

ELECTORAL MATTERS COMMITTEE

Electoral Matters Subcommittee

Inquiry into voter participation and informal voting

Inquiry into political donations and disclosure

Melbourne — 24 July 2008

Members

Ms C. Broad

Mr R. Scott

Mr A. Somyurek

Chair: Mr A. Somyurek

Staff

Executive Officer: Mr M. Roberts

Research Officer: Ms N. Wray

Witnesses

Ms C. Adler, Manager and Principal Lawyer, and

Ms M. Pekevka, secondee lawyer, Homeless Persons Legal Clinic, Public Interest Law Clearing House; and

Dr M. Robinson, manager, research and development, Victorian Association for the Care and Resettlement of Offenders.

The CHAIR — We have a subcommittee this morning. Welcome to the public hearings of the Electoral Matters Committee inquiry into political donations and disclosure and the inquiry into voter participation and informal voting. All evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and further by the provisions of the Parliamentary Committees Act 2003, the Defamation Act 2005 and, where applicable, the provisions of reciprocal legislation in other Australian states and territories. I also wish to advise witnesses that any comments you make outside the hearings may not be afforded such privilege. I take it each one of you has read the ‘Giving evidence at a public hearing’ pamphlet. If I can do this individually, and I will start with Dr Robinson first, please state your full name and business address.

Dr ROBINSON — Mary-Ann Robinson. I am the manager of research and development at VACRO. The address is level 1, 116 Hardware Street, Melbourne.

The CHAIR — Are you attending in a private capacity or are you representing an organisation?

Dr ROBINSON — Representing VACRO.

The CHAIR — What is your position in that organisation?

Dr ROBINSON — I am the manager of research and development.

Ms PEKEVSKA — My name is Monika Pekevaska, and my address is level 1, 550 Lonsdale Street, Melbourne.

The CHAIR — Are you attending in a private capacity?

Ms PEKEVSKA — No, I am not. I am representing the Homeless Persons Legal Clinic.

The CHAIR — And your position?

Ms PEKEVSKA — Is as a secondee lawyer.

The CHAIR — What is your full name and business address?

Ms ADLER — Caroline Adler. My business address is level 1, 550 Lonsdale Street, Melbourne.

The CHAIR — Are you attending in a private capacity or — —

Ms ADLER — I am representing my organisation. I am the manager and principal lawyer of the Homeless Persons Legal Clinic at PILCH.

The CHAIR — The evidence will be taken down and become public evidence in due course. I now invite you to make your verbal submissions.

Ms ADLER — As you know, my name is Caroline Adler. I am the manager and principal lawyer of the Homeless Persons Legal Clinic, which is a project of PILCH. I will be talking, along with Monika, about our submission on voting and homelessness, and Mary-Ann will be speaking around prisoner enfranchisement.

Firstly, thank you very much on behalf of the clinic for the opportunity to speak to you today about the potential practical and legislative reforms that could take place in Victoria to ensure that people experiencing homelessness in this state are able to access and realise their right to vote at state elections. What I am going to say today comes in large part from our written submission, which was made in conjunction with the Human Rights Law Resource Centre and with VACRO. I am going to walk you through a couple of the key points, and Monika will also do the same in relation to some of them. In very brief terms I am going to talk very quickly about the Homeless Persons Legal Clinic and its service delivery model, about the human rights framework that we believe should frame all decision making and reforms made in relation to voting enfranchisement of Victorians, and some information about homelessness and voting or, at the very least, the lack thereof in the homeless community in Victoria. We would also like to recognise the commitment that was shown by the Victorian Electoral Commission before the 2006 election and before the federal election last year to better assist people experiencing homelessness to enrol and access and then exercise their right to vote.

As you know, the human right to vote is an essential right recognised in article 25 of the International Covenant on Civil and Political Rights, or the ICCPR, and is also recognised by section 18 of the Victorian Charter of Human Rights and Responsibilities, which states that every eligible person has the right to vote without discrimination. That right imposes a positive obligation on all governments, and particularly in this context the Victorian government, to adopt measures that ensure that all people in Victoria who are entitled and eligible to vote are able to exercise that vote, and that really gets down to the practical nuts and bolts things that we will go on to talk about.

Any obstacles to the right to vote must be reasonable and proportionate, and the UN human rights committee, in addition to other bodies, has noted that voter education and enrolment campaigns are considered necessary in that process. Importantly, the enactment of the Victorian charter has created a mandate for the three arms of the Victorian government — the executive, Parliament, the judiciary, and obviously this committee, as well as all public bodies, including the Victorian Electoral Commission — to consider and operate within a human rights framework; that is, the Victorian government and its agencies must exercise their powers and review and amend all policies and procedures, in addition to legislation, to ensure the compatibility with human rights as set out in the charter and, for the purposes of today specifically section 18, the right to vote.

International and comparative jurisprudence on the right to vote should be utilised by the Victorian government and other arms of government, and any limitations on those rights and the right to vote must be reasonable, proportionate and justified. As a result, and as our written submission sets out in more detail, the responsibilities under the Victorian charter mean that this committee and the Victorian government must consider the right to vote and protect that right in a broader human rights framework.

As an organisation, the Homeless Persons Legal Clinic provides free legal assistance to people experiencing homelessness across Victoria, but principally in the Melbourne region. We do that via an outreach model, so we go down to service providers that provide material assistance to people experiencing homelessness on any given day. As a result of our, I guess, long-term commitment to this and our interactions with people experiencing homelessness, we have come to do a lot of research and collected a lot of anecdotal evidence around homelessness and voting. In terms of real stats, the census data from 2001 shows that around 99 000 people in Australia were homeless, and over 20 000 of those were in Victoria. Those are conservative estimates and the 2006 census data will likely show a rise in the homeless population across Australia and in Victoria.

Voter participation rates across that population are very low. We have done some research ourselves that indicates that prior to the 2004 state election 76 per cent of people within the homeless population who were eligible to vote did not do so. Extrapolating from that, we can assume that a similar number of people did not vote in the 2006 election. Hanover Welfare Services has also conducted a wide range of research in relation to homelessness and voting. It did that following the 2006 state election, showing that around 63 per cent of homeless people who were eligible to vote did not do so.

We submit that there is a direct link between homelessness, poverty and the right to vote and that people experiencing homelessness or at risk of homelessness, who are also probably the most marginalised group in our society, are unable to access and realise that right, as protected under the new charter. Voting is an incredibly positive experience, and from our experience people who are experiencing homelessness want to vote, but in the context of their everyday lives and barriers that they may face they are unable to do so. Voting for homeless people, we think, would be an empowering and socially inclusive experience and would help them to facilitate pathways out of homelessness. We think every effort should be made, from a legislative and practical perspective, to ensure that this is able to happen. I will let Monika talk briefly about the legislative reforms that we propose, and then I will talk more about practical measures that can be taken.

Ms PEKEVSKA — Again, thank you for having us at this inquiry. I am going to run through some of the legislative reforms that we posed in the submission. The first thing I want to talk about is itinerant elector provisions. We would congratulate the Victorian government on amending the Electoral Act to include a definition of homelessness in section 3A. However, in regard to this itinerant voter provision the Victorian act has effectively imported electoral provisions found in section 96 of the Commonwealth Electoral Act.

We would submit that the Victorian government should lobby the commonwealth government to amend section 96 of its act to allow people experiencing homelessness to more freely vote as itinerant electors. Obviously itinerant election is the easiest way for people experiencing homelessness to vote as it does not require a fixed address. We would say that, specifically, section 96 should be amended to include a definition of homelessness, and the

Victorian Electoral Act is a really good model for that. The commonwealth act should also be amended to remove the financial penalty associated if you do not vote as an itinerant elector at the election. Also — and this is included in the Victorian Electoral Act — it currently allows enrolment for an itinerant elector if you have a residence for less than a month. You cannot enrol to vote as an itinerant elector if you have a place to live for a period of a month. In our experience, and the statistics show, people have multiple and short-term accommodation and the average time they stay in this temporary accommodation is about six months. The act needs to be reformed to recognise that people who are homeless and still considered homeless may be living somewhere for six months, not one month. Further, the normal or ordinary elector provisions can apply to people who are experiencing homelessness, obviously who need Victorian residence, for more than one month.

There are a few issues about time frames that go along with this. People experiencing homelessness often have multiple issues they have to deal with. There is not only homelessness. There are literacy problems, there is mental illness, there are drug and alcohol addiction and other health issues. Things like section 22 of the Electoral Act state that once you are entitled to vote, once you have your Victorian residence for one month, you have two enrol within 21 days. Additionally, if you are already enrolled to vote on the electoral roll and you have changed your address you have to notify the Victorian Electoral Commission within 21 days. Obviously this might have a disproportionate impact on people experiencing homelessness. They often have multiple addresses and they also have problems meeting time frames. We would suggest that these time frames be broadened and that a reasonable excuse could be offered and homelessness should be deemed to be a reasonable excuse so that our clients are not find.

I might have a quick talk about the penalty provisions for ordinary electors as well. Normally if you are an ordinary elector under the electoral roll and you do not vote in a state election the Victorian Electoral Commission is required to notify the elector that they failed to vote, and they have to state the true reason for failing to vote. The elector must respond to this notice within 28 days and give an excuse for not voting. If you fail to vote without a reasonable excuse, fail to comply with the VEC notice or provide a false reason for not voting you are guilty of an offence which is punishable by conviction or 1 penalty unit. There are obviously a couple of issues with this for people experiencing homelessness. The first thing is that a financial fine can further entrench the cycle of disadvantage and vulnerability for very marginalised people within our society. Often they cannot afford to pay that fine and are forced into the court system and are discouraged from voting. Further, a written response to the VEC in regard to its notice might be very difficult for our clients. As noted, literacy is a big problem. It might be better if they were allowed to verbally respond to VEC notices at VEC offices.

Finally, we would say that homelessness should be included in the act as a reasonable excuse, such as the definition in the Electoral Act as it stands. Other issues such as drug and alcohol addiction, mental illness and literacy problems should also be deemed to be reasonable excuses to ensure accountability in the VEC process. I think Caroline would now like to talk about some of the practical measures that the VEC could institute.

Ms ADLER — I have witnessed some very successful and practical relationships between the VEC and homelessness service providers. We would say that the government should increase funding to the VEC to continue the good work that it has been doing in the last couple of years. One of the things that I have seen work very well is enrolment days at homelessness services. The VEC goes down and in conjunction with staff at those agencies runs enrolment days. Obviously that is set out in our written submission. During those days I have seen over 250 people experiencing homelessness enrolled to vote and be very keen to do that because the service was provided at places they were already going to for material aid and assistance.

Other things I have seen work very well include mobile polling booths. At the last Victorian election there was one polling booth — it was a little bit of an experiment and it worked incredibly well — at St Mary's House of Welcome in Fitzroy, which is a lunchtime program. The polling booth was available for people at the same time that lunch was on, and at that polling booth 68 people voted in the state election. That is just one example of something that could be extrapolated and used more broadly. In addition, we consider that training for electoral officers around issues that might confront people experiencing homelessness, including literacy issues and drug and alcohol issues, so that people who are attempting to vote on election day are assisted to do that. Another way of doing that would be to include consumer or peer mentors in electoral office staff for the purposes of election days. Work in the lead-up to the election should also be considered in the way of specific targeted advertising and working with homelessness agencies to ensure that that advertising gets to the right people at the right time. A lot of this is also covered in our written submission, and please feel free to ask me for more details. But in light of the time, I will pass over to Mary-Ann.

Dr ROBINSON — Since a number of the other matters have already been covered I am going to restrict myself to a few brief comments about prisoners and some of the difficulties of voting in jail. Just by way of background, Victoria's 13 prisons have a capacity to hold up to 4576 prisoners. While they are not full at the moment, there is substantial throughput so that, for instance, through the 2006–07 year there were over 5000 receptions and, again, over 5000 discharges. The population is around 4500, but there is substantial throughput. The existing situation is that prisoners are eligible to vote, obviously if they are over 18 and they are incarcerated for five years or less. As the submission makes clear VACRO supports constructive participation in social and civic life as far as is possible from within a prison. For instance, we support maintenance of family relationships — engagement in anything that is not part of the restricted liberty of a sentence.

The other point I wanted to make is that there are a number of people under 18 in custody who may well turn 18 in the juvenile justice system, and they have special needs because they are new to their entitlement to vote and they need assistance in understanding the system and being able to enrol to vote for the first time. A number of practical measures are summarised in point form on pages 22 and 23 of the submission. Essentially the practical measures fall into broad categories covering the need to provide information, provide education, provide assistance and then provide access. Obviously that would also need an increase in funding to the VEC because it needs to be carefully targeted information, and the access to voting issues will be very different for the prisons. I will not go through the practical measures in detail, because it might be more helpful to take questions.

Mr SCOTT — This question is addressed to issues around homelessness. In recommendation 6 you say that section 63 should be amended to allow itinerant voters to register to vote in person at voting centres on election day. Are you aware that in other jurisdictions, like Canada and particularly in a number of US states, there is election day registration where electors more generally — all electors in fact — can register at voting places on election day. Would you regard that sort of measure as being an appropriate response?

Ms ADLER — Are you saying, in the same way that US states do, allowing everyone to enrol on the day that they go to vote?

Mr SCOTT — In some US states and in Canada particularly. In Canada there is another issue that I would raise. In the Canadian system the electoral roll is maintained not by the individual electors enrolling themselves but the state tries to ensure that people are enrolled correctly. The onus is on the state to enrol a person correctly and it uses public information, interactions with government and other databases to ensure people are enrolled correctly. Would that be of help as well to homeless people?

Ms ADLER — In some ways it would. I would flag that there are probably some privacy issues that might occur if you were using agency databases across the board to find out that information. Certainly registration on the day — that is the first point you raised — we would encourage. If it could take place and work feasibly for the entire population I do not see why that could not be something that is brought in — definitely. In particular for communities that are marginalised and socially excluded I think anything that is going to assist them to wrap up enrolment and voting in a very quick way that will allow them to engage easily is definitely a very good step forward.

Mr SCOTT — You are aware at the moment of the system whereby information is obtained from various agencies interacting with government, like power companies and mail-out companies?

Ms ADLER — Of course.

Mr SCOTT — And then the forms are sent to them, but the problem of course is that a lot of people do not respond — in fact a majority of them do not respond to the forms.

Ms ADLER — Yes.

Mr SCOTT — You would see that as a particular problem for the clients you are dealing with, in that they are not going to respond or they are not going to be able to respond?

Ms ADLER — That is the difficulty. As Monika indicated, people move around in various forms of temporary accommodation. They may well be enrolled in one place and have to move on from that very quickly thereafter. It is not at the forefront of people's minds to continually think, 'I should call the VEC and let them know

that my address has changed and therefore that my enrolment has changed'. It is probably the lowest of the low priorities in the context of someone who is experiencing homelessness. So yes, definitely.

Mr SCOTT — Would you see it as a principle to be useful that the onus lies upon the state rather than on the individual to maintain the enrolment?

Ms ADLER — I have, to be honest, not thought about it in those broad terms.

Ms PEKEVSKA — It would probably be very effective, but considering the practical problems that homeless people face in terms of moving around the state it would still have very practical difficulties in maintaining the roll for people experiencing homelessness. Relationships with service providers and that sort of thing is probably the most effective way to engage people experiencing homelessness.

Ms ADLER — In addition to that, election day enrolment would also be very helpful in that context.

The CHAIR — In terms of election day enrolments, how difficult would it be for homeless people to produce ID?

Ms ADLER — To produce ID? It depends entirely on what ID you are asking for, to be honest. There are ID issues for people, and that is something that we have had difficulty with in terms of the amendments of the Commonwealth Electoral Act in 2006 and the enhanced ID requirements. If there were an ID requirement, we would argue that something like a Centrelink health care card or some sort of ID of that kind would be sufficient for the purposes of enrolling on that day rather than producing photographic ID, for example a drivers licence. For the most part all the clients who we see do not have drivers licences and passports and those kinds of things that would go to that level of identification. Provided that the ID criteria was broad enough to incorporate those other kinds of identification, I do not see there being too much of a problem.

Ms BROAD — Just to follow on that point of voting day registration and putting the obligation on the state to maintain the roll, you mentioned some issues around privacy. My understanding is that the most significant initial response of any homelessness agency assisting the person who is experiencing homelessness is to secure income support for that person, and obviously that then does put them on an agency database. If it were possible to access that, it would also be possible to ensure that they go onto a roll. Do you have any response to that?

Ms ADLER — This issue has come up in the context of access cards and those kinds of central database information points. I do not necessarily think that that is an issue, but there would just need to be safeguards around how that information is ultimately used. If the onus of ensuring the accuracy of the roll fell on the state and those kinds of database access mechanisms were put into place, I would not have a problem with that in principle, but I would feel as though there would need to be significant safeguards around how that information is used other than purely for the purposes of putting people on the roll. The other additional point I would make there is that if you are ultimately putting people on the roll for the purposes of them voting, you would need to ensure that there is no pecuniary penalty just because you happened to have been put on the roll because the responsibility is now on the state to do that and then you do not vote if you are someone who might be experiencing homelessness. You would need to ensure that that relationship worked as well.

Ms BROAD — Just on what is referred to in my notes as recommendation 10, you have been very supportive of the VEC's efforts, particularly at the last state election, and the practical steps that they have taken as far as possible to assist people who are experiencing homelessness to vote. I have to say that members of this committee who undertook a visit to Hanover as part of our investigation and report on the 2006 election had similar very positive feedback. In addition to what you have described as the minimum activities there, which essentially are a description of activities that were undertaken, are there any further actions that you think should be considered that are not included in that minimum set of activities that have already been undertaken?

Ms ADLER — I suppose there are a range of different things. Obviously I would see that an expansion of what was provided prior to the 2006 election is necessary. A mobile polling booth was set up at Saint Mary's House of Welcome. I would say that mobile polling should occur across the board, across the state to the extent possible, with the engagement of homelessness providers. There is certainly a lot of goodwill in the sector to ensure that people experiencing homelessness enrol to vote and vote also on election day, and that mobile polling pilot experiment should be expanded across the board.

I know that Centrelink and Medicare are commonwealth agencies, but our view has always been that voting information for both federal and state elections, in addition to targeted advertising, should be available in Centrelink and Medicare and places that people experiencing homelessness have to attend on a weekly and fortnightly basis to get their income support and deal with other needs. We see that as being something that is very important. Another thing that did not happen prior to the 2006 election that we have always advocated for is targeted advertising in and around places that people experiencing homelessness go to. In Melbourne, the CBD is obviously a primary place as well as North Melbourne, Fitzroy and St Kilda. Advertising should be not only in homelessness services but also in public areas to encourage social inclusion and participation, not just in places where the homeless go and the general public does not tend to attend or participate in, but in general public areas so that it is part of a push for the whole population to vote, including people who are experiencing homelessness. They are just a few things. Certainly, expansion of enrolment days.

Another thing that would be helpful — obviously this would need to work in conjunction with the VEC and homelessness service providers — is for there to be provision of transport, as I know occurs in the US in a large number of states. If there is not an ability for a mobile polling booth to be set up in a homelessness agency, the VEC and homelessness agencies should work together to ensure that transport is available and that people who want to exercise their right to vote are able to make it to other polling stations. They are just a few ideas.

Ms BROAD — Thank you.

The CHAIR — You just talked about agencies that homeless people need to attend such as Centrelink. What is your view on automatic enrolments? For example, Centrelink knows where the client lives, so they will have the capacity to share information with the AEC or the VEC to put these people on the roll electronically without filling out forms.

Ms ADLER — That ties very much into what both ministers also talked about. I think that there will probably need to be some consent from the individual or some safeguards around how that information is used, and for those safeguards to be widely advertised so that privacy concerns are allayed and people are aware of how their information is ultimately being used. But certainly some sort of automatic or tick-the-box enrolment is much easier than filling out a complete form.

The CHAIR — Before you said enrolling to vote was not a high priority for people experiencing homelessness. Would that be static or would that change?

Ms ADLER — I personally think, and certainly our research has played out, that people want to enrol to vote. They want to vote, but on a day when you are dealing with not having a house, having to find somewhere to eat or food, any drug or alcohol issues that you might have, figuring out whether you can see your kids, even though they live somewhere else and you are on the streets, at the end of the day filling in a form — and, as you have pointed out, quite a complex form — to let the Victorian Electoral Commission know what your address is and where you live is probably always going to fall to the bottom of the pile in terms of day-to-day priorities. I do not think it is a lack of will; I just think it is the reality of a very complex and often traumatic day-to-day life for people.

Ms PEKEVSKA — And it is also a lack of information. That is really important as well. You know, we do need to be providing information to service providers to inform people who have this right to actually vote and enrol.

Ms ADLER — I would add that the targeted advertising that I have suggested would also go to demonstrating to people who are experiencing homelessness and are significantly marginalised and excluded that the general population and the government and voting agencies actually want them to participate and want them to be included in electoral matters and in voting. I think that also goes a long way to sort of pushing it back up the priority list. People experiencing homelessness often feel as though they are so utterly excluded from mainstream life that voting or enrolling to vote really makes no difference whatsoever to anyone's lives. Really getting it back into the mainstream and pushing towards helping people understand that their vote counts and that their vote is important, just like anyone else's, is very important.

The CHAIR — Thank you very much for your time.

Witnesses withdrew.