



NSWCCL SUBMISSION

JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

INQUIRY INTO THE 2022 FEDERAL ELECTION

7 October 2022

Acknowledgment

In the spirit of reconciliation, the NSW Council for Civil Liberties acknowledges the Traditional Custodians of Country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all First Nations peoples across Australia. We recognise that sovereignty was never ceded.

About NSW Council for Civil Liberties

NSWCCL is one of Australia's leading human rights and civil liberties organisations, founded in 1963. We are a non-political, non-religious and non-sectarian organisation that champions the rights of all to express their views and beliefs without suppression. We also listen to individual complaints and, through volunteer efforts, attempt to help members of the public with civil liberties problems. We prepare submissions to government, conduct court cases defending infringements of civil liberties, engage regularly in public debates, produce publications, and conduct many other activities.

CCL is a Non-Government Organisation in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

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The New South Wales Council for Civil Liberties (NSWCCL) welcomes the opportunity to be involved in the Joint Standing Committee on Electoral Matters' Inquiry into the 2022 federal election and related matters.

We note that the Committee is tasked to report on the following terms of reference:

- (a) reforms to political donation laws, particularly the applicability of 'real-time' disclosure and a reduction of the disclosure threshold to a fixed \$1,000;*
- (b) potential reforms to funding of elections, particularly regarding electoral expenditure caps and public funding of parties and candidates;*
- (c) the potential for 'truth in political advertising' laws to enhance the integrity and transparency of the electoral system;*
- (d) encouraging increased electoral participation and lifting enfranchisement of First Nations People;*
- (e) the potential for the creation of a single national electoral roll capable of being used for all federal, state and territory elections in Australia;*
- (f) encouraging increased electoral participation and supporting enfranchisement generally, and specifically in relation to:*
 - i. accessibility of enrolment and voting for persons with a disability;*
 - ii. voting rights of Australians abroad;*
 - iii. Australian permanent residents and new Australian citizens; and*
 - iv. New Zealand citizens residing in Australia; and*
- (g) proportional representation of the states and territories in the Parliament, in the context of the democratic principle of 'one vote, one value'.*

NSWCCL wishes to express views in respect of terms of reference (a)-(d) and (f)-(g).

Australia has a long legacy for being a strong democracy since colonisation, but reform is needed to ensure that this trajectory is maintained.

(a), (b), (c) – Increasing transparency around fundraising and advertising

NSWCCL is a signatory to the #OurDemocracy campaign submission to this Inquiry and a proud member of the movement.

Accordingly, we strongly support the campaign proposal for election spending caps and greater transparency for political donations. Failure to implement such changes exposes our democratic system to adverse influence and corrupt conduct.

The principle underlying these proposed reforms is that elections should be contested on a level playing field where candidates and political parties are as equal as possible. This naturally means that they must be prohibited from having undue influence over outcomes due to increased political spending.

In a political climate where the climate change emergency poses an existential risk to our livelihood and wellbeing on this planet, such reforms are much needed as vested business interests, particularly those in coal, oil and gas, make sizeable political donations to parties which consistently fail to deliver on the strong action recommended by scientists to stave off its worst effects. This has been evident in the 2022

election where Mr Clive Palmer, holder of significant mining business interests, expended funds in the vicinity of \$100 million over the course of the campaign.¹

The reforms proposed in the #OurDemocracy submission are modest, proportionate and would serve to ensure that Australian democracy continues in the long tradition of privileging what is in the interests of the community and not the individuals with vested interests that may run at cross purposes.

We do not wish to repeat the contents of the #OurDemocracy campaign submission, but would be pleased to elaborate further on why we support the campaign, if it were to assist the committee.

In relation to political advertising, we endorse the recommendations made by Professor George Williams AO in Submission 7 to this Inquiry.²

(d) and (f) – Expanding the franchise and the ability to be politically active

NSWCCL considers that all Australian citizens, whether resident within Australian territory or abroad, should be afforded the right to vote in all elections, local, state and federal. In a democratic system, like which operates in Australia, there is no reason why the right to vote should be circumscribed. All barriers to Australian citizens who are presently unable to vote or are subjected to restrictions on the right to vote should be removed forthwith. This extends to ensuring that Australians residing abroad are given equal and safe access to the facilities to vote in embassies and high commissions abroad or via other means. Anecdotally, we are aware of Australians residing abroad who had difficulties in voting in the 2022 federal election, which has been supported in media reports.³

A system of exemptions is appropriate for people who are temporarily or permanently physically or mentally impaired is the only appropriate restriction that could conceivably be tolerated as an impediment to the right to vote.

Disability accessibility

Further work, in consultation with people living with disability, is required to support their ability to vote independently.

Advocacy by Blind Citizens Australia in response to the New South Wales Electoral Commission notes that 94% of sight impaired people opted to use the online voting option in part because independent voting is preferable to declaring one voting intentions to a stranger to facilitate the vote.⁴ NSW's past poor experience with I-Vote suggests this is not simple and warrants further attention, particularly in relation to identity verification.

NSWCCL is cognisant that data security is of paramount importance in elections but supports the rights of disabled people to vote without losing their dignity, privacy and anonymity. This may be a limited and acceptable risk for a small group in the voting population.

Prisoners' voting rights

The *Commonwealth Electoral Act 1918* (Cth) s. 93(8AA) prohibits a person who is serving a sentence of imprisonment of three or more years from voting in a Commonwealth election. The *Electoral Act 2017* (NSW) s. 30(4) prohibits a person who is serving a sentence of imprisonment for twelve or more months from being enrolled to vote. We condemn ongoing practices which limit the rights of prisoners to vote and call on this Committee to recommend that such practices be removed to prevent discrimination against prisoners with immediate effect.

¹ [Clive Palmer's massive advertising spend fails to translate into election success for United Australia party | United Australia party | The Guardian](#)

² <https://www.aph.gov.au/DocumentStore.ashx?id=8728a370-266c-4fb4-a4f7-5dd2b847d2a2&subId=721443>

³ E.g. [These Australian expats tried to vote at the federal election but couldn't. And they might not be the only ones - ABC News](#).

⁴ [National Organisation for People who are Blind or Vision Impaired Files Complaint Against NSW Electoral Commission – Blind Citizens Australia \(bca.org.au\)](#)

In this regard we endorse all of the recommendations made in Submission 185 to this Inquiry made by the Victorian Aboriginal Legal Service.⁵ We particularly endorse their views concerning the disproportionate effect that laws prohibiting prisoners from voting have on First Nations communities.

It is well known that First Nations people are over incarcerated in Australia. In our submission to the Senate Standing Committee on Legal and Constitutional Affairs on the Application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia Inquiry, we stated (references omitted):⁶

4.1.1. First Nations people represent 3.3 per cent of the Australian population and make up approximately 30 per cent of Australia's prison population.

4.1.2. Following the RCIADIC, it was recommended that incarceration should be the last resort for First Nations people. However, since the RCIADIC, incarceration rates for First Nations peoples in Australia have more than doubled from 14 per cent to approximately 30 per cent.

4.1.3. The rising incarceration rate of First Nations peoples is especially alarming given that arrest and conviction rates have plateaued. For instance, between 2001 and 2015, rates of First Nations peoples in remand in NSW rose by 283 percent despite dropping arrest rates. 40 per cent of those held on remand did not receive a custodial sentence.

In the spirit of reconciliation and in order to advance self-determination for First Nations peoples, we urge the committee to remove restrictions on prisoners' voting rights.

Article 25 of the *International Covenant on Civil and Political Rights* (ICCPR) protects the right to vote without "unreasonable restriction". When this right is read in conjunction with rights to be treated with humanity, dignity and respect in detention, matters protected by Articles 7 and 10 of the ICCPR and the *Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment*, the importance of respecting the voting rights of prisoners is clear. Similarly relevant is Article 10(3) of the ICCPR which emphasises the importance of the rehabilitative and reintegrative function of incarceration. It's important for prisoners' rehabilitation to feel integrated within the community outside of prison, and allowing them to vote affords them respect and dignity as democratic rights holders.⁷

Young people as voters

In the fulness of time, further detailed consideration could be given to expanding the right to vote to people under the age of eighteen but over the age of sixteen. In this regard, we agree with Professor George Williams AO's submission to this Inquiry.⁸ If young people aged sixteen and above can consent to sexual intercourse, leave school, work and pay tax, perhaps they should also be allowed to vote.

Dual Citizens

In the spirit of ensuring that parliament remains representative of everyone who calls Australia home, consideration, again in the fulness of time, should be given to the amendment of s. 44 of the *Australian Constitution*, in order to ensure that people of dual nationality can stand for public office in the Australian parliament. In this regard we draw attention to Submission 215 to this Inquiry made by Associate Professor Elisa Arcioni.⁹

⁵ <https://www.aph.gov.au/DocumentStore.ashx?id=16fc7412-f68f-4f0e-8954-a123f2473c34&subId=721594>

⁶ [Submission 30.pdf \(nationbuilder.com\)](#), p. 16.

⁷ If there is any doubt as to the status of protection of prisoner's voting rights under Article 25, please see the Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, p. 11 [Refworld | Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland](#)

⁸ <https://www.aph.gov.au/DocumentStore.ashx?id=8728a370-266c-4fb4-a4f7-5dd2b847d2a2&subId=721443>

⁹ <https://www.aph.gov.au/DocumentStore.ashx?id=0590b7ea-4818-46ba-b9c2-60e747d2d14f&subId=721891>.

Reducing the incidence of informal voting

One further area of concern is the high rate of informal voting, particularly amongst culturally and linguistically diverse (CALD) and First Nations communities.¹⁰ There is a strong public interest in the government investing further in civics education and providing multilingual electoral material in areas with high CALD and First Nations communities. Programs and materials designed to improve civics and electoral literacy and participation must be developed in close consultation with the CALD and First Nations community leaders and groups.

(g) – one vote, one value principle

No elector should have more than one vote in any election.

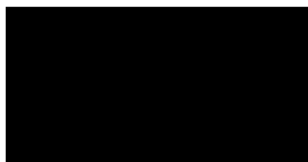
NSWCCL opposed the *City of Sydney Elections Amendment Act 2014* (NSW) passed in September 2014 which allows for two votes per business within City of Sydney Council elections. Such laws, despite their limited geographic scope, taint the quality of Australian democracy across the board.

Any measures which dilute the democratic right of each individual elector to have one vote of the same value must be resisted and removed.

This also necessitates regular redistributions to ensure that individual voices are not under or overvalued and to ensure that like-minded individuals are represented as communities.

This submission was prepared by Josh Pallas on behalf of the New South Wales Council for Civil Liberties. We hope it is of assistance and would be pleased to assist further if required.

Yours sincerely,



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¹⁰ <https://www.theguardian.com/australia-news/2022/may/24/high-number-of-invalid-votes-in-culturally-diverse-seats-prompts-concerns-after-federal-election>.