



public interest
ADVOCACY CENTRE LTD

Improving democracy: inquiry into voting centres in Victoria

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Introduction

The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights;
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

Established in July 1982 as an initiative of the (then) Law Foundation of New South Wales, with support from the (then) NSW Legal Aid Commission, PIAC was the first, and remains the only broadly based, public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC also receives funding from Industry and Investment NSW for its work on energy and water, and from Allens Arthur Robinson for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

PIAC's work on electoral reform

PIAC welcomes the opportunity to respond to the Parliament of Victoria, Electoral Matters Committee inquiry into the functions and administration of voting centres. In 2008, PIAC made a submission to the Victorian Electoral Matters Committee Inquiry into Political Donations and Disclosure.¹ PIAC has also responded to NSW inquiries, including the NSW Legislative Council Select Committee Inquiry into Electoral

¹ Deirdre Moor and Kerrie Tucker, *Funding Democracy: Submission to the Victorian Electoral Matters Committee Inquiry into Political Donations and Disclosure* (2008) Public Interest Advocacy Centre <http://www.piac.asn.au/publications/pubs/sub2008065_20080627.html> at 20 February 2009.

and Political Party Funding in 2008;² and nationally to the Joint Standing Committee on Electoral Matters Inquiry into the 2007 Federal Election.³ This paper draws on the material contained in those submissions.

Location, Accessibility, Participation and Transparency

Building on initiatives from the 2006 Victorian election

The Victorian Electoral Commission (VEC) reviewed its performance at the 2006 state election⁴ and made practical suggestions that, if adopted would improve access and provide greater flexibility for people with disability, older people and those with limited means of travelling to a polling centre. PIAC draws attention to the initiatives that the VEC implemented for the 2006 election and the ongoing commitments made as part of the 2006 review. The following issues raised in its review should receive priority as part of the VEC's planning for future elections.

Expanding the locations of early voting centres

Early voting centres are an important service for voters who cannot vote on election day or access a local polling booth. They are particularly important as only 10% of polling booths at the 2006 election were fully wheelchair accessible.⁵

Early voting centres are also important for voters who have difficulty accessing transport on election day; assisted community transport, for example, is more likely to be available Monday to Friday than on a Saturday.

Early voting centres should be available in every electorate, be accessible by public transport, have access to disability parking spaces, and the location and opening times of the centres should be advertised extensively in the local media and to targeted groups likely to use the centres.

Signage at voting centres

Signage is important for people entering unfamiliar buildings, and particularly for voters who must navigate to find accessible entrances. Locating voting centres would be assisted by extensive advertising of the locations of centres, and maps being made readily available illustrating access ramps, lifts and other access features. A household letter drop of locations of centres would be a useful addition to information accessed via telephone, websites or other audio information for those who cannot use printed material.

² Kerrie Tucker, Deirdre Moor and Robin Banks, *For the Sake of Democracy: Submission to the NSW Legislative Council Select Committee Inquiry into Electoral and Political Party Funding (2008)* Public Interest Advocacy Centre <http://www.piac.asn.au/publications/pubs/sub2008021__20080215.html> at 20 February 2009.

³ Public Interest Advocacy Centre, *Submission to Joint Standing Committee on Electoral Matters Inquiry into the 2007 Federal Election (2008)* <http://www.piac.asn.au/publications/pubs/sub2008051__20080516.html> at 20 February 2009.

⁴ Victorian Electoral Commission, *Report to Parliament on the 2006 Victorian State Election (2007)*.

⁵ *Ibid* (11).

Display of group voting tickets

PIAC opposes non-preferential above-the-line voting for group voting, that is, where voters can elect not to number their preferred order of candidates but place a '1' in a single box above the line, unless such voting is treated as exhausting the voter's vote. By non-preferential voting above the line, voters abrogate the direction of their preferences to the party for whom they vote '1'. Voters are not usually encouraged to seek out information about how their preferences will be distributed by the party of their choice and such information is quite difficult to locate.

As Victorians had the option of voting above the line available to them for the first time in 2006, it is assumed that this option will continue to be available. The VEC should assist voters to become informed about their preference allocation before they cast their vote. In addition to the information being available prior to election day, the voting centre should display all the group voting tickets and the preferencing that will flow from voting '1' above the line in a prominent place at the polling centres. Voters should not need to seek out or ask for the group tickets, in order to access the information on polling day.

Queues

The VEC noted that there was an underestimate in the number of people voting at centres in new growth areas and main centres in Melbourne⁶ and that this needed to be rectified at future elections. There is a risk of people turning away from voting centres when they are faced with long waiting times. If people turn away from voting because they had not planned for a long delay and have other commitments, this could effect the outcome of the election. This also becomes an issue of access for older people and people with disability who are unable to stand for long periods. PIAC encourages the VEC to undertake better planning and set in place procedures to meet unexpected demands as they arise on polling day, such as priority lines for older people and additional staff available to move between centres to respond to demand.

Wheelchair access

The limited number of venues accessible for wheelchair users is extremely disappointing. If a venue is not accessible, voters are either unable to vote because they cannot draw the attention of staff in order to get assistance or their secret ballot is compromised as they are asked to vote on the steps of the building rather than in a private booth. Ideally, all centres should be accessible. Voters should also be able to access early voting centres or access mobile centres at hospitals or residential services where practical. This is particularly the case in regional electorates where there are fewer voting centres.

Joint voting centres

Joint voting centres, particularly on electoral boundaries should provide better access for voters. A joint polling centre would be preferable to one where voters had to travel further, or to a location that was not directly accessible by public transport or had other access problems. Issues that may occur due to voter confusion about collecting ballot papers should be solved by signage, assistance from staff in managing queues and general management of the centre.

⁶ Ibid (117).

Electronic voting

The 2006 election was the first time all Victorians could cast a secret vote through the implementation of electronic voting. Steve Tully, the Electoral Commissioner, commented on the success of the trial and the desire to extend the system to voters with low proficiency in English or poor motor skills.⁷ PIAC encourages the VEC to proceed with these reforms and have them in place for the next state election.

Improving on the results of the 2006 election

The Electoral Matters Committee of the Parliament of Victoria undertook an inquiry into the 2006 election,⁸ it recommended improvements to voting centres similar to those raised by the VEC. During the inquiry hearings, the Committee took evidence for the need for additional practical changes for the next election. The following is a brief summary of the Committee's recommendations that PIAC suggests the Committee review as a priority as part of the current inquiry⁹:

- recruiting Indigenous and bilingual staff to work at the voting centres on election day;
- targeting information about accessible polling booths and early voting centres to older people, people with disability and carers;
- allowing anyone to vote at mobile voting centres where appropriate;
- wheelchair accessible locations, using buildings that comply with the *Disability Standards for Access to Premises*;
- location of voting centres close to parking and public transport, or alternative forms of voting if venues are not available;
- display information in 19 languages at voting centres that explains that information on how to vote is available from the polling booth staff;
- ensure results from electronic voting centres are reported in a way that protects the privacy of voters.

Other matters

Developments in NSW and Federal elections

Late in 2009 the NSW Government introduced the Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Bill 2009 (NSW), which will change the way young voters will enrol and how enrolment details will be updated when a voter changes residence.¹⁰ The Federal Government followed with an inquiry shortly after NSW introduced the legislation to examine the implications for managing the roll for federal elections. The Federal inquiry recommended the Commonwealth follow the NSW example

⁷ Ibid (11).

⁸ Electoral Matters Committee, *Inquiry into the Conduct of the 2006 Victorian State Election* (2008), 1st Report to Parliament, Parliamentary Paper: No 117 Session 2006-2008, Parliament of Victoria.

⁹ Ibid (Chapter 7 pages 149-179).

¹⁰ *Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Bill 2009 (NSW)* <http://www.parliament.nsw.gov.au/prod/parliament/nswbills.nsf/1d4800a7a88cc2abca256e9800121f01/10d602d385dd0fdbca25766b000c97db?OpenDocument> at 24 May 2009.

and modernise the electoral system applying new technology. In summary, the Joint Standing Committee on Electoral Matters recommended that legislation be amended to allow:¹¹

- the Australian Electoral Commission to automatically enrol voters on the basis of data provided by trusted agencies (Recommendation 1);
- the Australian Electoral Commission to enrol electors on election day and to issue a provisional vote providing suitable identification can be produced (Recommendation 2).

A detailed discussion and evidence in support of these recommendations can be found in the Joint Standing Committee on Electoral Matters report and transcript of the public hearings.¹²

The Electoral Matters Committee's current inquiry is an opportunity to review the NSW changes and Federal recommendations and consider adopting similar initiatives in Victoria. Adoption of legislation leading to the same outcome would improve consistency between state and federal elections and avoid confusion among voters as to how to enrol and change their details for state and federal elections.

Prisoners access to voting

PIAC continues to be concerned about the disqualification of some prisoners from voting. Victoria does not allow prisoners with a sentence of more than three years to vote; they are automatically taken off the electoral roll if they receive a sentence of longer than three years.¹³ It is PIAC's strongly held view that the disenfranchisement of prisoners is a breach of international law, including any disenfranchisement based on the length of sentence, and is an inappropriate additional penalty imposed on prisoners outside of the proper judicial process. Article 25 of the *International Covenant on Civil and Political Rights* (ICCPR)¹⁴ requires States Party to the ICCPR—including Australia—to legislate to ensure equal and universal suffrage. Clearly, the removal of the right to vote from prisoners is inconsistent with this basic obligation. It is a principle of the doctrine of the separation of powers that the penalty to be imposed on a person for the commission of a criminal act is to be determined by duly constituted court of law.

PIAC submits that to disenfranchise certain prisoners is a further punishment imposed on that prisoner, in breach of the doctrine of separation of powers. That is, the Parliament is unconstitutionally exercising judicial power to punish.¹⁵ The imposition of this additional penalty on prisoners is also retrospective in

¹¹ Parliament of the Commonwealth of Australia, Joint Standing Committee on Electoral Matters, *Inquiry into the implications of the Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Act 2009 (NSW)* for the conduct of Commonwealth elections (2010) Canberra.

¹² Ibid, Transcript: public hearings 2 February 2010
<<http://www.aph.gov.au/house/committee/em/autobill2009/hearings.htm>> at 24 May 2009.

¹³ Victorian Electoral Commission, *Information for prisoners on enrolment and voting*, <<http://www.vec.vic.gov.au/forms/Prisonerbrochureweb.pdf>> at 24 May 2009.

¹⁴ Australia signed the *International Covenant on Civil and Political Rights* in December 1972 and it came into force for Australia in August 1980.

¹⁵ See *Chu Kheng Lim & Ors v Minister for Immigration, Local Government and Ethnic Affairs* (1992) 176 CLR 1. In this case, the High Court held that the power to punish a person was an exclusively judicial power and that neither Parliament nor the Executive could act in a punitive way.

effect and, as such, offends against the basic principle that punishments should not be imposed retrospectively.

Summary

Victorian Electoral Commission recommendations

Support the Victorian Electoral Commission (VEC) recommendations made following the review of its performance at the 2006 state election, particularly the improvements that will increase the flexibility for electors to cast a vote, including:

- expansion of the number of early voting centres;
- improved signage at voting centres;
- display of group voting tickets;
- reducing waiting times;
- wheelchair access at all voting centres;
- continuation of joint voting centres;
- expansion of electronic voting.

Electoral Matters Committee recommendations

Adopt the recommendations from the Electoral Matters Committee recommendations that improve access to voting centres, including:

- VEC to recruit voting centre staff who are indigenous or bilingual;
- improved electoral information about accessible polling booths and early voting centres;
- mobile voting centres open to the public where possible;
- voting centres should comply with the *Disability Standards for Access to Premises*;
- voting centres should be close to parking and public transport;
- voting centres should display information in 19 languages at the polling centre that explains that information on how to vote is available from the polling booth staff;
- results published from electronic voting centres should protect the privacy of voters.

Other Matters

Automatic enrolment

Victoria should adopt the recommendations of the Federal Electoral Matters Committee to adopt technology that would allow automatic enrolment of electors and allow electors to enrol and vote on election day.

Prisoners and voting

Amend legislation to allow prisoners to vote in Victorian elections.

