that the New South Wales Government remove ban on voting for people serving a custodial sentence of 12 months or more. New South Wales should follow the

examples set by South Australia and the ACT by allowing all people in prison to vote, ensuring greater consistency and fairness in electoral participation rights.



## 4. Addressing barriers to voting

The NSW Electoral Commission itself recognises and acknowledges that some members of the community face barriers to participation in their democracy, including people with disability and Aboriginal and Torres Strait Islander people.<sup>7</sup>

The NSW Electoral Commission ought to be properly resourced and empowered to continue to identify and eliminate such barriers to participation.

### 4.1 The right to vote.

Article 25 of the *ICCPR* provides that every citizen shall have the right to vote without any distinctions, including but not limited to race or colour.<sup>8</sup>

Article 5 of the *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)* (which is scheduled to the *Racial Discrimination Act 1975 (Cth)*) requires states to guarantee, without distinction as to race:

*Political rights, in particular the rights to participate in elections--to vote and to stand for election--on the basis of universal and equal suffrage.*<sup>9</sup>

Similarly, Article 1 of the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*, which Australia is a State Party to, provides that:

*Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognised in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.*<sup>10</sup>

Contrary to this position at international law, for most of Australia's political history, tens of thousands of Aboriginal and Torres Strait Islander people were deliberately denied the right to vote in both state and federal elections.

Section 4 of the *Commonwealth Franchise Act 1902* (now repealed), the precursor to the *Electoral Act*, stated that:

*No [A]boriginal native of Australia, Asia, Africa, or the Islands of the Pacific except New Zealand shall be entitled to have his name placed on the Electoral Roll unless so entitled under section forty-one of the Constitution.*<sup>11</sup>

From 1850 onwards, the Australian colonies became self-governing and all adult male British subjects—including Aboriginal men—were entitled to vote in New South Wales from 1858 provided they were born or naturalised in the colony and had resided there for at least 3 years.<sup>12</sup>

The Commonwealth *Electoral Act* was amended in 1962 to give all Aboriginal and Torres Strait Islander people the right to vote in Federal elections, despite this they were still denied the right to vote in some states until 1965, when Aboriginal and Torres Strait Islander people were finally granted this right in Queensland.

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<sup>7</sup> NSW Electoral Commission, *Report on the administration of the 2023 NSW State election* (Report) 86.

<sup>8</sup> *International Covenant on Civil and Political Rights*, art 25.

<sup>9</sup> *International Convention on the Elimination of All Forms of Racial Discrimination*, art 5.

<sup>10</sup> Article 1.

<sup>11</sup> *Commonwealth Franchise Act 1902 (Cth)* (repealed), s 4.

<sup>12</sup> Australian Electoral Commission, 'Electoral Milestones for Indigenous Australians' (Website, 16 August 2023) <<https://www.aec.gov.au/indigenous/milestones.htm>>.

This is recent history. And since Aboriginal and Torres Strait Islander people were granted the right to vote, All Australian governments have continued to make decisions that have deprioritised Aboriginal and Torres Strait Islander people's democratic participation.

The Committee must pursue an end to this era, and recommend adequate resourcing of measures to ensure that Aboriginal and Torres Strait Islander people can easily and freely vote, be they on homelands, or in suburbs, or cities.

## 4.2 Barriers to voting experienced by Aboriginal and Torres Strait Islander communities.

Notably, New South Wales has a higher Aboriginal and Torres Strait Islander enrolment rate than that of the national average (94.1%).<sup>13</sup> But at 97.5%, it is still lower than the state's non-Indigenous enrolment rate of 99.0%.<sup>14</sup>

While New South Wales' relatively high Aboriginal and Torres Strait Islander enrolment rate, which has increased 11.6% since 2017, is to be commended,<sup>15</sup> these figures only tell part of the story.

Voter turnout is another crucial metric in analysing the participation of Aboriginal and Torres Strait Islander voters. It has been estimated (albeit for the most recent Federal election) that turnout was as low as 50.1% in areas where Aboriginal and Torres Strait Islander people made up at least 80% of the population.<sup>16</sup>

Historically, Aboriginal and Torres Strait Islander people have been underrepresented in Federal election participation, both in enrolment and in turnout at elections.<sup>17</sup> In the absence of voter turnout statistics at state level, and given the lack of dedicated programs aimed at improving voter turnout in NSW, we can only assume this trend is consistent in New South Wales.

Adequate resources must be committed to ensuring Aboriginal and Torres Strait Islander communities across the state receive culturally appropriate, proactive information about voting in elections.

### 4.2.1 Voting in homelands is less accessible than in metropolitan areas.

Accessibility to polling stations and alternative methods of voting is imperative to enable voters living outside of metropolitan regions the ability to vote.

New South Wales has in the past provided technology assisted voting (**TAV**) for state and local government elections - TAV refers to the use of electronic systems or tools to help people cast their votes in elections.

While the general ability for those whose residence is not within 20 kilometres of a polling place to use assisted-voting tools, like telephone voting, is important, more must be done to improve the voting options

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<sup>13</sup> Australian Electoral Commission, 'Indigenous enrolment rate', *Enrolment program performance indicators and targets*, 24 July 2023, <[https://www.aec.gov.au/Enrolling\\_to\\_vote/Enrolment\\_stats/performance/indigenous-enrolment-rate.htm](https://www.aec.gov.au/Enrolling_to_vote/Enrolment_stats/performance/indigenous-enrolment-rate.htm)>.

<sup>14</sup> Australian Electoral Commission, 'Size of the electoral roll and enrolment rate 2024', *National enrolment figures by state/territory*, 24 April 2024, <[https://www.aec.gov.au/Enrolling\\_to\\_vote/Enrolment\\_stats/national/2024.htm](https://www.aec.gov.au/Enrolling_to_vote/Enrolment_stats/national/2024.htm)>.

<sup>15</sup> The NSW Indigenous enrolment rate increased from 85.9% at 30 June 2017 to 97.5% at 30 June 2023: Australian Electoral Commission, 'Indigenous enrolment rate', *Enrolment program performance indicators and targets*, 24 July 2023, <[https://www.aec.gov.au/Enrolling\\_to\\_vote/Enrolment\\_stats/performance/indigenous-enrolment-rate.htm](https://www.aec.gov.au/Enrolling_to_vote/Enrolment_stats/performance/indigenous-enrolment-rate.htm)>.

<sup>16</sup> Parliament of Australia, Parliamentary Joint Standing Committee on Electoral Matters, *Conduct of the 2022 federal election and other matters* (Interim Report, June 2023) 111 [4.13] referencing Dr Morgan Harrington and Dr Francis Markham, *Submission 430 to the Conduct of the 2022 federal election and other matters*, 7.

<sup>17</sup> Parliament of Australia, Parliamentary Joint Standing Committee on Electoral Matters, *Conduct of the 2022 federal election and other matters* (Interim Report, June 2023) 110 [4.9].

for people living far from a polling place.<sup>18</sup> Particularly as TAV use was denied during the 2023 general election due to a previous failure of TAV for council elections.<sup>19</sup>

Similarly, the postal voting system can be strengthened. In the 2003 State election, 59,371 postal votes were for a variety of reasons, including postal vote certificates not being signed by a witness or the voter, the elector's signature was dated after election day or the security question was not answered.<sup>20</sup>

Additionally, in the 2023 state election, three remote voting centres in the electoral district of Barwon were decommissioned due to staffing shortages.<sup>21</sup> The district of Barwon covers 356,292 square kilometres and is home to 53,738 electors,<sup>22</sup> where 16.5% of the population identify as Aboriginal and/or Torres Strait Islander.<sup>23</sup> In that district alone, remote polling stations can be hundreds of kilometres apart.

The difficulties with casting effective postal votes and the decommissioning of remote voting venues, for example, ultimately compound to exacerbate the difficulties of remote voters participating in general elections.

The NSW Electoral Commission visits certain nursing homes, convalescent homes, hospitals, and aged care institutions that are appointed by the NSW Electoral Commissioner as declared institutions or facilities.<sup>24</sup> Election officials visit these institutions and facilities before an election day to allow residents to vote in person on-site. Voting at declared institutions and facilities is restricted to the residents of that institution or facility.<sup>25</sup> This practice highlights the Commission's ability to reach out to voters in vulnerable and less accessible locations, ensuring their participation in the electoral process.

Similar mobile polling visits should be deployed to homelands, ensuring that Aboriginal and Torres Strait Islander voters living in remote areas have the same access to in-person voting as those in declared institutions.

Furthermore, mobile polling visits should also prioritise reaching out to people living in crisis accommodation, shelters for unhoused people, and individuals sleeping rough. Currently, those living in crisis or transitional accommodation, or without access to safe and secure housing, can enrol as voters with no fixed address.<sup>26</sup>

**Recommendation:** That the Committee recommend that more funding be provided to the NSW Electoral Commission to ensure polling booths are accessible to all communities, particularly Aboriginal communities living on homelands.

**Recommendation:** That the Committee recommend that the NSW Electoral Commission collect and publish statistics of the rates of Aboriginal and Torres Strait Islander voter enrolment *and* participation.

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<sup>18</sup> *Electoral Act 2017* (NSW), s 152.

<sup>19</sup> *Ibid* sch 7 pt 4 cl 14.

<sup>20</sup> NSW Electoral Commission, *Report on the administration of the 2023 NSW State election* (Report) 43.

<sup>21</sup> *Ibid* 47.

<sup>22</sup> NSW Electoral Commission, The Legislative Assembly District of Barwon, <<https://elections.nsw.gov.au/elections/find-my-electorate/districts/barwon>>.

<sup>23</sup> Australian Bureau of Statistics, *Barwon – 2021 Census All persons*, <<https://www.abs.gov.au/census/find-census-data/quickstats/2021/SED10006>>.

<sup>24</sup> NSW Electoral Commission, 'Declared institutions and facilities' (Website, 6 August 2024) <<https://elections.nsw.gov.au/voters/voting-options/declared-institutions-and-facilities>>.

<sup>25</sup> *Ibid*.

<sup>26</sup> NSW Electoral Commission, 'Homelessness and voting' (Website, 26 September 2023) <<https://elections.nsw.gov.au/voters/assistance-for-voters/homelessness-and-voting>>.

**Recommendation:** That the Committee recommend the deployment of mobile polling booths to remote homelands, similar to the practice of visiting declared institutions, to facilitate voting access for Aboriginal and Torres Strait Islander communities.

**Recommendation:** That the Committee recommend mobile polling visits prioritise people living in crisis accommodation, shelters for unhoused people, and those sleeping rough, to ensure that all people, regardless of their housing situation, have the opportunity to vote.

#### 4.2.2 Underfunding of electoral programs reduce voter enrolment and participation.

There were some initiatives aimed at making voting materials and campaigns more accessible during the 2023 New South Wales state election, including:

1. Community awareness videos translated into seven non-English languages (none of which were an Aboriginal or Torres Strait Islander language);<sup>27</sup>
2. Information materials translated into 26 languages (none of which were an Aboriginal or Torres Strait Islander language);<sup>28</sup>
3. Print advertising placed in in-language community news publications, including the Koori Mail;<sup>29</sup>
4. ‘*First Nations targeted factsheets*’ distributed to Aboriginal community organisations and “Indigenous Centres”;<sup>30</sup>
5. the hosting of an information session with Dharriwaa Elders Group in Walgett about how to complete ballot papers;<sup>31</sup> and
6. The NSW Electoral Commission’s ‘*Report on the administration of the 2023 NSW State election*’ outlined that Aboriginal people were one of the “priority campaign audiences” leading up to the 2023 election.<sup>32</sup> Yet the publication of resources and a single information session with an Elders group did not demonstrate meaningful and deep engagement with Aboriginal and Torres Strait Islander communities in the lead up to the 2023 state election.

At the Federal level, we have seen examples of a successful model of Aboriginal and Torres Strait Islander community engagement.<sup>33</sup>

The Aboriginal and Torres Strait Islander Education and Information Service was established in 1985. It aimed to promote self-management in electoral matters, increase voter registration, provide education, and develop materials in Aboriginal and Torres Strait Islander languages.<sup>34</sup> However, this service was abolished in 1996 by the Federal Government. After its abolition, the Australian Electoral Commission (AEC) did not operate a major program targeting Aboriginal and Torres Strait Islander electors for 13 years after the Information Service closed. Unsurprisingly, enrolment rates dropped.<sup>35</sup>

The AEC’s Indigenous Electoral Participation Program (IEPP), in many ways a successor to the Aboriginal and Torres Strait Islander Education and Information Service, is dedicated to implementing “engagement activities focused on closing the enrolment gap and increasing effective electoral participation”.<sup>36</sup>

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<sup>27</sup> NSW Electoral Commission, *Report on the administration of the 2023 NSW State election* (Report) 88.

<sup>28</sup> Ibid 87.

<sup>29</sup> Ibid 27.

<sup>30</sup> Ibid 90.

<sup>31</sup> Ibid 90.

<sup>32</sup> Ibid 81.

<sup>33</sup> For example, an appropriately funded Indigenous Electoral Participation Program: GetUp First Nations Team, “Funding for the Indigenous Electoral Participation Program, 2021-22 Budget” (29 January 2021) <[https://treasury.gov.au/sites/default/files/2021-05/171663\\_getup\\_first\\_nations\\_team.pdf](https://treasury.gov.au/sites/default/files/2021-05/171663_getup_first_nations_team.pdf)>.

<sup>34</sup> Australian Institute of Aboriginal and Torres Strait Islander Studies, “The right to vote”, <<https://aiatsis.gov.au/explore/right-vote>>.

<sup>35</sup> Norm Kelly, *Directions in Australian electoral reform: professionalism and partisanship in electoral management* (ANU Press, 2012), 69.

<sup>36</sup> Australian Electoral Commission, ‘Increased Investment of Indigenous Electoral Participation Measures’, 8 October 2021 (press release) <<https://www.aec.gov.au/media/2021/10-28.htm>>.

Recent efforts to expand and strengthen Aboriginal and Torres Strait Islander enrolment and participation programs have shown to be fruitful.<sup>37</sup> For example, the IEPP has numerous initiatives aimed at enhancing Indigenous electoral participation, including developing resources in Aboriginal and Torres Strait Islander languages, implementing in-community engagement activities and amending the electoral roll to better capture and link a person's traditional, kinship and other recognised names.<sup>38</sup>

The New South Wales Parliament should commit resourcing to similar programs to be run by the NSW Electoral Commission. Initiatives to increase Aboriginal and Torres Strait Islander participation should include:<sup>39</sup>

1. Partnerships with Aboriginal representative bodies and communities to develop and deliver enrolment initiatives;
2. Increased culturally appropriate and accessible communication; and
3. Culturally appropriate voter education programs.

#### 4.2.3 Insufficient use of interpreter and translation services.

The 2023 state election featured a distinct lack of material available in Aboriginal and Torres Strait Islander languages, despite resources being translated into a number of other languages.<sup>40</sup>

Related problems created by a lack of access to accredited interpreters in Aboriginal and Torres Strait Islander languages at polling stations are not exclusive to elections (either at the state or federal level).

An investigation by the Commonwealth Ombudsman has found that despite Aboriginal and Torres Strait Islander language interpreting services being critical for effective government communication:

*“...a coordinated whole of government response is still required. While there has been some progress, ongoing barriers to accessing interpreters continue to undermine communication between government and Indigenous language speakers, even for those agencies who have gone to considerable lengths to try to improve accessibility.”<sup>41</sup>*

The employment of local interpreters to work in their communities offers an opportunity to both bolster the accessibility of voting while also employing local community members.

**Recommendation:** The Committee recommends that the New South Wales Government prioritise funding and resourcing for programs that increase Aboriginal and Torres Strait Islander enrolment and participation in elections.

**Recommendation:** The Committee recommends the New South Wales Government resource the NSW Electoral Commission to work directly with Aboriginal and Torres Strait Islander community organisations to increase rates of enrolment and participation among Aboriginal and Torres Strait Islander people, particularly on homelands.

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<sup>37</sup> Norm Kelly, *Directions in Australian electoral reform: professionalism and partisanship in electoral management* (ANU Press, 2012), 69.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid 118 [4.41]

<sup>40</sup> Ibid 87-88.

<sup>41</sup> Commonwealth Ombudsman, *Accessibility of Indigenous Language Interpreters, Talking in Language Follow Up Investigation*, (Report No. 06, December 2016) 1.

**Recommendation:** The Committee recommends that the NSW Electoral Commission be adequately funded to develop accessible and culturally appropriate voter education and information, including in Aboriginal and Torres Strait Islander languages, in the lead up to and during elections.

**Recommendation:** The Committee recommends that the NSW Government properly resource the provision of accredited interpreters of Aboriginal and Torres Strait Islander languages, particularly on homelands, in the lead up to and during elections. Where possible and appropriate, interpreters should be employed locally.

## 4.3 Current enrolment processes can restrict electoral participation.

### 4.3.1 The Direct Enrolment and Update Program

The AEC's Direct Enrolment and Update Program (**DEU**) assists people to maintain their enrolment obligations.

The AEC, which also manages enrolment for New South Wales elections, collects information from other government agencies, such as Service NSW or the Australian Taxation Office, to automatically update the electoral roll. For example, if someone changes their address with Service NSW, the AEC examines and matches the data they provided Service NSW against the electoral roll. This process identifies whether the person is entitled to enrol to vote but is not yet enrolled, or if they are already enrolled but need to update their details. The AEC then contacts that person advising that they need to act to either enrol or to update their details.<sup>42</sup>

However, until recently the DEU required all people to have a gazetted address to be able to participate. Many communities on homelands do not have gazetted addresses and rely on community mailboxes for their correspondence. Conversely some individuals, like people sleeping rough, may move between numerous addresses, meaning that they are often ineligible to participate in the program or fail to reply to letters from the AEC and can result in them being removed from the electoral roll.

This aspect of the DEU was the subject of a complaint to the Australian Human Rights Commission by two Aboriginal men, Mr Matthew Ryan and Mr Ross Mandi from Arnhem Land in the Northern Territory. The complainants alleged that the Commission was applying the DEU in a way that caused Aboriginal people living on homelands to be "suppressed or inhibited" from voting in Federal and Northern Territory elections.<sup>43</sup>

In response to the complaint, the AEC committed to trial the sending of DEU communication via email or to community mailboxes in Western Australia, Northern Territory and Queensland in an effort to increase Aboriginal and Torres Strait Islander enrolment rates.<sup>44</sup> This approach led to more than 1,400 new enrolments in the trial communities.<sup>45</sup>

### 4.3.2 Lowering the voting age

Lowering the voting age to 16 in New South Wales would be a significant step in increasing voter participation and aligning with Australia's human rights obligations.

The eligibility to vote in New South Wales has evolved over time, reflecting the changing understanding of who should have a say in democratic processes. Extending the right to vote to 16 and 17-year-olds would continue this progression, fulfilling Australia's commitment under Article 25 of the ICCPR to ensure universal and equal suffrage. As demonstrated in countries like Austria and Scotland, young people are capable of making informed decisions, and including them in the electoral process would strengthen democratic inclusion.

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<sup>42</sup> Australian Electoral Commission, *Direct enrolment and update* (Website, 26 May 2023) <[https://www.aec.gov.au/Enrolling\\_to\\_vote/About\\_Electoral\\_Roll/direct.htm](https://www.aec.gov.au/Enrolling_to_vote/About_Electoral_Roll/direct.htm)>.

<sup>43</sup> Roxanne Fitzgerald, 'Indigenous voters lodge discrimination complaint against Australian Electoral Commission', ABC News (online, 19 June 2021) <<https://www.abc.net.au/news/2021-06-19/nt-voters-racial-discrimination-human-rights-commission/100227762>>.

<sup>44</sup> Australian Electoral Commission, Significant boost to First Nations enrolment announced, 1 September 2022, (press release) <<https://www.aec.gov.au/media/2022/09-01.htm>>.

<sup>45</sup> Australian Electoral Commission, *Direct enrolment program expanded for Australians in remote communities* (Website, 14 April 2023) <<https://www.aec.gov.au/media/2023/04-14.htm>>.



#### 4.3.3 Increased voter education

Other aspects of the enrolment process, including the need for people to be enrolled ahead of election day, continue to disenfranchise eligible voters.

There have been reports of unenrolled adults (particularly newly eligible 18-year-olds) who did not understand the process for enrolling to vote being turned away from polling places when they had not enrolled prior to election day.<sup>46</sup>

This is an issue that, with appropriate education and resourcing, can be addressed.

**Recommendation:** That the Committee recommend that the New South Wales Government work with the Australian Electoral Commission to conduct DEU trials in New South Wales.

**Recommendation:** That the Committee recommend that the voting age be lowered to 16 years of age in New South Wales.

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<sup>46</sup> Parliament of Australia, Parliamentary Joint Standing Committee on Electoral Matters, *Conduct of the 2022 federal election and other matters* (Interim Report, June 2023) 112 [4.16].

## 4.4 Barriers to voting experienced by people with disability.

The Human Rights Law Centre has previously made a submission to the Commonwealth Parliament's Joint Standing Committee on Electoral Matters' review of the conduct of the 2022 federal election. That submission, among other things, focused on the barriers to voting at the federal level that were experienced by people with disability.

Our submission to the Commonwealth Parliament was developed in consultation with People with Disability Australia, the national peak disability rights and advocacy organisation. The recommendations that we made in that submission were also endorsed by People with Disability Australia. Where applicable and relevant, this submission is informed by the recommendations that were made in our previous submission.

### **People with disability must be given the same opportunity to vote as every other elector.**

Currently, people with disability face many barriers to voting in both state and federal elections. The ongoing failure to materially improve voting access for people with disability raises anti-discrimination and constitutional concerns, given Australians' right to vote as recognised by the High Court.<sup>47</sup>

Australia is a State Party to the *Convention on the Rights of Persons with Disabilities (CRPD)*. Article 29 of the CRPD prohibits restrictions on voting on the basis of disability or legal capacity. Article 29 provides that:

*States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake:*

- a) *To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:*
  - (i) *Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;*
  - (ii) *Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;*
  - (iii) *Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;*
- b) *To promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:*
  - (i) *Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;*

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<sup>47</sup> *Rowe v Electoral Commissioner* [2010] HCA 46.

- (ii) *Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.*

Australian states and territories have an important role in ensuring that Australia realises its obligations under the CRPD.

#### 4.4.2 New South Wales must address the barriers to voting for people with a disability.

Australians with disability face a range of compounding barriers, such that one in five respondents to the Register from the 2022 federal election were people with disability.

While the Register explicitly focused on experiences in relation to the 2022 federal election, these experiences are relevant to New South Wales. A selection of the responses received by the Register are set out at **Annexure 1**.

Responses received by the Register highlight the challenges faced by people with disabilities during the most recent Federal election. Relevantly, deaf voters reported poor experiences due to insufficient awareness training for polling station staff, and the inability for Auslan users to cast telephone votes.<sup>48</sup> Additionally, there were issues with the lack of physical accessibility, including insufficient seating or a lack of ramps at voting centres, and the overwhelming nature of these centres for people with sensory sensitivities.

The Human Rights Law Centre welcomes the NSW Electoral Commission's '*Report on the administration of the 2023 NSW State election*' and '*Technology assisted voting – Final review report*'. These thorough investigations into the administration of New South Wales' elections represent an opportunity for reflection and to address the multiple barriers experienced by electors.

We acknowledge and welcome a number of improvements to address voting barriers in the 2023 state election, including the establishment of Equal Access to Democracy (Disability) and Culturally and Linguistically Diverse Reference Groups,<sup>49</sup> and the provision of Auslan interpreting services.<sup>50</sup>

The NSW Electoral Commission has acknowledged the importance of alternate methods of voting, including postal voting, noting:

*'Postal voting is an important voting channel for electors who are unable to attend in person to cast their vote... The enfranchisement of postal voters in New South Wales relies on an effective and efficient letter delivery service.'*<sup>51</sup>

As we have outlined above, the high rate of rejection of postal votes indicates that this process is inadequately supported.<sup>52</sup>

It is imperative that when providing electors with the opportunity to access alternative methods of voting, that they are also empowered with the tools and understanding to be able to make an effective vote that will ultimately be accepted. 59,371 votes are not an insubstantial number and one that may well have impacted election outcomes. It is in this context that the NSW Electoral Commission ought to commit to ensuring the

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<sup>48</sup> Difficulties with technology assisted voting are also common to NSW voters, especially given the limited use of TAV in the 2023 NSW general election (see discussion below).

<sup>49</sup> NSW Electoral Commission, *Report on the administration of the 2023 NSW State election* (Report) 86.

<sup>50</sup> Ibid 89.

<sup>51</sup> Ibid 43.

<sup>52</sup> Ibid.

use of accessible voting methods is properly facilitated to ensure that electors are supported and empowered to cast effective votes.

The Human Rights Law Centre is also concerned by the NSW Electoral Commission's provision (or lack thereof) of accessible voting centres. In the 2023 State election, only 594 voting centres (out of a possible 2,246) were fully wheelchair accessible.<sup>53</sup> The NSW Electoral Commission's narrow definition of 'accessible' is also cause for concern.

According to the NSW Electoral Commission, a fully accessible voting centre is one that is fully wheelchair accessible.<sup>54</sup> However, this definition fails to recognise and make provision for other disabilities that require different accessibility measures, like those with sensory impairments, hearing impairments and visual impairments.

Despite this, only 26% of voting centres for the New South Wales state election were fully accessible, a modest increase from the 2019 state election where only 19% were fully accessible.<sup>55</sup> However, a 'fully accessible' voting centre must be one that should enable any elector to comfortably cast a vote within their own abilities.

**Recommendation:** The Committee recommends that the NSW Electoral Commission undertake a review, in partnership with the Equal Access to Democracy (Disability) Reference Group, into the accessibility of voting in New South Wales and the barriers faced by voters with disability. The NSW Electoral Commission and Parliament should commit to acting on all findings of the review, with sufficient time to be effective prior to the next state election.

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<sup>53</sup> Ibid 68.

<sup>54</sup> Ibid 67.

<sup>55</sup> NSW Electoral Commission, *Disability Inclusion Action Plan 2024* (Report, 2024) 10 <<https://elections.nsw.gov.au/getmedia/620dc356-2bf0-4ecb-9a7a-dd940c75d27a/disability-inclusion-action-plan-2024.pdf>>.

#### 4.4.3 The availability of TAV should be properly considered.

The Human Rights Law Centre is concerned about the integrity, security, and safety of the mass deployment of TAV at elections.

The past failures of TAV in New South Wales elections, particularly the technical difficulties during the 2021 local government elections that led to the voiding of elections in some councils, underscore the real and significant security concerns associated with its use.<sup>56</sup>

The decision to not use TAV (iVote) in the 2023 State election, except for telephone voting for electors who are blind or have low vision also raised legitimate concerns.<sup>57</sup> Concerns were raised by Blind Citizens Australia that telephone voting does not provide a secure voting method that is secret, independent and verifiable. Blind Citizens Australia commenced unlawful discrimination proceedings against the NSW Electoral Commission in relation to the removal of the iVote electronic voting platform ahead of the 2023 state election.<sup>58</sup>

The Joint Standing Committee on Electoral Matters, while ultimately supporting the decision not to use iVote in the 2023 State election, noted that:

*“it is important that NSW electors have alternative, accessible and secure voting platforms and tools available to them for future elections, particularly people with disability.”<sup>59</sup>*

The Australian Bureau of Statistics estimates that in 2021 there were 464,712 people with disability in New South Wales who require assistance with “core activity”.<sup>60</sup> The NSW Electoral Commission estimates (conservatively) that approximately 25,000 people with disability would use an assisted voting offering if available.<sup>61</sup>

It is crucial that the New South Wales Government and the NSW Electoral Commission do all that is practicable to maximise accessibility to voting, as required by human rights law and indeed New South Wales law. A national approach to the implementation of TAV, coordinated across Australian jurisdictions would ensure uniform accessibility, security, and efficiency of TAV, ultimately benefiting the substantial number of electors who rely on TAV to participate in their democracy.

**Recommendation:** The Committee recommends that the NSW Electoral Commission undertake a review, in partnership with the Equal Access to Democracy (Disability) Reference Group, into the accessibility of voting in New South Wales and the barriers faced by voters with disability. The NSW Electoral Commission and Parliament should commit to acting on all findings of the review, with sufficient time to be effective prior to the next state election.

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<sup>56</sup> NSW Electoral Commission, *Technology assisted voting – Paper 3* (Final review report, November 2023) 8.

<sup>57</sup> NSW Electoral Commissioner, ‘iVote will not be used for 2023 NSW State election’ (Determination, 16 March 2022) <<https://elections.nsw.gov.au/about-us/media-centre/news-and-media-releases/electoral-commissioner-ivote-determination>>.

<sup>58</sup> Christopher Knaus, ‘Blind advocates allege NSW’s removal of online voting system is a breach of human rights’, Guardian Australia (online, 1 August 2022) <<https://www.theguardian.com/australia-news/2022/aug/01/blind-advocates-allege-nsws-removal-of-online-voting-system-is-a-breach-of-human-rights>>.

<sup>59</sup> Parliament of New South Wales, Joint Standing Committee on Electoral Matters, *Adequacy of the funding allocation of the NSW Electoral Commission for the 2023 State General Election* (Report 3/57, November 2022) iii.

<sup>60</sup> Australian Bureau of Statistics, *Disability and carers – 2021 Census* Canberra, 28 June 2022, <<https://www.abs.gov.au/statistics/health/disability/disability-and-carers-census/latest-release>>. ABS defines core activity as self-care, communication, and mobility due to disability, long-term health conditions or the effects of old age.

<sup>61</sup> NSW Electoral Commission, *Technology assisted voting – Paper 3* (Final review report, November 2023) 41.

## 4.5 Barriers to voting for people in prisons.

In New South Wales, people serving a custodial sentence of 12 months or more are not eligible to vote in state elections. They can vote in Federal elections and referendums provided they are not serving a custodial sentence of more than three years.

The United Nations Human Rights Committee has noted that all people deprived of their liberty should enjoy all of the rights set forth in the ICCPR, subject only to restrictions that are unavoidable as a result of being held in a closed environment.<sup>62</sup>

Under Article 4 of the ICCPR, countries may temporarily suspend certain obligations, including the right to participate in public affairs and elections, however the threshold to suspend or limit these rights is high; the limitation has to be due to an officially declared public emergency that threatens the existence of the nation. Furthermore, such measures must be strictly necessary for the situation, must not violate other international law obligations, and must not discriminate based on race, colour, sex, language, religion, or social origin.<sup>63</sup>

Conditions may be applied on the right to participate in public affairs, however these conditions must be established by law based on objective and reasonable criteria. The United Nations Human Rights Committee has clarified that if a criminal conviction is grounds for suspending voting rights, the suspension period should be proportionate to the offence and sentence.<sup>64</sup>

In *General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service* the United Nations Human Rights Committee stated that:

*“State Parties should indicate and explain the legislative provisions which would deprive citizens of their right to vote. The grounds for such deprivation should be objective and reasonable... Persons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote.”*<sup>65</sup>

The Committee also noted that if a conviction for an offence is the basis for suspending the right to vote, the period of the suspension should be proportionate to the offence committed, implying that a blanket ban on voting for people in prison that does not consider these factors is not proportionate.<sup>66</sup>

The United Nations Human Rights Committee has also noted that the general disenfranchisement of people in prison is inconsistent with Article 25 of the ICCPR and does not serve the stated goals of rehabilitation contained in Article 10(3) of the ICCPR.<sup>67</sup>

### 4.5.1 The right to vote for people in prison is protected by the Australian Constitution.

In the landmark case of *Roach v Electoral Commissioner* (2007) 233 CLR 162 (**Roach**) the High Court found that the Howard Government had acted unlawfully and unconstitutionally in imposing a blanket ban on people in prison voting, regardless of the length of their sentence.

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<sup>62</sup> United Nations Human rights Committee, *General Comment 21, Article 10 (Humane Treatment of Persons Deprived of Their Liberty)*, 10 April 1992.

<sup>63</sup> Attorney-General's Department 'Right to take part in public affairs and elections- public sector guidance sheet' (Website, Accessed 13 August 2024) <<https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/right-take-part-public-affairs-and-elections#can-the-right-to-take-part-in-public-affairs-and-elections-be-limited>>.

<sup>64</sup> Ibid.

<sup>65</sup> United Nations Human rights Committee, *General Comment 21, Article 10 (Humane Treatment of Persons Deprived of Their Liberty)*, 10 April 1992, 14.

<sup>66</sup> Ibid.

<sup>67</sup> 5 Human Rights Committee, *International Covenant on Civil and Political Rights, Consideration Of Reports Submitted By States Parties Under Article 40 of the Covenant* (CCPR/C/USA/CO/3/Rev.1), 18 December 2006, 35.

The Court in *Roach* held that sections 7 and 24 of the Constitution, which require that the Houses of Parliament be “directly chosen by the people”,<sup>68</sup> “have come to be a constitutional protection of the right to vote”<sup>69</sup> in Australia which may only be limited for a “substantial reason”,<sup>70</sup> and that any limitation on the franchise be “appropriate and adapted” to that reason.<sup>71</sup>

In his Honour’s decision, Gleeson CJ affirmed that:

*“Because the franchise is critical to representative government, and lies at the centre of our concept of participation in the life of the community, and of citizenship, disenfranchisement of any group of adult citizens on a basis that does not constitute a substantial reason for exclusion from such participation would not be consistent with choice by the people.”*<sup>72</sup>

When the Court considered whether a person serving a sentence of three years or more could be restricted from voting, it stated that:

*“...such a criterion does distinguish between serious lawlessness and less serious but still reprehensible conduct. It reflects the primacy of the electoral cycle for which the Constitution itself provides...”*<sup>73</sup>

#### 4.5.2 The disenfranchisement of people in prison is discriminatory.

The disenfranchisement of people in prison indirectly discriminates against Aboriginal and Torres Strait Islander people.

In the most recent census, 278,000 people in New South Wales identified as being Aboriginal and/or Torres Strait Islander, representing 3.4% of the New South Wales population.<sup>74</sup>

At the end of March 2024, Aboriginal and/or Torres Strait Islander people represented 30.8% of the adult prison population in New South Wales and 66.4% of the youth and child prison population. Both of these figures have been increasing since March 2022.<sup>75</sup>

Between 2019 and 2023 in New South Wales, approximately 42% of all people in prisons were serving a sentence of 12 months or more.<sup>76</sup>

As noted above, Article 25 of the *ICCPR* provides that every citizen shall have the right to vote ‘without any distinctions mentioned in Article 2’. Those distinctions include race and colour (among others). Similarly, Article 5 of the *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)* requires states to guarantee, without distinction as to race:

*[p]olitical rights, in particular the rights to participate in elections –to vote and to stand for election –on the basis of universal and equal suffrage”. The Convention also requires signatories to amend, rescind or nullify laws that have the effect of creating or perpetuating racial discrimination or racial division.*<sup>77</sup>

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<sup>68</sup> *The Australian Constitution*, ss 7 and 24.

<sup>69</sup> *Roach* at 7.

<sup>70</sup> *Roach* at 7.

<sup>71</sup> *Roach* at 95.

<sup>72</sup> *Roach* at 174.

<sup>73</sup> *Roach* at 102.

<sup>74</sup> Australian Bureau of Statistics, *New South Wales: Aboriginal and Torres Strait Islander population summary*, (Website, 1 July 2022) <<https://www.abs.gov.au/articles/new-south-wales-aboriginal-and-torres-strait-islander-population-summary>>.

<sup>75</sup> NSW Bureau of Crime Statistics and Research, *NSW Closing the Gap target 10 and 11 Summary Report* (Website, March 2024) <<https://www.bocsar.nsw.gov.au/Documents/Aboriginal%20over-rep/AOR-Summary-Mar-2024.pdf>>.

<sup>76</sup> *Ibid*.

<sup>77</sup> Article 2.

Given the over-targeting of Aboriginal and Torres Strait Islander people by the criminal legal system, any restrictions on the right of people in prison to vote will exclude a disproportionate number of Aboriginal and Torres Strait Islander people from voting and could be in breach of Australia's international obligations under the *ICCPR* and the *ICERD*.

The well-documented disproportionate rates of incarceration among Aboriginal and Torres Strait Islander people means that any restrictions on the right to vote for people in prison do not just limit the franchise in general but also exacerbate the over-targeting of these communities.

Moreover, such restrictions cause cycles of disenfranchisement and disempowerment. When Aboriginal and Torres Strait Islander people are systematically excluded from voting, it reinforces their historical and ongoing marginalisation by the authorities and undermines efforts to address the socio-economic and political inequalities they are pushed to. This exclusion also diminishes the ability of Aboriginal and Torres Strait Islander communities to further advocate for policies and leaders who would address the systemic issues that contribute to their over-representation in the criminal legal system in the first place.

#### 4.5.3 The disenfranchisement of people in prisons impacts rehabilitation.

International human rights law mandates the rehabilitation and social integration of people in prison, yet this is often not the reality. The *United Nations Standard Minimum Rules for the Treatment of Prisoners* provide a universally acknowledged set of minimum standards and principles for the treatment of people in prison.

Rule 4 states that:

*The purposes of a sentence of imprisonment or similar measures deprivative of a person's liberty are primarily to protect society against crime and to reduce recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life.*

*To this end, prison administrations and other competent authorities should offer education, vocational training and work, as well as other forms of assistance that are appropriate and available.*

Rule 5 states that:

*The prison regime should seek to minimize any differences between prison life and life at liberty that tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.*

Similarly, Article 10(3) of the *ICCPR* provides that:

*The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.*

Disenfranchising people in prison contributes to their broader social marginalisation, obstructing rehabilitation and stigmatising those impacted.

This practice is rooted in antiquated concepts of 'attainder' and 'civil death', where a criminal conviction leads to the loss of civil and political rights. These antiquated ideas are incompatible with a criminal legal system that should encourage people in prison to see themselves as part of society, thereby facilitating their reintegration, rather than perpetuating indiscriminate social separation.

The New South Wales Government should be strengthening programs that reintegrate people in prison back into their communities in a culturally safe, respectful way. This includes ensuring that people in prison are not disenfranchised by a seemingly arbitrary ban on voting for those serving sentences of 12 months or more.



Any restriction on the right to vote must be compatible with international human rights law, which requires that such restrictions are justified, necessary, and proportionate in all the circumstances.

In *Roach*, the High Court stated that:

*[People in prison] who are citizens and members of the Australian community remain so. Their interest in, and duty to, their society and its governance survives incarceration. Indeed, upon one view, the Constitution envisages their ongoing obligations to the body politic to which, in due course, the overwhelming majority of them will be returned following completion of their sentence.*<sup>78</sup>

#### 4.5.4 The disenfranchisement of people in prison is arbitrary and inconsistent.

Disenfranchising people serving a custodial sentence of 12 months or more appears arbitrary – there is no clear rationale for selecting 12 months as the threshold over any other length of sentence.

This inconsistency is further highlighted by the difference in the Federal election or referendum limit, which is set at three years. Consequently, someone serving a 12-month sentence is deemed unworthy of the franchise in New South Wales state and local elections but is still able to participate in national elections and referendums provided they are serving a custodial sentence of less than three years. This discrepancy undermines the justification for the 12-month limit in New South Wales and raises questions about its fairness.

Additionally, a blanket ban on voting for people serving a prison sentence of 12 months or more fails to consider the severity of an individual's crime or any mitigating factors.

This lack of nuance makes the policy indiscriminate and unjust. Furthermore, the variation in disenfranchisement rules across the states and territories adds to the confusion, as there is no unified justification for any of these differences.

Limitations on the right to vote must be compatible with international human rights law. The seemingly arbitrary 12-month figure used by New South Wales does not appear to meet the criteria of being justified, necessary, and proportionate in all of the circumstances, suggesting it may not be compatible with New South Wales' human rights obligations at law.

**Recommendation:** The Committee recommends that the New South Wales Government remove ban on voting for people serving a custodial sentence of 12 months or more. New South Wales should follow the examples set by South Australia and the ACT by allowing all people in prison to vote, ensuring greater consistency and fairness in electoral participation rights.

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<sup>78</sup> *Roach* at 84-85.

## 5. Annexures

### 5.1 Annexure 1

After the 2022 federal election, the Human Rights Law Centre established the Barriers to Voting Register in an attempt to understand the most common issues faced by voters. While the Register compiled individual's experiences with the 2022 federal election, many of these experiences are common to state elections too. A selection of responses received by the Register from people in Australia with disability are set out below.

#### Challenges for deaf voters – Electorate of Macnamara

'I am a deaf/hard of hearing person who voted at [a specialist site for people with disability]. Because staff were wearing masks, I was not able to understand what was being said to me. I think staff members did not know that you could take off your mask for a person to lipread for hearing problems. Instead I had to follow the instructions from the visual pictures and not from the woman who served me. I also thought that the accessibility ramps and disability service etc. was very poorly conducted. The staff ought to take accessibility training. The instructions were not too bad after I was told what to do, but it was poorly organised.'

#### Challenges for deaf voters – Electorate of Corio

'My son is profoundly deaf. He had Covid and could not vote in person as he was in isolation. He can text on phone but cannot talk on phone as Auslan is his language. When my husband rang [the AEC], he was told there was no option for the profoundly deaf. He was told my son would get a fine but we just had to explain the situation and the fine would be waived.'

#### Need for Seating – Electorate of Fraser

'As a disabled person I have difficulties standing for long periods such as in a queue, so I was keen to find a voting venue without a long queue. I went to four voting centres until I finally found one with a manageable queue. Great – except that when I got my voting forms, I then asked for a sit down booth explaining that I cannot stand to complete them. The staff member looked confused and directed me to a small table where another AEC staff was seated. I explained, as I have done in many previous elections, that I have a right to privacy and do not want someone seated so close as to see my voting. I informed her that if there was not a private seated booth, then I will sit on the floor. which is what I did. I am fine to sit on the floor. However in previous elections this has created a dramatic reaction from staff which is embarrassing for me. This time, fortunately no-one told me to get off the floor, and I was able to vote. But I was embarrassed, stressed and angry. Others who cannot stand or use a wheelchair, will have difficulty accessing voting. I have given feedback about the need for seated stations on many occasions in years past, but nothing seems to change.'

#### Sensory overload – Electorate of Newcastle

'My voting location was not suitable for people with trauma, sensory issues, and or processing disorders who become overwhelmed in loud, crowded spaces. Staff weren't understanding of disabilities whatsoever. Person directing to the voting booths didn't take into account the need for space for myself. They wouldn't listen to my support worker when it was pointed out, even though I was clearly struggling and was wearing noise cancelling headphones and sunglasses.'