



Victorian Aboriginal Legal Service Submission to the
Inquiry into the 2022 Federal Election

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Background to the Victorian Aboriginal Legal Service

The Victorian Aboriginal Legal Service (**VALS**) is an Aboriginal Community Controlled Organisation (**ACCO**). VALS was established in 1973 to provide culturally safe legal and community justice services to Aboriginal and/or Torres Strait Islander people across Victoria. VALS' vision is to ensure that Aboriginal people in Victoria are treated equally before the law; our human rights are respected; and we have the choice to live a life of the quality we wish.

Acknowledgements

VALS pays our deepest respect to traditional owners across Victoria, in particular, to all Elders past, present and future. We also acknowledge all Aboriginal and Torres Strait Islander people in Victoria and pay respect to the knowledge, cultures and continued history of all Aboriginal and Torres Strait Islander Nations.

SUMMARY OF RECOMMENDATIONS

Recommendation 1. The Victorian and the Federal Governments should remove all restrictions on the right of incarcerated people serving sentences to vote in federal, state and local elections.

Recommendation 2. Proactive, targeted and properly resourced measures must be taken to enrol Aboriginal and/or Torres Strait Islander people deprived of their liberty, including those who are administratively detained post-sentence.

Recommendation 3. Incarcerated people should have access to information, from a diverse range of sources, in different and accessible formats, to enable them to make an informed decision regarding their vote.

Recommendation 4. The AEC and VEC should operate voting centres in prisons, and make appropriate arrangements for support and scrutineering to reflect the needs of the prison population. These should include culturally appropriate supports for Aboriginal voters in prison.



SUBMISSIONS

VALS welcomes the opportunity to make a submission to the Inquiry into the 2022 Federal Election, focusing on the following from the Terms of Reference: “encouraging increased electoral participation and lifting enfranchisement of First Nations People.”

Most jurisdictions in Australia prevent some people serving time in prison from voting in elections. Under Victorian law, people in prison on a sentence of more than five years are barred from voting.¹ People in Victorian prisons also cannot vote in federal elections if their sentence is more than three years.² Some Australian states impose harsher rules – banning voting at sentences of more than three years or, in NSW and WA, twelve months – while the ACT and South Australia do not restrict voting rights of people in prison.³

The restriction of voting rights for people in prison is a form of disenfranchisement which heavily affects already marginalised people. The over-incarceration of Aboriginal people means that disenfranchisement disproportionately affects Aboriginal communities which are already neglected by political processes. It has been estimated that 0.6% of Aboriginal people in Australia are disenfranchised by restrictions on voting from prison, compared to 0.075% of non-Aboriginal people.⁴ In addition, people removed from the electoral roll while in prison may not re-enrol after their release, particularly in the absence of strong transitional supports, which means that the number of Aboriginal people not enrolled to vote because of their time in prison is much higher than the number in prison at any given time. In New Zealand, the Waitangi Tribunal found that Māori people removed from the electoral roll – particularly if this occurs when they are young – are less likely to ever vote.⁵

Denial of the right to vote to people serving prison sentences constitutes an additional punishment over the jail term itself.⁶ It is dubious that this additional punishment is given adequate consideration, either in sentencing decisions or in any assessment of its effects on rehabilitation. Disenfranchisement explicitly treats incarcerated people as though they are not members of the Victorian and Australian community, at odds with the goal of rehabilitative interventions.

¹ Constitution Act 1975 (Vic), s48(2)(b). Accessible at http://classic.austlii.edu.au/au/legis/vic/consol_act/ca1975188/s48.html.

² Commonwealth Electoral Act 1918, s93(8AA). Accessible at http://classic.austlii.edu.au/au/legis/cth/consol_act/cea1918233/s93.html.

³ Churchill (2020), *Voting Rights in Prison: Issues Paper*, University of Queensland, p4. Accessed at https://law.uq.edu.au/files/60196/REP_PBC_MsP_Voting_Rights_Australian_Prisons_FIN_20200715.pdf.

⁴ Churchill (2020), *Voting Rights in Prison: Issues Paper*, University of Queensland, p8. Accessed at https://law.uq.edu.au/files/60196/REP_PBC_MsP_Voting_Rights_Australian_Prisons_FIN_20200715.pdf

⁵ Waitangi Tribunal (2020), *He Aha I Pera Ai? The Maori Prisoners' Voting Report*, p25. Accessed at <https://waitangitribunal.govt.nz/news/tribunal-releases-report-on-maori-prisoners-voting-rights/>.

⁶ Churchill (2020), *Voting Rights in Prison: Issues Paper*, University of Queensland, pp7-8. Accessed at https://law.uq.edu.au/files/60196/REP_PBC_MsP_Voting_Rights_Australian_Prisons_FIN_20200715.pdf



The Waitangi Tribunal – the body in New Zealand responsible for monitoring the government’s treaty obligations to Māori people – has recommended that complying with the Treaty requires abolition of all limits on voting rights for people in prison.⁷ This finding recognised both the disproportionate effect of disenfranchisement on Māori people, but also the potential “rehabilitative and reintegrative potential of the franchise.”⁸ Evidence at the Tribunal showed that people released from prison “are more likely to identify with a society they have had a stake in creating” and that disenfranchisement is inconsistent with an effective focus on reintegration and rehabilitation.⁹ The Tribunal also found that restricting voting rights of people in prison had flow-on effects for the political participation of family members and wider Māori communities.

VALS is of the view that denying the right to vote to people in prison is inconsistent with human rights obligations and counterproductive. Disenfranchisement from the electoral roll contributes to a sense of broader social disenfranchisement which obstructs rehabilitation and stigmatises people who have been in prison.

RECOMMENDATIONS

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⁷ Waitangi Tribunal (2020).

⁸ Ibid, p. 25.

⁹ Ibid, p. 23.