

Votes for the Homeless

**Submission to the Victorian
Government regarding
Homelessness and the Right to Vote**

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1. Executive Summary and Recommendations

1.1 Executive Summary

In 1996, more than 105,000 people in Australia were homeless. Many more were at risk of homelessness. It is expected that the 2001 Census figures will disclose an even greater incidence of homelessness.

Based on the 1996 Census figures, it is estimated that approximately 88,000 homeless people are eligible voters. Given that approximately 16 per cent of Australia's homeless live in Victoria it is likely that there are over 14,000 homeless people eligible to enrol to vote in Victoria.

Estimates of the proportion of homeless people who are eligible but not registered to vote vary from 33 to 90 per cent. This suggests that between 2,800 and 4,640 homeless people did not vote in the 2002 Victorian Election.

The *Constitution Act 1975* (Vic) and the *Electoral Act 2002* (Vic) determine who has the right to vote in Victorian parliamentary elections and the procedure pursuant to which that right is exercised. This submission examines the impact of the legal requirements relating to enrolment and voting on the exercise of the right to vote by homeless people in Victoria.

The submission argues that the requirements and restrictions relating to "normal" electors may prevent and discourage homeless people from being noted on the register of electors. The submission also argues that the provisions relating to "itinerant" electors should be reviewed, amended and targeted so as to enable homeless people to participate in elections regardless of the form of shelter in which they are domicile prior to and at the time of elections.

The submission makes recommendations as to appropriate legal, policy and administrative reforms aimed at enabling and empowering homeless people to enrol to vote, exercise their right to vote, and meaningfully participate in the democratic process.

1.2 Recommendations

Recommendation 1: That section 3 of the *Electoral Act 2002* (Vic) be amended so that the definition of "Address" includes, in the case of a person who is homeless within the meaning of section 4 of the *Supported Accommodation and Assistance Act 1994* (Cth), a place with which that person has a "close connection".

Recommendation 2: That section 23(4) of the *Electoral Act 2002* (Vic) be amended such that persons with a "reasonable excuse" for failing to notify a change of place of living within 21 days are not guilty of an offence, and that homelessness (as defined in section 4 of the *Supported Accommodation and Assistance Act 1994* (Cth)) be deemed a "reasonable excuse".

Recommendation 3: That details as to what constitutes a "valid and sufficient" excuse under section 166(1)(a) of the *Electoral Act 2002* (Vic) in relation to failure to vote be made publicly available.

Recommendation 4: That an amendment be drafted to section 166 of the *Electoral Act 2002* (Vic) (and expressly included in any manual used by the VEC to determine whether an elector's excuse is "valid and sufficient") recognising that the problems faced by homeless people who are enrolled as "normal" voters may prevent them

from exercising their right to vote and that such problems constitute a "valid and sufficient" excuse for failing to vote.

Recommendation 5: That section 164(1) of the *Electoral Act 2002* (Vic) be amended to allow electors to attend offices of the VEC in person to respond verbally to section 163 notices. VEC staff should be trained to assist persons unable to complete the form if such persons attend in person.

Recommendation 6: That the VEC update enrolment forms to reflect the new legislative provisions governing enrolment on the Victorian register of claims for electors.

Recommendation 7: That the VEC send administrative assistants to shelters for the homeless, disability services, welfare organisations, Centrelink and other places frequented by homeless people to assist homeless people with completing relevant forms and to educate homeless people about their voting rights and how to exercise those rights.

Recommendation 8: That employees of agencies providing services to homeless people, including Centrelink, be trained to assist in the registration of homeless people as itinerant voters.

Recommendation 9: That voting centres be strategically located to facilitate casting of votes by homeless people and that welfare agencies and homelessness services be empowered to request mobile voting centres to attend to areas of need.

Recommendation 10: That section 63 of the *Electoral Act 2002* (Vic) be amended so that, for persons eligible to claim enrolment as "itinerant" electors, the roll remains open up to and including the day of an election and that such persons be able to register in person at a voting centre.

Recommendation 11: That section 22(4) of the *Electoral Act 2002* (Vic) be amended to provide that persons enrolled as itinerant electors in respect of a Commonwealth Subdivision which is in Victoria may enrol as itinerant electors in Victoria in respect of the address with which they have "the closest connection".

Recommendation 12: That the Victorian Government lobby Federal Parliament to amend section 96(12) of the *Commonwealth Electoral Act 1918* (Cth) such that a person shall be taken to reside at a place if, and only if, the person has his or her real place of living at that place *and* that place of living constitutes safe and secure housing within the meaning of section 4 of the *Supported Accommodation and Assistance Act 1994* (Cth).

Recommendation 13: That the Victorian Government lobby Federal Parliament to amend section 96(8) of the *Commonwealth Electoral Act 1918* (Cth) to increase the period of time that an itinerant voter may have "a real place of living" in a Commonwealth Subdivision from one month to six months before that person becomes ineligible to be enrolled as an itinerant voter.

2. Introduction

2.1 What is the Homeless Persons' Legal Clinic?

The Homeless Persons' Legal Clinic ("**Clinic**") is a joint project of the Public Interest Law Clearing House (Vic) Inc ("**PILCH**") and the Council to Homeless Persons ("**CHP**"). It was established in October 2001 to provide free legal assistance to, and advocacy on behalf of, one of society's most disenfranchised groups – people who are homeless or at risk of homelessness. The fundamental objectives of the Clinic are to reduce the degree to which homeless people are marginalised and to provide a viable and sustainable pathway out of homelessness.

The Clinic provides civil legal services at crisis accommodation centres and welfare agencies so as to encourage direct access by clients. This is important because, given the range of pressures and issues confronting many homeless people (including financial, familial, social, psychological, medical and health issues), legal problems often remain unaddressed unless services are provided at locations already frequented by homeless people.

The Clinic is staffed by pro bono lawyers from participating law firms and legal departments, including Allens Arthur Robinson, Blake Dawson Waldron, Clayton Utz, Hunt & Hunt, Mallesons Stephen Jaques, Minter Ellison, Phillips Fox and the National Australia Bank Legal Department.

2.2 Persons Assisted by the Homeless Persons' Legal Clinic

As discussed above, the Homeless Persons' Legal Clinic provides assistance to people who are homeless or at risk of homelessness.

This includes people who are without conventional accommodation (such as people who sleep rough), people who are in temporary accommodation (such as a refuge or crisis accommodation facility) and people who are in insecure or transitional accommodation (such as people who live in rooming houses).

2.3 Significance of Voting to the Homeless

The homeless population is one of society's most powerless and disenfranchised groups. The sense of frustration and powerlessness that attends homelessness is perpetuated by the denial, in substance or form, of the right to vote in federal and state elections. This denial also undermines democracy, any meaningful notion of which must provide for protection of, and participation by, members of marginalised groups.

Exercise of the right to vote is likely to give homeless people an enhanced sense of agency and empowerment. Moreover, given that the needs of homeless people are often so different to the needs of those with stable accommodation, it is crucial that they are encouraged, assisted and able to enrol and vote in elections so as to articulate their special circumstances, interests and concerns. This is crucial to sensitive policy responses to homelessness and the construction of sustainable pathways out of homelessness.

2.4 Definition of "Homelessness"

There are numerous definitions of "homelessness". This is because homelessness is a descriptive term relating to the actual and perceived social and cultural minimum standards of shelter and housing in a particular community.

For the purposes of this submission, the following three-tier definition of “homelessness”, adopted by the Australian Bureau of Statistics (“ABS”), is used:

Primary homelessness

People without conventional accommodation, such as people living on the streets, sleeping in parks, squatting in derelict buildings, or using cars or railway carriages for temporary shelter.

Secondary homelessness

People who move frequently from one form of temporary shelter to another. It covers: people using emergency accommodation (such as hostels for the homeless or night shelters); teenagers staying in youth refuges; women and children escaping domestic violence (staying in women's refuges); people residing temporarily with other families (because they have no accommodation of their own); and those using boarding houses on an occasional or intermittent basis.

Tertiary homelessness

People who live in boarding houses on a medium to long-term basis. Residents of private boarding houses do not have a separate bedroom and living room; they do not have kitchen and bathroom facilities of their own; their accommodation is not self-contained; they do not have security of tenure provided by a lease.¹

2.5 Statistics on Homelessness in Australia

The most comprehensive statistics available on homelessness in Australia are those that were collated by Chris Chamberlain on behalf of the ABS using the raw data collected in the 1996 Census. This report, entitled “Counting the Homeless”, found that on Census night in 1996 there were 105,304 homeless people in Australia.² The profile of this population is enumerated in Table 1 below.

¹ Australian Bureau of Statistics, *Occasional Paper – Counting the Homeless: Implications for Policy Development* (1999) 1, 13.

² The Clinic acknowledges that a certain percentage of the total number of homeless people will be under the age of 17 and thus be ineligible enrol to vote. Unfortunately, there is no reliable data regarding the number of homeless people who are over the age of 17, although the Clinic notes that of the 48,500 homeless people staying with friends and relatives, it was estimated by the ABS that 13,000 youths between the ages of 13-18 were “missed” by the Census.

Table 1 Number of persons in different sectors of the homeless population, Census night 1996:³

	Enumerated	Estimated	Total
Boarding houses	23,299		23,299
SAAP accommodation	12,926		12,926
Friends and relatives	35,500	13,000	48,500
Improvised dwellings, sleepers out	19,579	1,000	20,579
Totals	91,304	14,000	105,304

“Counting the Homeless” reports that:

There were 105,000 homeless people across Australia on Census night. Many of them move frequently from one form of temporary shelter to another and between 60 and 70 per cent of them had been homeless for six months or longer at that time. However, nearly half (46%) were staying temporarily with other households on Census night; one-fifth (20%) were in improvised dwellings, tents or sleeping out; and another one-fifth (22%) were staying in boarding houses. Twelve per cent were in SAAP.

Over a year, just over 100,000 people stay in SAAP accommodation for short periods of time; but many people who exit from SAAP go to other sectors of the homeless population, or they 'move around the system'.⁴

2.6 Statistics on Homelessness in Victoria

The "Counting the Homeless" report found that, on census night in 1996, there were 17,840 homeless people in Victoria.⁵ Thus, in 1996 over 16 per cent of Australia's homeless were living in Victoria.

2.7 Representation of Homeless People on the Commonwealth and Victorian Electoral Rolls

Statistics on enrolment to vote and participation in voting by homeless people are difficult to obtain due to inherent difficulties in tracking homeless people.

Estimates of the proportion of homeless people who are eligible but not registered to vote vary from 33 to 90 per cent.⁶ This suggests that between 29,000 and 80,000

³ Australian Bureau of Statistics, *Occasional Paper – Counting the Homeless: Implications for Policy Development* (1999) 3.

⁴ Australian Bureau of Statistics, *Occasional Paper – Counting the Homeless: Implications for Policy Development* (1999) 7 [citations omitted].

⁵ Australian Bureau of Statistics, *Occasional Paper – Counting the Homeless: Implications for Policy Development* (1999) 4.

⁶ Hanover Welfare Services estimates that approximately one third of homeless people are not registered to vote (M Horn, 'Social and Democratic Exclusion: Giving Voice to the Homeless' (Hanover Welfare Services: November 2001)), while the Australian Federation of Homelessness Organisations estimates that more than 90 per cent of

homeless people did not vote in the 2001 Federal Election, and, by analogy, between 4,640 and 12,800 did not vote in the 2002 Victorian Election.

The lack of authoritative statistics and information on homelessness and voting are indicative of the marginalisation and isolation of this particular population from the rest of society. It is important that the government take steps to ensure that this population is represented during democratic elections to ensure that their voice is heard amongst the other voices of the Australian population.

It is only when the homeless are empowered as a collective voting group that their needs will be more effectively recognised and met by the legislature.

3. Voting in Australian State and Federal Elections

3.1 Constitutional Right to Vote

The Commonwealth Constitution does not guarantee the right of all citizens to vote.

Although sections 7 and 24 of the Constitution provide that the Senate and the House of Representatives shall be comprised of members “directly chosen by the people”, these provisions have not been interpreted to impose a minimum standard of universal suffrage.⁷ Indeed, it is arguable that Parliament is not constrained under the Constitution from denying groups of citizens from the right to vote “on the grounds of race, sex or lack of property”.⁸

The requirement contained in section 8 of the Constitution, that no adult person with a right to vote in a state election shall be prevented from voting in elections for the Federal Parliament, has been interpreted narrowly and has no practical effect today. This provision has been interpreted to be a transitional provision, applying to those who had acquired the vote prior to the introduction of the first uniform Commonwealth Franchise in 1902.⁹

Although the Constitution does not enshrine the right to vote, it does, pursuant to sections 30 and 51(xxxvi), confer on parliament the power to legislate to determine the franchise for elections. The Federal Parliament has done so in the *Commonwealth Electoral Act 1918* (Cth).

3.2 Victorian Right to Vote

Section 48 of the *Constitution Act 1975* (Vic) establishes the right of all Australian citizens aged 18 years or older to enrol as an elector in Victorian parliamentary elections.

This general right is circumscribed and is given effect by the more detailed provisions relating to enrolment now contained in the *Electoral Act 2002* (Vic) and discussed further below.

3.3 International Law Right to Vote

Article 25 of the International Covenant on Civil and Political Rights (“**ICCPR**”) states that every citizen is to have the opportunity to participate in the public affairs of the country, including the right to vote.¹⁰

In relation to the implementation of this Article, the United Nations adopted General Comment 25 which states, *inter alia*, that:

Article 25 of the Covenant recognises and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. Whatever form of

⁷ *Attorney General (Cth); Ex rel McKinlay v Commonwealth* (1975) 135 CLR 1.

⁸ *Attorney General (Cth); Ex rel McKinlay v Commonwealth* (1975) 135 CLR 1, 56 (Stephen J). Cf *McGinty v Western Australia* (1996) 186 CLR 140, 166-7, 200-01, 216, 286-7 in which the High Court held that representative government is an evolving concept such that the section 24 franchise can not, unlike in 1900, exclude groups such as women.

⁹ *R v Pearson; Ex parte Sipka* (1983) 152 CLR 254.

¹⁰ *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171 (entered into force generally 23 March 1976 and for Australia 13 August 1980).

constitution or government is in force, the Covenant requires states to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects. Article 25 lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant.

... States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed. If residency requirements apply to registration, they must be reasonable, and should not be imposed in such a way as to exclude the homeless from the right to vote.¹¹

Further, Article 2(1) of the ICCPR states that the rights contained in the Covenant are to be protected 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.

Australia is a party to the ICCPR and is therefore bound, at international law, by its provisions. Moreover, although Australia has not implemented the ICCPR as part of domestic law, the ICCPR is a legitimate and important influence on the development, interpretation and application of domestic law.¹²

For so long as homeless people are denied a practical, exercisable opportunity to vote, the *Electoral Act 2002* (Vic) is inconsistent with fundamental human rights principles and the Victorian Government is acting in contravention of its obligations under the ICCPR.

3.4 Entitlement to Vote in Victorian Elections

Up until 2002, the *Constitution Act Amendment Act 1958* (Vic) contained the legislative requirements regarding enrolling and voting in Victoria. The *Electoral Act 2002* (Vic) was enacted to update and simplify the law relating to Victorian Elections.

In the second reading of the bill before Parliament, the Honourable Rob Hulls, Attorney-General, stated that the impact of the bill on electors would be as follows:

Many of the reforms in the bill are aimed at encouraging more Victorians to vote by making it easier for electors to enrol and to cast their vote at election time.

The bill makes it easier for electors to update their enrolment. Electors who have changed their address will receive an invitation to update their enrolment and the necessary form from the VEC. In some cases, where the VEC has received authoritative advice from electors themselves or from government sources of a change of address, elector's enrolment will be updated by the VEC without the electors having to complete an enrolment form. This will particularly benefit elderly and infirm Victorians who have taken up residence in an assisted care facility, whose enrolment details

¹¹ Office of the High Commissioner for Human Rights, 'The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service - CCPR General Comment 25', 57th Session, 12 July 1996 (<http://www.unhchr.ch>)

¹² See generally, *Mabo v Commonwealth* (1992) 175 CLR 1, 42 (Mason CJ, Brennan and McHugh JJ).

have been updated by the VEC based on information provided by the Commonwealth Department of Health and Aged Care.¹³

The Clinic submits that the *Electoral Act 2002* (Vic) goes some way to achieving the aim of increased participation by Victorians in the election process. However, the new regime does not adequately recognise and cater to the specific circumstances of Victoria's homeless citizens.

As discussed above, the *Constitution Act 1975* (Vic) and the *Electoral Act 2002* (Vic) together determine who is entitled to vote in Victorian elections.

Section 48(1) of the *Constitution Act 1975* (Vic) sets out the primary provisions relating to entitlement to enrol as an elector for the two houses of the Victorian government. It provides:

48 *Qualification of electors for the Council and the Assembly*

(1) Subject to this Act, a person who -

(a) is -

(i) an Australian citizen; or

(ii) a person (other than an Australian citizen) who would, if the relevant citizenship law had continued in force, be a British subject within the meaning of that relevant citizenship law and whose name was, at any time within the three months immediately before 26 January 1984, enrolled on -

(A) an electoral roll for an electoral district of the Assembly; or

(B) an electoral roll maintained under any one of the Commonwealth Acts known as the Commonwealth Electoral Act 1918, the Australian Capital Territory Representation (House of Representatives) Act 1973 and the Northern Territory Representation Act 1922; and

(b) is of the full age of eighteen years -

shall be entitled to enrol as an elector for the Council and the Assembly.

Section 22(1) of the *Electoral Act 2002* (Vic) makes the following further provisions in relation to enrolment or transfer of enrolment:

22 *Entitlement to enrolment of electors for Assembly and Council*

¹³ Hansard, Thursday, 21 March 2002, 420.

- (1) A person who is qualified to enrol as an elector for the Assembly and Council under the Constitution Act 1975 and has lived at an address in Victoria that is the person's principal place of residence for at least one month immediately before the date of the person's claim for enrolment as an elector is entitled in respect of living at that address to enrol on the register of electors."

"Lives", "Living" and "Lived" are not defined in either the *Constitution Act 1975* (Vic) or the *Electoral Act 2002* (Vic).

Section 3 of the *Electoral Act 2002* (Vic) defines "Principal place of residence" to include a place of living to which a person, when temporarily living elsewhere, has a fixed intention of returning for the purpose of continuing to live at that place.

The only definition of "Address" is that it does not include a post-office box number.

Section 87 of the *Electoral Act 2002* (Vic) relates to the exercise of the right to vote once enrolled. It provides:

87 *Voting at Elections*

- (1) A person is entitled to vote in an election in accordance with this Act if the person -
- (a) is qualified to enrol as an elector under the Constitution Act 1975; and
 - (b) is enrolled as an elector under Part 3 of this Act; and
 - (c) in the case of an elector enrolled under section 22(1), is enrolled in respect of the address of the person's principal place of residence or the address of that place was the person's principal place of residence during the period 3 months immediately before election day.

3.5 *Enrolment to Vote and Exercise of Right to Vote as a "Normal Elector"*

A person entitled to vote must lodge a claim to be added to the Victorian Electoral Register ("**the Register**") within 21 days of becoming entitled to vote. Persons who are noted on a roll maintained under the *Commonwealth Electoral Act 1918* (Cth) as either overseas or itinerant electors, as well as persons who are aged between 17 and 18 years of age, are exempted from the requirement to complete a claim for enrolment and forward it to the VEC within 21 days.¹⁴

Section 23 of the Act sets out the following procedure for enrolment:

23 *Claims for enrolment and notice of change of address*

- (1) A person who is entitled to enrol on the register of electors (other than under section 22(3), 22(4) or 22(5)) and whose name is not on the register of electors must within 21 days of becoming so entitled--

¹⁴ Section 23(1).

- (a) complete and sign a claim for enrolment in the prescribed form in accordance with the directions on the form; and
- (b) forward the claim for enrolment to the Commission.
- ...
- (3) A claim for enrolment under sub-section (1) or (2) must be witnessed by an elector.

A copy of the approved form is at **Appendix A**.

Forms can be downloaded from the internet or otherwise obtained from the VEC.

An individual seeking to be added to the Register for the purposes of voting in a Victorian Election must provide, *inter alia*, the following information:

- residential address – full details are required showing the exact residential address. Notes to rural and remote electors request that Crown Allotment Numbers or Crown-Parish name be given if they live in a street with no street numbers. If necessary, these electors may draw a sketch and return it with the form; and
- postal address; and
- the applicant must sign a declaration of eligibility to enrol for federal and Victorian elections and attest to the correctness of the information provided on the form in front of a witness who is eligible to be on the federal and Victorian rolls.¹⁵

The form may then be returned by mail (no postage required).

A claim may be rejected by the VEC pursuant to section 23(7). The claimant must be notified of the decision in writing. Unlike under the *Commonwealth Electoral Act 1918* (Cth), there is no provision in the *Electoral Act 2002* (Vic) requiring the VEC to inform the claimant of the basis for the decision, or of any appeal rights he or she has under section 42 of the Act.

A decision to reject an application can ultimately be heard by the Victorian Civil and Administrative Appeals Tribunal (see section 42 of the *Electoral Act 2002* (Vic)). The Clinic is not aware of any hearing before the Tribunal relating to rejection of a claim on the basis of an improper or unacceptable address being given, or on the basis that the claimant is not entitled to be an elector due to an argument that the person does not "live" at the address given in the subdivision.¹⁶

Once the application is received and approved the individual will receive a card showing their enrolment details and their name will be added to the Register.

¹⁵ There have been proposals to amend this aspect of enrolment under the federal system, which may then impact on the Victorian system. These proposals are discussed below, eg. footnote 31.

¹⁶ The Clinic is also not aware of any hearing before the Administrative Appeals Tribunal under the similar provision in the *Commonwealth Electoral Act* (s. 121).

Pursuant to section 63 of the *Electoral Act 2002* (Vic), electors have until 8pm three days after the writs are issued (commanding the Commission to conduct an election) to enrol or update their details on the Register.¹⁷ Election Day must be at least 25 days after the issue of the writs according to section 157 of the Act. However, it can be as many as 58 days after the date of the writ pursuant to section 63 of the Act.

Once enrolled to vote, it is compulsory for "normal" electors to vote in all State elections in the Subdivision in which the elector lives (see section 166 of the *Electoral Act 2002* (Vic)).

3.6 Penalties for Failing to Enrol and Failing to Vote

Section 23 of the *Electoral Act 2002* (Vic) sets out the requirements for lodging a claim for enrolment and is aimed at ensuring that persons entitled to vote are enrolled and that the Register remains valid and up to date. This section is set out in full in Annexure A.

Section 23(1) of the Act establishes that it is compulsory for every person who is entitled to be enrolled on the register of electors to sign a claim for enrolment within 21 days of that person becoming so entitled. Failure to do so is an offence punishable on conviction by 1 penalty point. This requirement does not apply to persons eligible to enrol under section 22(3), 22(4) or 22(5).

A person is also required, by virtue of section 23(4) to give notice of a change of address within 21 days of the change of the address of his or her principal place of living. Failure to do so is an offence punishable on conviction by a fine of 1 penalty point.

The *Electoral Act 2002* (Vic) now contains powers (section 26(4)) for the VEC to obtain information from, *inter alia*, electricity distribution companies and retailers and public statutory authorities regarding a person's address. This power could be relevantly used, in the case of persons experiencing homelessness, to obtain information from Centrelink. Where information obtained under section 26(4) suggests that a person has changed address, the VEC sends out a card enabling the citizen to easily confirm a change of address and have their enrolment details updated.

Section 23(5) contains a partial exception to the provisions relating to timely enrolment which was not found in the previous legislation. Proceedings must not be instituted against a person for any offence against sections 23(1) or 23(4) if that person forwards to the VEC a claim for enrolment or a notice of change of address as required. However, if proceedings have already been instituted, this would be of no assistance.

Part 9 Division 2 of the *Electoral Act 2002* (Vic) contains the penalty provisions for electors who fail to exercise the right to vote. Division 2 is set out in full in Annexure B.

Certain electors, including those enrolled as itinerant electors are not to be sent a notice informing them of their failure to vote and requiring the elector to state the true reason for failing to vote (section 163(3)). Thus, these electors are effectively exempted from the compulsory voting provisions.

¹⁷ See also section 61 in relation to writs generally, including writs for by-elections.

3.7 Exercise of the Right to Vote and Enforcement of Penalties

A penalty of 1 penalty point, currently \$100.00, applies for "normal" electors who fail to exercise their right to vote in a Victorian Election (section 166).

However, failure to vote does not automatically result in a \$100.00 fine. First, the VEC will send a penalty notice to the elector requiring them to state the true reason for failing to vote. Section 166 sets out the circumstances in which a person will be guilty of an offence for failing to vote in a Victorian State Election:

166 Offences

- (1) An elector who--
- (a) fails to vote at any election without a valid and sufficient excuse for the failure; or
 - (b) fails to comply with section 164 [requiring a reply to a failure to vote notice]; or
 - (c) states in a form under section 164 a false reason for not having voted; or
 - (d) in the case of an elector completing or purporting to complete a form on behalf of any other elector, states in the form a false reason why the other elector did not vote--
- is guilty of an offence.

Penalty: 1 penalty unit.

The Regulations to the *Electoral Act 2002* (Vic) set out the form of the failure to vote notice which the VEC is required to send by post to each elector who has failed to record a vote under section 167 of the Act. The elector may provide the reason for their failure to vote or may elect to pay a fine of \$50 (or declare that they did in fact vote). The response notice must be received by the VEC within 28 days. It is then up to the Commission to determine whether any excuse given is valid and sufficient or whether to institute proceedings to enforce the original penalty within 12 months of the date of the election (section 166(2)).

If the elector pays the penalty shown on the failure to vote/infringement notice within the time permitted, no further proceedings may be taken in respect of the offence (section 171). If the elector's excuse is considered valid and sufficient, the failure to vote does not constitute an offence under the Act (section 166).

What is a "valid and sufficient reason" for failing to vote?

There is no explanation in the *Electoral Act 2002* (Vic) as to what is meant by the term "valid and sufficient" excuse in section 166(1)(a).¹⁸

¹⁸ Section 245(14) of the *Commonwealth Electoral Act 1918* (Cth) expressly states that religious duty may constitute a valid and sufficient reason for not voting. Presumably this ground at least would also be accepted by the Victorian Electoral Commission.

It is therefore at the discretion of the VEC to decide whether the reason given is "valid and sufficient". Section 163(3) lists a number of sufficient excuses (of which homelessness is not one), and it is then at the discretion of the Commissioner to determine whether other reasons are valid. The VEC staff who assess responses to non-voter notices are guided in their assessment of the sufficiency of excuses by the VEC's Election Management System.

The Australian Electoral Commission is guided in the exercise of its discretion by the Divisional Office Procedures (Elections) Manual ("**AEC Manual**").

The Clinic has not had the advantage of perusing the AEC Manual nor VEC's Election Management System. These are internal documents and are not available to the public, despite the fact that the exercise of this discretion may result in a person being summonsed to appear before Court.¹⁹

In addition, section 11 of the *Electoral Act 2002* (Vic) requires the VEC to publish an election manual for the purposes of the Act. It is unclear whether this manual will include guidelines on what constitutes a "valid and sufficient excuse", nor is it clear whether "publish" means that the manual will be made available to the general public.

In the Clinic's view, some form of official recognition of the problems faced by homeless people which may validly prevent those enrolled as "normal" voters from voting should be articulated in such guidelines or policies. Further, it is critical to make it well known in the relevant communities that the government, the AEC and the VEC will not punish or penalise homeless people for failing to vote if that failure was caused by or related to the person's homelessness. Just as there is a justifiable basis for the express provision relating to religious beliefs found in section 245(14) of the *Commonwealth Electoral Act 1918* (Cth); the Clinic submits that express recognition of the practical difficulties faced by the homeless population which may prevent them from voting is necessary under both the Victorian and Commonwealth legislation. This would encourage the recently homeless and the homeless population in the tertiary class, who may have some kind of housing and be eligible to enrol as a "normal" voter, to participate in the democratic process whenever possible.

Although the VEC was unable to provide exact statistics regarding the number of electors who provided a satisfactory reason for not voting, they indicated that "most" electors issued with a non-voter notice provided a satisfactory reason. However, following the 1999 election at least 29,468 electors failed to provide a sufficient excuse in response to a non-voter notice and were subsequently issued penalty notices.

Unlike the AEC who routinely enforce failure to vote through the issue of summonses and court proceedings, it is evident that, at least in the past, the VEC has not exercised its right to do so.

The High Court of Australia has stated that a "valid and sufficient" excuse is some reason which is not excluded by law and is, in the circumstances, reasonable. This

¹⁹ The AEC Manual lists specific circumstances and examples of reasons for failure to vote which will be regarded as "valid and sufficient" reasons. It also discloses procedures in relation to dealing with defaulters. In *John Paul Murphy v Australian Electoral Commission* (No Q93/585 AAT No 9492; (1994) 33 ALD 718) the AEC was challenged to make the contents of the AEC Manual available to the public under the *Freedom of Information Act 1982* (Cth). However, the application was refused on the grounds that to make the information public (the applicant admitted that he would publish the Manual) would, or would be likely to, prejudice the effectiveness of methods and procedures adopted by the AEC to detect, investigate and deal with matters arising out of the breach of section 245.

may include circumstances of "physical obstruction, whether sickness or outside prevention, or of natural events, or accident of any kind."²⁰

Whether homelessness or associated problems would be accepted as constituting a "valid and sufficient" reason for failing to vote is not clear. The Clinic submits that it should. Homeless people experience a range of pressing problems (including financial, familial, social, psychological, medical and accommodation issues) which are related to homelessness and which may prevent the person from being able to vote on a particular day.

Table 2: Statistics collated by the VEC in relation to the 1996 and 1999 Victorian elections show the following pattern of voting:²¹

	1996 Election	1999 Election
Number of enrolled electors	11,740,568	12,154,050
Total number of apparent non-voters	177,609	211,792
Number of non-voters sent a notice requiring payment of the penalty or provision of a valid and sufficient excuse for failing to vote	116,544	115,949
Number of penalty notices issued	1,522	29,468
Number of electors who paid the fine	2,189	5,203
Number voters who provided satisfactory reason for not voting		"most" (centred)
Number of summonses issued for failure to vote	0	0
Number of cases dealt with by Courts	0	0

3.8 The Impact of Enrolment and Enforcement Provisions relating to "Normal" Electors on Homeless People

(a) Requirement to give a residential address and mailing address

The requirement to give a residential address is a major impediment to homeless people completing a claim for enrolment, re-enrolment or updating their information on the Register. This is due to two main characteristics of homelessness, namely, non-conventional housing or lack of stability and security of housing.

- (i) Non-conventional housing: Where the homeless person resides or stays in non-conventional shelter such as a doorway, neglected warehouse or on the streets, they will not be able to provide an

²⁰ *Judd v McKeon* (1926) 38 CLR 380 (Isaacs J).

²¹ Information provided by Victorian Electoral Commission in a letter to Brianna Harrison dated 31 January 2003.

"address" which is suitably particular and therefore will be ineligible to enrol as a "normal" elector. It is not clear under the Act and from the VEC directions on the electoral claim form what would constitute an "address". However, there is nothing to indicate that a wide definition would be applied. For example, a person who lived in a caravan on unused Crown land, which could be adequately located by means of describing the "access road" or other geographical marker, would probably be refused enrolment.

- (ii) Stability and security of housing: For most homeless people, it is not the lack of address per se, but the lack of a stable and consistent address which is the major barrier preventing them from being able to be enrolled as "normal" electors. As stated earlier in this submission, the statistics show that homeless people are a relatively transient population, lacking stability of residence and moving from place to place frequently.²² Section 22(1) requires not only that the person be "living" at an "address" within the Subdivision, but also that the person have lived in that Subdivision for at least one month.

Thus, it is extremely difficult for most, if not all, homeless people to provide an address where they live, and to constantly maintain the correctness of their details on the Register.

Recommendation 1: That section 3 of the *Electoral Act 2002* (Vic) be amended so that the definition of "Address" includes, in the case of a person who is homeless within the meaning of section 4 of the *Supported Accommodation and Assistance Act 1994* (Cth), a place with which that person has a "close connection".

"Close connection" in this context could be drawn from similar provisions in international legislation such as:

- the address of or which is nearest to a place where the claimant commonly spends a substantial part of his or her time (whether during the day or night): see section 7B of the *Representation of the People Act 1983* (UK) as amended in 2000 (discussed below at part 5.1); or
- the "home base" requirement as provided for under the American "National Mail Voter Registration Form" (discussed below at part 5.2).

- (b) **Requirement that the claimant live at the address that is the person's principal place of residence for at least one month immediately before the date of the person's claim for enrolment (section 22(1))**

This requirement renders many homeless persons who have recently found accommodation (not necessarily stable) from enrolling as a "normal" elector.

- (c) **Requirement to update information within 21 days of change of place of living (section 23(4)) and fine for failure to do so**

²² Australian Bureau of Statistics, *Occasional Paper – Counting the Homeless: Implications for Policy Development* (1999) at 7.

This requirement discourages homeless people from becoming and remaining enrolled as "normal" voters because of the relative frequency with which homeless people move. This is an unrealistic requirement both in terms of the time period allowed for notifying the Commission of a change of address and the potentially onerous obligation on homeless people, particularly those in the secondary and tertiary classes of homelessness who may often have an address but who move from place to place frequently. The threat of a penalty of \$100.00 for a failure to provide appropriate notification has the effect of discouraging homeless people from enrolling as "normal" electors when they do have an acceptable address at which they have been living for more than 21 days due to the burden of updating the Register each time they move.

Section 23(5) contains an exemption for persons who fail to enrol or update their address within the time frame but who subsequently forward the required claim or notice prior to proceedings being instituted. However, the object of this new provision should be more clearly expressed.

Recommendation 2: That section 23(4) of the *Electoral Act 2002* (Vic) be amended such that persons with a "reasonable excuse" for failing to notify a change of place of living within 21 days are not guilty of an offence, and that homelessness (as defined in section 4 of the *Supported Accommodation and Assistance Act 1994* (Cth)) be deemed a "reasonable excuse".

- (d) **Whilst \$100.00 may be intended as an administrative penalty and mere "slap on the wrist", the impact of a \$100.00 or \$50.00 fine on a homeless person can be significant**

Receiving such a fine can have the effect of further entrenching the vulnerability and instability of a homeless person's current situation. Often they have no chance of paying such a fine and they get drawn into the administration system and eventually brought before the courts. This discriminates against homeless people and those with limited finances and limited access to resources to respond to and defend such penalties. It also discourages homeless people from seeking to re-enrol when they do find stable housing.

- (e) **Failure to vote once enrolled is an offence punishable by a fine which may be enforced by Court**

The provisions relating to failure by a "normal" elector to vote in an election are found in section 166 of the *Electoral Act 2002* (Vic).

Electors who fail to vote in an election without a valid and sufficient excuse are guilty of an offence and may be served a penalty. These individuals can be summonsed to court pursuant to sections 172 and 173 if the penalty is not withdrawn by the Commission, and is not paid. The elector can be convicted of an offence and the infringement penalty enforced.

These provisions may have the effect of discouraging people in unstable housing situations from enrolling to vote if they have been or are likely to be penalised for failing to vote when such failure may be due to issues associated with homelessness, or problems experienced by a higher proportion of homeless people (such as issues relating to securing accommodation, income, and food for the immediate future).

In addition, if a homeless person has been penalised under these provisions in the past, they are unlikely to update their information on the Register when they do have a "place of living" with a valid residential address.

(f) **"Valid and sufficient reason" not open and transparent**

As can be seen from Table 2 above, many of the penalty provisions relating to penalties for failing to vote are routinely enforced following each election. Section 166(1)(a) provides that if the elector can provide a valid and sufficient excuse for failing to vote in an election the person will not be guilty of an offence under the *Electoral Act 2002* (Vic).

Details of what constitutes a "valid and sufficient" excuse are not available to the public. This exception may operate to protect people from being penalised for failing to vote in circumstances where they were unable to vote due to issues related to homelessness. However, without transparency and openness in the purpose and application of this provision, the policies of the government cannot be scrutinised for any discriminatory effects. Furthermore, lack of openness or guidance as to what constitutes a "valid and sufficient excuse" will result in the exception not being properly utilised by many of the people who need it most.

Recommendation 3: That details as to what constitutes a "valid and sufficient" excuse under section 166(1)(a) of the *Electoral Act 2002* (Vic) in relation to failure to vote be made publicly available.

Recommendation 4: That an amendment be drafted to section 166 of the *Electoral Act 2002* (Vic) (and expressly included in any manual used by the VEC to determine whether an elector's excuse is "valid and sufficient") recognising that the problems faced by homeless people who are enrolled as "normal" voters may prevent them from exercising their right to vote and that such problems constitute a "valid and sufficient" reason for failing to vote.

(g) **Administrative impediments**

The Clinic is concerned about the disproportionate impact that administrative requirements have on the homeless population many of whom have literacy problems and can have great difficulty complying with administrative and time requirements due to other more pressing problems such as addictions, poverty, shelter and other basic needs. Section 164(1) requires an elector to forward a written response to a section 163 penalty notice within the time stipulated in the notice (28 days).

Recommendation 5: That section 164(1) of the *Electoral Act 2002* (Vic) be amended to allow electors to attend offices of the VEC in person to respond verbally to section 163 notices. VEC staff should be trained to assist persons unable to complete the form if such persons attend in person.

4. Current Itinerant Voter Provisions

4.1 Itinerant Voters under the *Electoral Act 2002* (Vic)

There were only 835 itinerant electors noted on the Victorian Electoral Register at the time of the 2002 election.²³

The provisions of the *Electoral Act 2002* (Vic) effectively import the provisions of the *Commonwealth Electoral Act 1918* (Cth) relating to enrolment as an itinerant elector into the Victorian Act.

Section 22(4) of the *Electoral Act 2002* (Vic) provides that a person is entitled to be enrolled on the Victorian Register if the person is enrolled as an itinerant elector under section 96 of the *Commonwealth Electoral Act 1918* (Cth) and if the address in relation to which the elector has established a connection pursuant to section 96 is in Victoria.

4.2 Commentary Regarding Itinerant Electors and the Homeless under the *Commonwealth Electoral Act 1918* (Cth)

In relation to the important role that the itinerant elector provisions may play in increasing the representation of the homeless in state and federal elections, the Clinic refers to the supplementary submission of the AEC to the Joint Standing Committee on Electoral Matters, recently made in response to the Clinic's submission in July 2002 regarding voting rights for homeless. The AEC responded as follows:

- 23.1 The Homeless Persons' Legal Clinic makes 16 recommendations aimed at enabling homeless people to meaningfully participate in federal elections. These recommendations broadly cover: changes that would be required to normal enrolment mechanisms to enable homeless people to enrol; alternatively, changes that would be required to the itinerant elector provisions to enable homeless people to enrol as itinerant electors; and increased levels of service provision to homeless voters. The Council for Homeless Persons (submission 105) and the Big Issue (submission 150) make similar recommendations.
- 23.2 During their appearance before the JSCEM on 12 August 2002, representatives of the homeless indicated that amendments to the itinerant voter provision were probably the most appropriate mechanisms to address the problem of low homeless enrolment.²⁴
- 23.3 Even if this suggestion is adopted, the submission from the Homeless Persons' Legal Clinic regarding the enrolment of homeless people proposes a number of detailed amendments to the Act. The AEC has not fully considered the implications of the proposed amendments. However, while the AEC considers that the provisions relating to enrolment by itinerant persons do apply to homeless people, it also acknowledges that this is not entirely clear.

²³ Information provided by the VEC in a letter to Brianna Harrison dated 31 January 2003.

²⁴ Transcript of appearance before the Joint Standing Committee and Electoral Matters Inquiry, 12 August 2002, 36.

- 23.4 The AEC is supportive of the thrust of the submission regarding the enrolment of homeless people, and recommends that the Act be amended to clarify that homeless people can enrol under the itinerant provisions.
- 23.5 In relation to the recommendation concerning service provision to homeless voters, the AEC will include the homeless as a target group in the preparation of the communication plan for the next Federal Election. This plan will include strategies to educate homeless people about their rights and how to exercise those rights.²⁵

4.3 Impact of Reference to Commonwealth Electoral Roll

Victorian law has, for quite some time, based the entitlement to enrol as an itinerant elector in Victoria on the requirement that the claimant be enrolled as an itinerant elector on the roll maintained under the *Commonwealth Electoral Act 1918* (Cth).

This effectively imports the requirements of the *Commonwealth Electoral Act 1918* (Cth) into the *Electoral Act 2002* (Vic). This method of drafting raises a number of issues:

- (a) any changes to the federal provisions relating to enrolment, such as provision of identification, the closing of the roll and the lay out of the AEC claim form, may have a direct impact on whether a claimant is entitled to enrol as an itinerant elector in Victoria;²⁶ and
- (b) if a person is removed from the Federal Roll for failing to vote in a Federal Election or referendum that person will become ineligible to remain on the Victorian Register of Electors.

4.4 Requirements for Enrolment as an Itinerant Elector under the *Commonwealth Electoral Act 1918* (Cth)

There are a number of special enrolment provisions in the *Commonwealth Electoral Act 1918* (Cth) which establish exceptions and special rules for persons with physical difficulties, itinerants, overseas electors, Antarctic electors, and persons who do not want their addresses shown on the Roll.

The federal provisions for itinerant electors are found in section 96 of the *Commonwealth Electoral Act 1918* (Cth) and are intended to provide for enrolment by persons with no fixed address, including the homeless. Section 96 is set out in full in Annexure C.

A person is entitled to be listed on the Federal Roll (and the Victorian Register by virtue of section 22(4) of the *Electoral Act 2002* (Vic)) as an itinerant elector if:

- the person is in Australia; and

²⁵ Australian Electoral Commission, *Supplementary Submission to the Joint Standing Committee on Electoral Matters Inquiry into the 2001 Federal Election - Response to Issues Raised During the Inquiry* (8 November 2002).

²⁶ For example, amendments currently being considered by the Federal Parliament in relation to closing of the rolls and tighter restrictions on identification and witnessing of enrolment claims may have an impact of a person's entitlement to enrol under the *Electoral Act 2002* (Vic).

- the person has had no "real place of living" in a Subdivision for a month or longer.

Once a person has resided in a Subdivision for over a month (that is, once they have had a "real place of living" within the Subdivision for over a month) they are no longer entitled to be enrolled as an itinerant elector.

"Real place of living" is defined in the *Commonwealth Electoral Act 1918* (Cth) as including the place of living to which a person, when temporarily living elsewhere, has a fixed intention of returning for the purpose of continuing to live at that place. Many homeless people will not have a "real place of living" as defined in the *Commonwealth Electoral Act 1918* (Cth), or will only have so for short, unpredictable periods of time.

In *Tanti v Davies (No 3)*,²⁷ Justice Ambrose was caused to consider more closely the meaning of "real place of living" under the *Electoral Act 1992* (Qld). His Honour made the following observations regarding this term:

"Place of living" encompasses both temporary and permanent living. While it includes residential living, it also includes living which does not amount to residential living. In my view, "real place of living" is more synonymous with "actual place of living" than it is with "place of residence" where one need not actually live at the relevant time. An actual place of living may be either a place of residence of the voter or at some other place where the voter lives, without necessarily choosing to do so at the time and without any adoption of that place as "home" - for example persons on military duty overseas in places like Rwanda or perhaps persons held in custody.

In *Burnett Shire Council v Galley*,²⁸ Justice Holmes also considered the meaning of the term, holding that "there must be some element of continuity in a person's occupation of premises for the purposes of eating, sleeping, bathing and carrying on the other activities of everyday life to warrant a conclusion that he or she lives there."

Applying these tests of "place of living" it would appear that a homeless person who lives in, say, a particular area of a public park, might be said to have a "place of living" and thus not be eligible to enrol as an itinerant.

The Australian Electoral Officer is empowered under section 96(5) of the *Commonwealth Electoral Act 1918* (Cth) to consider the application and grant or refuse such application.

One of the reasons for which a person will cease to be entitled to be treated as an itinerant elector is if, while the person is being so treated, a general election is held at which the person neither votes nor applies to vote (section 96(9)(a)). However, there is no provision in the *Commonwealth Electoral Act 1918* (Cth) for rejecting an application for enrolment as an itinerant elector on the basis that the applicant has been previously removed from the Roll as a consequence of failing to vote. Therefore, it appears that this will not disentitle an individual from re-enrolling as an itinerant elector.

A person whose application for enrolment as an itinerant elector is rejected by the Australian Electoral Officer may, subject to the *Administrative Appeals Tribunal Act 1975* (Cth), apply to the Administrative Appeals Tribunal for a review of the decision.

²⁷ [1996] 2 Qd R 602.

²⁸ [2000] QSC 490.

Section 245 of the *Commonwealth Electoral Act 1918* (Cth) does not apply to itinerant electors. Thus, strictly speaking there are no "penalties" for itinerant electors who fail to vote at a Federal Election.

4.5 Enrolment as an Itinerant Elector in Victoria

The Clinic notes that (unlike under section 52(1)(c) of the *Constitution Act Amendment Act 1958* (Vic)), section 22(4) of the *Electoral Act 2002* (Vic) does not give the VEC an express power to similarly annotate the Victorian register of electors to indicate the itinerant status of such electors, however we assume that the VEC is intended to have and exercise this power.

This intention is supported by the fact that the VEC has its own form for claimants wishing to enrol as itinerant electors. However, this form merely refers to each of the requirements under the *Commonwealth Electoral Act 1918* (Cth), rather than referring to the test as set out in section 22(4) of the *Electoral Act 2002* (Vic). Further, these forms still refer to rights and responsibilities under the *Constitution Act Amendment Act 1958* (Vic), the relevant sections of which were repealed upon enactment of the *Electoral Act 2002* (Vic).

Recommendation 6: That the VEC update enrolment forms to reflect the new legislative provisions governing enrolment on the Victorian register of claims for electors.

4.6 Exception to Compulsory Voting

The compulsory voting provisions found in Part 9 Division 2 of the *Electoral Act 2002* (Vic) do not apply to itinerant electors. Section 163(3) of the Act provides that itinerant electors are amongst certain types of classes of electors who are not to be sent a notice regarding failure to vote. Therefore, itinerant voters cannot be guilty of an offence under section 166 for failing to respond to a penalty notice or failing to vote without a valid and sufficient excuse.

Unlike the *Commonwealth Electoral Act 1918* (Cth), the *Electoral Act 2002* (Vic) does not contain an express provision authorising the VEC to remove an itinerant elector from the Register if he or she fails to exercise his or her right to vote in a Victorian Election.

4.7 How Many People are Currently Registered as Itinerant Voters?

As at 7 September 1998 (the date the Rolls closed for the 1998 Federal Election), there were a total of 2,532 electors enrolled in Australia as itinerant voters.²⁹ In 2002, there were only 835 itinerant electors on the Victorian Register. This number is clearly far below the number of homeless persons in Victoria, most of whom would not be eligible to enrol as "normal" electors.

Commonwealth statistics show that those electors enrolled as itinerant voters do tend to exercise their right to vote. In 1996, only 0.62 per cent of itinerant electors were subsequently removed from the Roll for failing to vote, and in 1998, 0.67 per cent of the enrolled itinerant electors were removed from the Roll.³⁰

²⁹ Information available at www.aec.gov.au

³⁰ Figures dated 31 July 2001. Information provided by Deputy Electoral Commissioner in letter to Brianna Harrison dated 17 January 2002.

4.8 Entitlement and Enrolment to Vote as an Itinerant Elector

In order to enrol as an itinerant elector, the individual must complete the approved form.

Copies of the approved forms for enrolment for both the Commonwealth and Victorian jurisdictions are at **Appendix B**.

Forms can be downloaded from the internet or otherwise obtained through the AEC or VEC.

An individual seeking to be added to the Roll or Register as an itinerant elector for the purposes of voting in a Federal or Victorian Election must provide, *inter alia*, the following information:

- the Subdivision in which the elector is entitled to be enrolled. The form contains a hierarchical list of grounds for determining which subdivision the elector is entitled to be enrolled in. The elector must select the first statement that applies to him or her from the following list:
 - (a) the Subdivision for which the claimant was last entitled to be enrolled;
 - (b) the Subdivision in which one of his or her next of kin is enrolled (if he or she has not previously been entitled to enrol);
 - (c) the Subdivision in which the claimant was born; and
 - (d) the Subdivision with which the claimant has the closest connection (this final category is available only to persons born outside Australia).

Reasons must be attached if the claimant elects to be enrolled in any Subdivision other than the Subdivision where the claimant was previously enrolled; and
- a postal address;
- reasons for applying for enrolment as an itinerant elector;
- the address for which the claimant is claiming enrolment; and
- the address at which the claimant was previously enrolled (where applicable).

The Clinic has been informed by the AEC that the address for which the person is claiming enrolment will relate directly to their answer to question 1 which determines the Subdivision in which they are entitled to be enrolled. It is not clear from the face of the AEC form that the "address for which the claimant is claiming enrolment" does not need to be the address of the place where the individual is currently staying. Whilst the VEC form does not suffer from this problem, if a claimant cannot complete the AEC form, this will preclude him or her from eligibility to enrol as an itinerant elector in Victoria due to the terms of section 22(4) of the *Electoral Act 2002* (Vic).

The only express requirement in relation to the address for which the claimant is claiming enrolment is that it be more than a mere post box number.

There are no specific requirements regarding the postal address nominated by the individual.

When enlisting as an itinerant elector on the Federal Roll, the applicant must sign a declaration stating that they are eligible to enrol for Federal Elections, that they do not have a real place of living, that they do not intend to reside overseas while enrolled as an itinerant elector and that the information given is true and correct. The Victorian claim form does not require the claimant to declare they have no real place of living. Presumably, the VEC does not require this as it will refer directly to the Roll maintained by the AEC for confirmation of the claimant's eligibility.

Both the AEC and VEC forms must be witnessed by a person who is eligible to enrol. The form may then be returned by mail (no postage required).

4.9 Benefits of Itinerant Voting Provisions for Homeless People

The itinerant voting provisions do not require that the elector have an "address" or a fixed place of living.

There are no penalties for failing to update one's information on the Register.

There is no penalty for itinerant electors who fail to vote. The *Commonwealth Electoral Act 1918* (Cth) provides that an itinerant elector who fails to vote will be removed from the Roll (section 96(9)). However, the *Electoral Act 2002* (Vic) contains no power to remove an itinerant elector from the Victorian Register if they fail to exercise their right to vote in a Victorian Election. Thus, whilst it seems that a Victorian itinerant elector will become ineligible to vote in both the Federal and Victorian Elections if they fail to vote in a Federal Election, it seems that they will not be removed from either roll if they fail to vote in a State election.

4.10 Reform of Itinerant Voting Provisions to Target and Aid Homeless People

It appears that the provisions relating to enrolment as an itinerant elector in the *Electoral Act 2002* (Vic) (including the requirements set out in the *Commonwealth Electoral Act 1918* (Cth)) potentially apply to many homeless people.

The Clinic submits that the main reasons for so few people being enrolled as itinerant voters (and, therefore, so few homeless people) are related to the practical aspects of enrolling.

(a) Administrative requirements and impediments

The main impediments to the homeless population utilising the itinerant voter provisions are practical.

Elector awareness is a critical issue which needs attention and funding. Not only do homeless people often miss out on the educational campaigns that are aimed at the mainstream population, but they are also plagued by other issues commonly associated with homelessness such as fear, hunger, illiteracy, disenchantment with authority, apathy and desperation. It is essential that the government recognise these factors which act on the homeless population and make positive steps to overcome them in order to increase homeless voter participation.

The fact that a prescribed written form needs to be completed acts as a deterrent to many homeless people. This is an administrative burden which

might frequently be displaced due to more pressing issues associated with homelessness, such as the need to find food and shelter for the night.

This administrative burden is increased by section 96(9)(a) of the *Commonwealth Electoral Act 1918* (Cth), which effectively requires an individual to re-enrol as an itinerant elector each time they fail to vote in an election. There are many reasons why a homeless person might fail to vote in an election and the mail checks should be a sufficient means of ensuring that the registration details of itinerant voters are valid and up to date.

The Clinic notes also that the AEC form itself is unclear. Question 11, which requires an individual to show the address for which they are claiming enrolment, could be read as requiring them to indicate a current residential address. It is not sufficiently clear from the form that the address required is the address relating to the claimant's answer to Question 1.

The VEC form for enrolling as an itinerant elector is, whilst out of date, sufficiently clear in this respect.

In light of the above, the Clinic recommends the following battery of non-legal measures.

Recommendation 7: That the VEC send administrative assistants to shelters for the homeless, disability services, welfare organisations, Centrelink and other places frequented by homeless people to assist homeless people with completing relevant forms and to educate homeless people about their voting rights and how to exercise those rights.

Recommendation 8: That employees of agencies providing services to homeless people, including Centrelink, be trained to assist in the registration of homeless people as itinerant voters. [The United States *National Voter Registration Act 1992* (US) contains express provisions to this effect (see discussion below at part 5.2).]

Recommendation 9: That voting centres be strategically located to facilitate casting of votes by homeless people and that welfare agencies and homelessness services be empowered to request mobile voting centres to attend to areas of need.

(b) **Closing of the Register within three days of writ being issued (section 63)**

Section 63 of the *Electoral Act 2002* (Vic) requires that the Register remain open for three days after the election writ is issued. This is a very small window of opportunity for an elector to lodge a claim updating their information.³¹

³¹ Under section 155 of the *Commonwealth Electoral Act 1918* (Cth), the Federal Roll must remain open for seven days after the issue of an election writ. As a result of inquiries into the 1996 and 1998 Federal Elections, it was recommended that the *Commonwealth Electoral Act 1918* (Cth) be amended to close the Roll at 6pm on the date of issue of the election writ for new enrolments and to close the Roll three days after the issue of the writ for electors who wished to update their information on the Roll or re-enrol. This was also recommended by the Joint Standing Committee on Electoral Matters following the 2001 Inquiry into the Integrity of the Roll (see Joint Standing Committee on Electoral Matters, *Report of the Inquiry into the Conduct of the 1998 Federal Election and Matters Related Thereto* (June 2000) 15 and Joint Standing Committee on Electoral Matters, *Report of the Inquiry into the Integrity of the Electoral Roll: User Friendly Not Abuser Friendly* (May 2001) 50). This recommendation was supported by the

The VEC received more than 21,000 new enrolments and 34,000 enrolment updates in the four days between the issue of election writs and the closing of the rolls before the 2002 election. It is not known how many citizens were prevented from voting by failing to notify the VEC of their details in time.

Whilst section 23 of the *Electoral Act 2002* (Vic) requires electors to update the information on the Register if they change address within 21 days of so doing, it is recognised that many people (homeless or not) neglect this responsibility. It is only when an election is announced that most individuals notify the VEC of their changed circumstances.³²

The early closing of the Register of electors acts as a practical impediment to homeless people exercising their right to vote by removing or significantly reducing the opportunities for updating address details or registration as itinerant voters. The premature closing of the Register has a disproportionate and discriminatory effect on homeless people because:

- homeless people have no consistent and stable place of residence and most of the homeless population moves frequently from one form of temporary shelter to another,³³ therefore, homeless people are far more likely to have incorrect details recorded against their names on the Register, or to have been removed from the Register due to the Commission becoming aware of inaccuracies in address or contact details;
- homeless people are often outside the main-stream media loop and may not become immediately aware that an election has been announced; and
- a higher proportion of the homeless population have reduced literacy and this impacts on their knowledge of current events and also their ability to complete the required forms within a limited time frame.

Interestingly, the American roll closes only 30 days before an election and the Canadian roll remains open until the day before the election. This enables registration staff to actively maximise enrolment prior to the election by seeking out under-represented populations and it also ensures that people who require assistance with enrolling or who may not be "tuned in" to the mainstream media will have an opportunity to enrol.

The Clinic is aware of the considerable efforts of the Commission in actively seeking to update the Register in the period leading up to the issue of the election writs in 2002.³⁴ However, many of the measures employed would not detect the homeless. In fact, address verification checks are more likely to reduce the number of homeless people enrolled to vote.

Federal Government as a means of preserving the integrity of electoral Roll and is now reflected in sections 3, 5 and 11 of the *Electoral and Referendum Amendment (Roll Integrity and Other Measures) Bill 2002*.

³² This is reflected in section 23(5) of the *Electoral Act 2002* (Vic).

³³ Australian Bureau of Statistics, *Occasional Paper – Counting the Homeless: Implications for Policy Development* (1999) 7.

³⁴ Information provided on VEC website: www.vec.vic.gov.au/TheVEC/WP_MediaRecordResponseToRollCall.htm

Recommendation 10: That section 63 of the *Electoral Act 2002* (Vic) be amended so that, for persons eligible to claim enrolment as "itinerant" electors, the roll remains open up to and including the day of an election and that such persons be able to register in person at a voting centre.

(c) **No provision allowing enrolment in place of closest connection**

Pursuant to section 96(2A) of the *Commonwealth Electoral Act 1918* (Cth), the Subdivision for which an itinerant elector will be enrolled is determined by the hierarchical list set out in the section. An elector will only be enrolled in the Subdivision with which they have the closest connection if none of paragraphs (a), (b) and (c) apply. A note on the enrolment form states that the "closest connection" option is only available to persons born outside Australia.

If homeless people are to use the itinerant elector provisions, it follows that they should be able to cast a vote in respect of the Subdivision in which they "live". This is an essential aspect of democracy; persons voted into power should be directly chosen by the electors that they are to represent. The current provisions discriminate against homeless people by ignoring their right to have a say in the people and policies by which they are governed.

The Clinic submits that the current means of determining the appropriate Subdivision for a homeless person enrolling as an itinerant elector should be amended to enable the elector to vote in the Subdivision in which they spend most of their time. This could be determined by a "place of closest connection" test as is already provided in section 96(2A)(d) of the *Commonwealth Electoral Act 1918* (Cth). This method has recently been adopted in the United Kingdom pursuant to section 6 of *The Representation of The People Act 2000* (UK). Alternatively it may be determined by reference of the postal address given by the claimant. This method would more closely reflect the United States approach (see section 4 of the *Model State Homeless Voter Registration Act*).

Recommendation 11: That section 22(4) of the *Electoral Act 2002* (Vic) be amended to provide that persons enrolled as itinerant electors in respect of a Commonwealth Subdivision which is in Victoria may enrol as itinerant electors in Victoria in respect of the address with which they have "the closest connection".

(d) **"Real place of living"**

Although the evidence shows that the homeless population moves around within the system, there will be a significant number of homeless people who become ineligible to be enrolled as itinerant voters after having secured stable accommodation for over one month (section 96(8) of the *Commonwealth Electoral Act 1918* (Cth)) but who are still essentially ineligible or unlikely to enrol as a "normal voter" for the reasons discussed in this Submission.

The ABS report "Counting the Homeless" estimated that over 70 per cent of homeless people fall within the "low turnover" category, that is, have been homeless for over six months. A further 17 per cent were estimated to be "medium turnover", that is, to have been homeless for between four and 25 weeks. Whilst these figures do not show precisely how long a homeless person is likely to stay in particular accommodation, it is clear that the one

month limit for itinerant electors would prevent a significant percentage of the homeless population – most of whom are ineligible or unlikely to enrol as "normal voters" from enrolling as itinerant voters.

The current definition of a "real place of living" is not sufficiently particular and needs to be reconsidered so as to ensure that homeless people with unstable housing or non-conventional places of living are not excluded from both "normal" enrolment and from the itinerant elector scheme.

In a submission made to the Joint Standing Committee on Electoral Matters in July 2002 the Clinic made certain recommendations for amendment to the *Commonwealth Electoral Act 1918* (Cth) in relation to itinerant electors. Due to the terms of section 22 of the *Electoral Act 2002* (Vic), these comments are relevant to the Victorian electoral process, although not directly within the control of the Victorian Government.

Recommendation 12: That the Victorian Government lobby Federal Parliament to amend section 96(12) of the *Commonwealth Electoral Act 1918* (Cth) such that a person shall be taken to reside at a place if, and only if, the person has his or her real place of living at that place *and* that place of living constitutes safe and secure housing within the meaning of section 4 of the *Supported Accommodation and Assistance Act 1994* (Cth).

Recommendation 13: That the Victorian Government lobby the Federal Parliament to amend section 96(8) of the *Commonwealth Electoral Act 1918* (Cth) to increase the period of time that an itinerant voter may have "a real place of living" in a Commonwealth Subdivision from one month to six months before that person becomes ineligible to be enrolled as an itinerant voter.

5. Overseas Models and Provisions for the Enrolment of Homeless People and the Exercise of the Right to Vote

5.1 United Kingdom: *The Representation of the People Act 2000* (UK)

As part of electoral law reform, the United Kingdom recently enacted *The Representation of the People Act 2000* (UK) ("**RPA**"). The RPA was designed to amend the *Representation of the People Act 1983* (UK), in particular to address declining rates of voter participation in the United Kingdom. The RPA specifically contains reforms aimed at those who neither own nor occupy any property, and thus is of particular relevance to homeless people. Prior to the enactment of the 2000 RPA, the need for an address at which to register had been a major barrier to registration for homeless people.

(a) Requirements to establish an entitlement to vote

Under the RPA, in order to establish an entitlement to vote in a United Kingdom parliamentary election in any constituency a person must:

- (i) be registered in the register of parliamentary electors for that constituency,
- (ii) not be subject to any legal incapacity to vote (age apart),
- (iii) be either a Commonwealth citizen or a citizen of the Republic of Ireland; and
- (iv) be of voting age (that is, 18 years or over).³⁵

Thus, the requirement of registration is paramount to ensure that a person has the right to vote. The RPA attempted to address problems of virtual disenfranchisement of homeless people, many of whom, by definition, are without even a temporary address, by allowing potential electors to demonstrate "notional residence". Previously, in practical terms, only those able to nominate a residence were able to comply with the first requirement of registration.

(b) Declaration of Local Connection

Section 6 of the RPA allows a person to make a "declaration of local connection" in order for them to register to vote. Specifically, section 6 provides that a homeless person may make such a declaration by:

- (i) stating his or her name;
- (ii) providing an address to which correspondence from the registration officer may be sent, or an indication of a willingness to collect such correspondence periodically from the registration officer's office; and
- (iii) in lieu of a residential address, providing the address of, or which is nearest to, a place in the UK where he or she commonly

³⁵ See section 1 of the *Representation of the People Act 1983* (UK), inserted by section of the *Representation of the People Act 2000* (UK).

spends a substantial part of his time (whether during the day or night).

By allowing a homeless person to state as their address "the address of, or which is nearest to, a place in the UK where he or she commonly spends a substantial part of his time (whether during the day or night)", registration becomes possible. A place such as a day centre or rough sleeping site would now be considered adequate as an address for the purposes of registration.

Registration forms are available from outlets including local councils, libraries, Citizen's Advice Bureaux and doctors' surgeries.³⁶ Once completed, the forms may be lodged at electoral registration offices located within local councils. The register is a rolling register which is updated monthly rather than every year.

(c) **Limitations**

The RPA qualifies the rights of homeless people to register to vote somewhat by imposing a limitation on declarations of local connection made in the run up to a by-election. Section 6 of the RPA provides that from the date on which a vacancy of a candidate occurs until the final date for nominations, an additional declaration to the effect that for the last three months the declarant had been spending a substantial part of his or her time at, or near, the required address must be made. This is intended to prevent a flood of non-*bona fide* electors into the constituency of the by-election. However, a propertied voter would not have to comply with such a requirement, and thus homeless people are, in effect, discriminated against.

Furthermore, homeless people are not permitted to make multiple declarations of local connection, however those people with multiple homes are permitted to register pursuant to their multiple addresses.

(d) **Voting not compulsory**

Voting is not compulsory in the United Kingdom. Therefore penalties do not apply due to a failure to vote.

5.2 **United States: *National Voter Registration Act 1992* (US)**

The United States confers eligibility to register and to vote on citizens of the United States who are legal residents of their state who have attained at least 18 years of age by the election date.

Some states exclude the eligibility of individuals who are imprisoned, on probation or parole, are ex-felons or have been declared mentally incompetent by a court.

Individuals are able to register by completing a short voter "registration-by-mail" form. These are available at various locations including post offices, libraries, the Department of Motor Vehicles, the welfare department, the Registrar of Voters, the City/County Elections Office and many other social service agencies.

The *National Voter Registration Act 1992* (US) ("**NVRA**"), (also known as the "Motor-Voter" law), governs voter registration for United States Federal elections.

³⁶ www.youthinformation.com

The NVRA requires states to make the voter registration process for federal elections more accessible to citizens by facilitating the registration process. The "motor voter" option provided to citizens enables them to register to vote when they apply for or renew their driver's licenses at state Departments of Motor Vehicles. The NVRA also requires the states to designate as voter registration agencies all state offices that provide either public assistance or state-funded programs primarily engaged in providing services to people with disabilities. This includes homeless shelters, drop in centres, food pantries, soup kitchens, day care centres, child welfare agencies and community health centres.

The following are key provisions of the NVRA:

(a) **Residential Address Requirement**

The uniform "National Mail Voter Registration Form" requires the states to accept for registration an applicant who draws a map to indicate where he or she lives "if the applicant lives in a real district or has a non-traditional address".

This allows a homeless person who is able to identify a street corner or a park bench, for example, as their home base by designating it on a map to register to vote notwithstanding being unable to provide a traditional residential address. The "home base" is a specific location that the homeless person considers is their home base to which they return regularly and intend to remain for the present. In relation to state elections, courts have addressed the issue and have held that states may not refuse to allow a homeless person to register to vote on the grounds that he or she does not have a traditional residential address.

(b) **Mailing Address Requirement**

Most states require prospective registrants to provide a mailing address and this requirement is not prohibited by the NVRA. However, several states allow registrants to identify a government office or post office "general delivery" address or other reliable contact points including a shelter, church or municipal building as a mailing address.

The mailing address requirement has not been tested by the courts. If the mailing address requirement simply imposes a burden or inconvenience on the applicant but does not prevent his or her registration, the requirement is likely to be upheld by the courts. If however the mailing address requirement is strictly enforced with the consequence of preventing the homeless person to register, it will be likely to constitute an unlawful restriction on the fundamental right to vote.

(c) **Personal Identification Requirement**

Most states require prospective registrants to provide a personal identification number which is usually a social security number or a driver's licence, to enable election officials to verify the persons identity. The legality of demanding the person's social security number has recently been impugned by a Federal District Court, which prohibited the practice of a state requiring a social security number.

The NVRA prohibits states from imposing highly restrictive identification requirements as the National Voter Registration Form "may require only such identifying information ... and other information ... as is necessary to

enable the appropriate state election official to assess the eligibility of the applicant and to administer the registration and other parts of the election process".

(d) **Registration Deadlines and Residency Duration Requirements**

Most states have a deadline prior to election day in which voter registration applications must be submitted. Generally it is 30 days before the election. This requirement often presents a problem for homeless individuals who move their home base to a different election district before the deadline for registration and the election. The result is that the homeless person will have missed the deadline for registering to vote in the new district but will be prohibited from voting in the former district because they are no longer residents of that district.

The NVRA provides protection for people who move their home base from one location to another within an election district and requires that the registrant be permitted to vote at either the previous assigned polling place or a central location upon affirmation of the new address by the registrant or at a new polling place upon confirmation of the new address.

(e) **Removal of Registration Lists and Mail Checks**

Many states remove names of individuals from registered voters lists where they are no longer residents of the election district in which they are previously registered. This practice presents difficulties for homeless people because commonly names are removed when the registrant fails to respond to a mail check. This involves a notice being issued by mail to which the registrant is required to respond in order to confirm his or her continued residence in the particular election district and to prevent removal of his or her name.

The NVRA confers some protection by restricting circumstances under which failure to respond to a mail check may result in removal from the rolls and by imposing certain conditions on mail check procedures.

In addition to the above, section 1B of the NVRA encourages "all non governmental entities" to register their clients. This targeting of key venues has the effect of encouraging a greater response in homeless people registration and is a useful model for our purposes and worthy of consideration.

5.3 United States: *Equal Protection of Voting Rights Act of 2001* s.565/H.R. 3295 (US)

Section 103(2) of the *Equal Protection of Voting Rights Act 2001* refers to the requirements for identification for voting eligibility. It reads:

- (A) In general an individual meets the requirements of this paragraph if the individual -
 - (i) in the case of an individual who votes in person -
 - (I) presents to the appropriate state or local electoral official a current and valid photo identification; or

- (II) presents to the appropriate state or local election official a current utility bill, bank statement, Government check, pay check, or other Government document that shows the name and address of the voter.

There are currently a number of lobby groups requesting that the United States Congress expand the definition of valid identification to include identifications issued from shelters, transitional housing programs and other services for people experiencing homelessness.³⁷

5.4 United States: Model State Homeless Voter Registration Act and Enactment of Homeless Voting Registration Laws in American States³⁸

The National Council for the Homeless ("NCH") has been involved in the "You Don't Need A Home To Vote" campaign in the United States since 1992. This campaign aims to lobby and effect written policies/opinions from either the State Elections Office or the State Attorney-General. The campaign seeks to protect and promote a homeless persons' right to vote, ensuring that people who are homeless maintain an active role and voice in shaping their future.

Since the inception of the campaign in 1992, thousands of homeless citizens have been registered to vote. The campaign according to the NCH, uses a five-pronged strategy of: registration; education; "get out the vote"; state and federal legislation; and litigation. Currently, 30 states require that a person have a mailing address in order to register and while nearly all states say that a person can register to vote even if he or she lives in a shelter or on the streets (that is 48 states), only 17 have written policies and 24 have verbal policies. Currently, only ten states (Arizona, Colorado, Illinois, Indiana, Iowa, Kansas, Maine, Nebraska, Oregon and West Virginia) have laws which give homeless people the right to vote. It is of concern that verbal policies on the homeless voter registration result in county election officials having a discretion of making their own policies.³⁹

The NCH has drafted a Model State Homeless Voter Registration Act which, during the past decade, has formed the basis for homeless voting legislation in Arizona, Colorado, Illinois, Indiana, Iowa, Kansas, Maine, Nebraska, Oregon and West Virginia. The Model Act is intended to provide guidance in relation to the provisions that a state's homeless voter registration law should include. The objective is, of course, to increase homeless voter participation in elections by overcoming restrictions on their eligibility by virtue of their homeless status. The following is an outline of some of the key provisions:

(a) Section 2 – "Definitions"

"Domicile" the place where a person's habitation is, and to which, whenever absent, the person has the present intent of returning.

³⁷ Such organisations involved in such lobbying include the National Coalition for the Homeless, the Law Committee for Civil Rights, National Council of La Raza, Disability Rights Education Defence Fund, National Network to End Domestic Violence, the Mexican American Legal Defence Fund, New York Coalition for the Homeless, US PIRG, and the Leadership Conference on Civil Rights.

³⁸ The Clinic acknowledges the considerable information provided by the NCH at www.nationalhomeless.org

³⁹ For further information regarding the NCH and the Model State Homeless Registration Act, please refer to www.nationalhomeless.org

"Non-Traditional Abode" includes shelters, parks, shanties, underpasses and cars.

"Homeless Provider" includes residential shelters, day centres, soup kitchens and food pantries.

The NCH notes that the key to assessing a person's domicile and residence is "present intent". That is, if an individual has the present intent of returning to a shelter or a park whenever the person is absent during the day, then that constitutes the requisite residence. It is not significant that at some unidentifiable time in the future the person intends to leave the shelter or park and live elsewhere.

(b) **Section 4 – "Residency"**

A person living in a residential shelter may be considered a resident of the election district where the shelter is located. A person living in a non-traditional abode other than a residential shelter has the option of electing that his or voting residence be either the "geographic location" or the street address of a homeless provider with which the homeless person has a relationship.

The NCH regards this section as the key to the Act. It signifies that a person living in a shelter is a resident of the election district in which the shelter is located even though the person does not live in a traditional house. Further, an individual who lives in a park, for example, can vote in the election district where the "geographic location" is situated or in a district where the shelter with which the person has a relationship is located. Persons living in non traditional abodes other than shelters may not want to use their "geographic location" because they may move frequently and thus would have to re-register every time their "geographic location" changed. Therefore, there is an alternative to using the address of a homeless provider so that if the location does change, the individual is not precluded from re-registration.

(c) **Section 5 – "Equal Treatment"**

A person's residency should not be challenged solely on the basis that a person lives in a non-traditional abode.

The NCH refers to the objective of the section as to prohibit an inference that a person is a non-resident solely on the basis of living in a shelter or in a park. They submit that people living in these locations should be treated the same as persons living in traditional residences with regard to determining residency. Therefore, a question about the true residence of a person cannot be raised solely on the basis that the person lives in a park instead of a house. A person who claims to live in a house in a particular election district is presumed to be a resident of that election district and it should therefore follow that a person who claims to live in a park or shelter in a traditional election district should also be presumed to be a resident of that election district.

(d) **Section 6 – "Registration Deadline"**

Registration for an election shall close at 8:00pm on the second Wednesday before the election.

The NCH clarifies that a significant number of states have a registration deadline of 30 days. Some states permit same day registration but most state legislatures would most likely reject an enactment of this type. The NCH advocates that state legislatures enact at least a deadline of within 14 days prior to an election on the basis that registration deadlines are often the major reason for why people who are homeless become disfranchised. Such people are ignorant of the deadline to register and are therefore less likely to become involved in an election until immediately before it occurs. They are therefore less likely to register before the deadline passes. Some states have reduced their deadline to below ten days and the NCH argues that other states should follow suit.

(e) **Section 7 – “Late Registration - In Person”**

A person who has failed to register by the registration deadline for an election can still vote in the election if the person completes a registration form in person at the City/County Registrars' Office by 5:00pm on the day before the election. Once the registration form is completed, the Registrar shall issue a certificate of registration to the person. The certificate can then be presented by the person on election day at the polling place, who she will then be entitled to vote.

The NCH states that this provision prevents the registration deadline being so final by conferring an exception for homeless people who are unaware of registration deadlines in recognition of the important right of voting.

(f) **Section 8 – “Mail Registration”**

A person may register by mail by filling out a registration card and having the card mailed or delivered to the City/County Registrar's Office. The registration card shall have postage pre-paid, with the address of the City/County Registrar's Office already printed on the front. The card shall only require the person to provide the information listed in section 11: for registration by mail to be considered totally, the registration card must be post marked no later than the second Wednesday before the election. Any person who is a registered voter in the state may help another person fill out a mail registration card.

NCH regards the mail registration provision as having the biggest impact on increasing the number of persons who are experiencing homelessness to register to vote. The provision facilitates the registration of people who are experiencing homelessness by allowing an employee of the shelters and soup kitchens to assist their clients with filling out the cards and dropping them in the mail.

(g) **Section 9(a) – “In-Person Registration - Shelters and Soup Kitchens”**

The director or an employee of the shelter or soup kitchen, or a client/shelter resident who uses the services of a shelter or soup kitchen, may apply to the city/county registrar to be appointed a deputy registrar. The city/county registrar is required to make such appointment if such director, employee, or person who is experiencing homelessness is a qualified voter in the city/county. The person shall be appointed as a deputy registrar for a period of 2 years. As a deputy registrar, the person will have the power to conduct in person registration at that location during normal business hours. The city/county registrar shall provide registration forms to all deputy registrars.

The NCH states that employees or clients/shelter residents who use the services of a shelter or soup kitchen acting as deputy registrars will have the effect of significantly increasing registration among persons who are homeless. Clients at the shelters and soup kitchens are much more likely to come forward and register with familiar deputy registrars as opposed to going to the city/county registrar's office.

(h) **Section 9(b) – "In Person Registration - Additional Sites"**

Any person may request in writing to the city/county registrar's office that the registrar conduct additional registration at a specific site. Such site can be at any place where more than 50 persons qualified to vote are located. If an additional site is requested, the registrar shall make a good faith attempt to conduct registration there.

The NCH states that this provision allows an additional in-person registration site upon request at any encampment or in any park where a large number of people who are currently homeless live.

(i) **Section 10 – "Registration by Absentee"**

A person may register in-person or by mail in a different city/county than the one in which that person resides. The city/county registrar who receives the registration form or mail registration card has the duty to forward the registration to the appropriate city/county registrar so that the person may be registered.

NCH states that this provision allows persons who are forced to live temporarily in a shelter located outside of the city/county of their residence to register without having to travel back to their city/county of residence.

(j) **Section 11 – "Registration Information Required"**

The mail registration card and registration form shall only require a person to provide his or her full name, date of birth, resident address, mailing address (if different), and location of previous registration. Persons living in shelters may provide the shelter address as their resident address. Persons who live in non-traditional abodes other than shelters may use either the geographic location where they live, or the address of a homeless provider with whom they have a relationship as their resident address. Persons using their geographic location as their resident address must give a description of the location with such specificity that the proper election district can be determined for such persons. The person is not required to present identification to register. The person must sign an oath that he or she is qualified to vote in that election district. If the person cannot write, he or she can sign the registration form or mail registration form with his or her mark.

The NCH submits that persons should not be required to present identification in order to register. A signed oath subject to criminal penalty is sufficient to deter voter fraud. Further, persons living on the streets should have a choice as to their resident address. If they are very transient, using their geographic location would be difficult because every time they moved, they would have to re-register. However, if the person is more permanently based, then he or she should be allowed to use his/her geographic location as a resident address. The geographic location (eg. the north-west corner of a local park) is important so that the person is allowed to vote in the

election district where he or she actually lives. It would not be difficult for the city/county registrar to determine the proper election district based on a specified geographic location.

(k) **Section 11(a) – "Mailing Address"**

An applicant may provide any type of mailing address to which non-forwardable mail can be delivered, including a post office box, general delivery, a shelter, or a soup kitchen. The city/county registrar is required to maintain a list of shelters and soup kitchens that have agreed to allow registered voters to receive mail there. A person can then use one of these shelters or soup kitchens as his or her mailing address. In the absence of a mailing address, the city/county clerks office may be substituted.

The NCH submits that there is no reason to limit the types of mailing addresses that can be used. Requiring the registrar to maintain a list of shelters and soup kitchens that have agreed to accept mail would assist those persons who do not have a readily available mailing address. If sufficient shelters and soup kitchens participate, a person registering will likely have an available mailing address that is close to his or her residence.

(l) **Section 12 – "Examination of Applicants for Registration"**

A person signing an oath that he or she is qualified to vote in an election district shall be presumed qualified to vote in that district. The city/county registrar shall refuse registration only if there is a preponderance of evidence that the person attempting to register is not so qualified. The city/county registrar cannot refuse registration however, on the sole basis that the person attempting to register lives in a non-traditional abode. The registrar must rely on other evidence that indicates that the person is not qualified to vote in that election district. If a person is refused registration, that person must be given notice of the refusal within 10 days.

The NCH highlights that the significance of this section is that a city/county registrar cannot refuse registration based solely on the assumption that a person who is currently experiencing homelessness is not a resident because he or she lives in a shelter or a park. The registrar must have other information to indicate that the person should not be considered a resident of the election district, before being allowed to refuse registration.

(m) **Section 13 – "Right of Appeal"**

All applicants refused registration have the right to appeal the refusal to the County Circuit Court within 30 days. The appeal shall be heard in a timely fashion so as to enable those whose appeal is successful to vote in the upcoming election.

The NCH comments that homeless applicants who attempt to register to vote close to the registration deadline or who attempt to register the day before the election and whom are refused registration will effectively be denied their right to vote if an appeal is not heard in a timely fashion.

(n) **Section 15 – "Verification Procedures"**

The city/county registrar shall conduct voter verification during the month of May each year. The verification shall be conducted both by mail and personal canvass. The city/county registrar shall first send by non-

forwardable mail a verification notice to all registered voters within that city/county. As long as the verification notice is not returned as non-deliverable, the voter shall continue to remain in the registration roll. If a notice is returned as non-deliverable and if the voter's resident address or mailing address is a shelter or soup kitchen, the city/county registrar shall request the employees of the shelter or soup kitchen to conduct a personal canvas during the month of June. If during that month, the registered voter uses the services of the shelter or soup kitchen, the employee shall report this back to the city/county registrar and the voter shall continue to remain on the registration roll.

If the voter does not use these services during the month of June, or if the voter's resident address or mailing address is not a shelter or soup kitchen, the city/county registrar shall send a notice by forwardable mail that the voter will be removed from the registration rolls unless a response is received within 30 days. The notice shall provide a return address reply card, with postage pre-paid, signifying that the voter is still qualified to vote in that election district. The reply card shall provide a space for the voter's new mailing and/or resident address in that election district. If a new address is provided in the reply card, the city/county registrar will then send a new voter identification card to that address within 10 days. If no response is heard within 30 days, the voter shall then be purged from the registration roll.

The NCH states that the city/county registrar should take every step to accurately determine whether a registered voter is still a resident of that election district before purging such voter from the registration roll. Moreover, it should not be difficult for the registrar to provide shelter and soup kitchen employees with a list of those voters who may be purged. The employees could then simply keep an eye out for those voters listed and if such voters used their services during the month of June, notify the registrar of this fact.

(o) **Section 16 – "Re-identifying"**

A voter who is purged pursuant to section 15 can still vote on election day if the voter goes to the polling place on election day and signs an affidavit that she or he is still qualified to vote in that election district.

The NCH refers to the exception that should be made to purging for such a important right as voting. The signing of an affidavit subject to criminal penalty is sufficient to deter voter fraud.

(p) **Section 18 – "Voter Education"**

Any shelter or soup kitchen that has more than 50 registered voters using its services may apply to the city/county registrar to have voter education conducted at its location each year. The voter education should cover the voting procedures that will take place on Election Day and shall also cover the importance of voting in a election.

The NCH comments that voter education is likely to increase voting by people who are experiencing homelessness by generating interest and emphasising the importance in individuals exercising their right to vote.

The city/county registrar must make a good faith effort to comply with each request.

The NCH states that increasing access to polling places will result in an increase in the electoral participation of people experiencing homelessness.

5.5 Canada: **Canada Elections Act 2000 (Can)**

There are no specific itinerant voter provisions in the Canadian legislation.

However, the *Canada Elections Act 2000* ("**Canadian Act**") has, to some extent, addressed the issues faced by homeless people participating in the political process. Furthermore, the Canadian Federal Government has adopted a purposive approach to the interpretation of the relevant sections of the legislation.

(a) **Qualifications for electors**

Section 3 of the Canadian Act provides that every person who is a Canadian citizen and is 18 years of age or older is qualified as an elector.

Every person who is qualified as an elector is entitled to be included on the list of electors for the polling division for which he or she is ordinary resident.⁴⁰

Further, section 49 of the Canadian Act provides:

Any person may at any time request the Chief Electoral Officer to include him or her in the Register of Electors, by providing

- (a) a signed certification that he or she is qualified as an elector;
- (b) his or her surname, given names, sex, date of birth, civic address and mailing address; and
- (c) satisfactory proof of identity.

An elector may be registered on the Register of Electors for that electorate prior to an election or may register on the day of the election. A person's ordinary place of residence is defined in s 8(1) to be the place "that has always been, or that has been adopted as, his or her dwelling place, and to which the person intends to return when away from it".

(b) **Ordinary Place of Residence for Homeless**

As homeless people are likely to struggle to determine an ordinary place of residence, the following sections are of specific importance to homeless people registering to vote:

Section 8 of the Act provides, *inter alia*:

- (5) Temporary residential quarters are considered to be a person's place of ordinary residence only if the person has no other place that they consider to be their residence.
- (6) A shelter, hostel or similar institution that provides food, lodging or other social services to a person who has no dwelling

⁴⁰ Section 6 of the *Canada Elections Act 2000*.

place is that person's place of ordinary residence.

Further, section 9 provides:

If the rules set out in section 8 are not sufficient to determine the place of ordinary residence, it shall be determined by the appropriate election officer by reference to all the facts of the case.

The *Canada Elections Act 2000* was intended to simplify the residency requirements and the discretion granted to the Chief Electoral Officer was the additional means of ensuring that individuals are not refused enrolment due to their homeless status.

Section 2(3) of the Act provides:

For the purposes of this Act, satisfactory proof of an elector's identity and satisfactory proof of residence are established by the documentary proof of the elector's identity and residence that is prescribed by the Chief Electoral Officer.

In the lead up to the 2000 federal election, Jean-Pierre Kingsley, the Chief Electoral Officer, used his discretion to interpret the above sections to mean that homeless people could, for the purposes of the Act, designate their place of residence to be the shelter in which they were registered to sleep on 25 November 2000 (two days prior to the election).⁴¹

Homeless people were required to furnish one piece of identification to fulfil the identification requirement. Such identification may consist of an official document bearing the elector's name and signature. Moreover, if a homeless person is unable to provide proof of identity, they may take prescribed oath as to their identity and residence, provided another voter registered in the same district vouched for them.⁴²

(c) **Voting not compulsory**

It should be noted that voting is not compulsory in Canada. Consequently the Canadian Act, contrary to the position in Australia, contains no penalties for failing to vote. Furthermore, no fines apply in the event that a homeless person is unable to register to vote, or where a person is registered and fails to vote.

⁴¹ *Library of Parliament* (Canada) on-line under the subject heading "*ELECTIONS Do the homeless have the right to vote in federal elections?*"

⁴² Section 161 of the *Canada Elections Act 2000*.

6. Conclusion – Improving the Representation of Homeless People on the Electoral Roll and in the Next Federal Election

Whilst there is scope for amendment to the "normal" elector registration requirements and voting regulations so as to take into account the needs and constraints of the homeless population, the Australian system differs in one critical aspect from its overseas counterparts: compulsory voting. Thus, unlike the United Kingdom, United States and Canadian systems which have all recently amended their general enrolment requirements and systems to provide for the special needs of the homeless population, this may not be the best approach in Australia.

Due to the penalties in the Australian registration and voting requirements relating to the enforcement of compulsory voting, the Clinic believes that the itinerant elector provisions are more amenable and appropriate for the homeless population as this group of electors are exempt from the penalties which apply to "normal" voters. The Clinic thus submits that reform and resources are most critically required in relation to the under-utilised scheme for enrolment as an itinerant elector.

However, the Clinic also recognises that many homeless people, such as the recent homeless, are also unjustifiably punished by the "normal" elector system when, for reasons related to homelessness, they are unable to comply with the strict administrative requirements. The Clinic submits that this is not only discriminatory, but also undermines the democratic idea by further marginalising an already under-represented minority group. It is the government's duty to actively encourage voter participation and ensure that it is not inadvertently preventing or discouraging homeless people from participating in the democratic process.

7. Annexure A – Section 23 of the *Electoral Act 2002* (Vic)

23. *Claims for enrolment and notice of change of address*

- (1) A person who is entitled to enrol on the register of electors (other than under section 22(3), 22(4) or 22(5)) and whose name is not on the register of electors must within 21 days of becoming so entitled--
- (a) complete and sign a claim for enrolment in the prescribed form in accordance with the directions on the form; and
- (b) forward the claim for enrolment to the Commission.

Penalty: 1 penalty unit.

- (2) A person who is entitled to enrol on the register of electors under section 22(5) may --
- (a) complete and sign a claim for provisional enrolment in the prescribed form in accordance with the direction on the form; and
- (b) forward the claim for provisional enrolment to the Commission.
- (3) A claim for enrolment under sub-section (1) or (2) must be witnessed by an elector.
- (4) If a person who is enrolled on register of electors changes the address of his or her principal place of residence, the person must notify the Commission in writing of the person's new address within 21 days after becoming entitled to be enrolled on the register of electors in respect of living at that new address.

Penalty: 1 penalty unit.

- (5) If a person forwards to the Commission--
- (a) a claim for enrolment under sub-section (1) or (2); or
- (b) a notice of change of address--

proceedings must not be instituted against that person for any offence against sub-section (1) or (4) allegedly committed before the forwarding of that claim or notice.

- (6) The Commission must process claim for enrolment under sub-section (1) or (2) or a notice of change of address in accordance with the regulations.
- (7) The Commission--

- (a) may accept or reject a claim for enrolment under subsection (1) or (2); and (b) must advise the person in writing of a decision to reject the claim.

8. Annexure B – Part 9 Division 2 of the *Electoral Act 2002* (Vic)

162. *Commission to prepare list of non-voters*

The Commission must after every election, prepare a list of the names of the electors who were entitled to vote at the election and did not vote.

163. *Notice to electors who have not voted*

- (1) Subject to sub-section (3), within 6 months after an election, the Commission must send by post to each elector whose name appears on the list prepared under section 162 at the elector's latest known address, a notice in the prescribed form--
 - (a) notifying the elector that the elector has failed to vote at the election; and
 - (b) requiring the elector to state the true reason for failing to vote.
- (2) The notice must specify--
 - (a) the full name of the elector as appearing on the list; and
 - (b) the elector's latest known address; and
 - (c) the address in respect of which the elector was enrolled; and
 - (d) a date (not being less than 21 days after the date of the posting of the notice) before or on which the form forwarded with the notice completed and signed by the elector is to be received by the Commission.
- (3) Sub-section (1) does not apply if the Commission is satisfied that an elector--
 - (a) is dead; or
 - (b) was absent from Victoria on election day; or
 - (c) was ineligible to vote at the election; or
 - (d) was issued with a ballot paper for the purpose of voting; or
 - (e) was an itinerant elector, eligible overseas elector or Antarctic elector; or
 - (f) was notified under section 104(2); or
 - (g) had a valid and sufficient excuse for not voting.

164. *Replies by or on behalf of electors*

- (1) An elector to whom a notice has been sent under section 163 must--
 - (a) complete the form forwarded with the notice by stating in it the true reason why the elector failed to vote; and
 - (b) sign the form; and
 - (c) post or deliver the form so as to reach the Commission not later than the date specified in the notice.
- (2) If an elector is unable to comply with sub-section (1) by reason of-
 - (a) the absence of the elector from the elector's residence; or
 - (b) the elector's physical incapacity--

any other elector who has personal knowledge of the facts may, subject to the regulations, comply with sub-section (1) on behalf of the elector.
- (3) Compliance with sub-section (2) is deemed to be sufficient compliance by the elector with sub-section (1).
- (4) If the Commission receives a form which complies with this section, the Commission must record on the list prepared under section 162 opposite the name of the elector to whom the form refers--
 - (a) a note to that effect; and
 - (b) whether or not in the opinion of the Commission the reason contained in the form is a valid and sufficient reason for the failure of the elector to vote at the election.
- (5) If the Commission does not receives a form which complies with this section from an elector sent a notice, the Commission must record a note to that effect on the list opposite the name of the elector.

165. ***List to be evidence***

The list prepared under section 162 indicating--

- (a) the names of electors who did not vote at the election; and
- (b) the names of electors from whom or on whose behalf the Commission received within the time allowed forms properly completed and signed; and
- (c) the names of electors from whom or on whose behalf the Commission did not within that time receive forms properly completed and signed; and

(d) the opinions of the Commission -

or a copy of the list, or any extract certified by the Commission, is evidence of the contents and of the facts stated in the list or extract.

166. **Offences**

(1) An elector who--

- (a) fails to vote at any election without a valid and sufficient excuse for the failure; or
- (b) fails to comply with section 164; or
- (c) states in a form under section 164 a false reason for not having voted; or
- (d) in the case of an elector completing or purporting to complete a form on behalf of any other elector, states in the form a false reason why the other elector did not vote--

is guilty of an offence.

Penalty: 1 penalty unit.

(2) Despite anything to the contrary in this Act, proceedings for the enforcement of the penalty under sub-section (1) may be commenced under this Division within 12 months after the date of the election by an authorised officer.

167. **Power to serve infringement notice**

(1) An authorised officer may serve an infringement notice on a person who the authorised officer has reason to believe has committed a prescribed offence.

(2) An infringement notice may be served--

- (a) by personally serving the infringement notice on the alleged offender; or
- (b) by sending the infringement notice by post addressed to the alleged offender's latest known address.

168. **Form of notice**

An infringement notice must--

- (a) be in the prescribed form; and
- (b) state the penalty fixed under section 170 for the offence; and
- (c) state that if the amount of the penalty is tendered at the place referred to in the notice the matter will not be

brought before the Magistrates' Court unless the notice is withdrawn before the end of the period specified in the notice as the time for payment of the penalty.

169. ***Withdrawal of infringement notice***

- (1) The authorised officer may withdraw an infringement notice at any time within 28 days after the notice is served by serving a withdrawal notice on the alleged offender.
- (2) An infringement notice may be withdrawn even if the appropriate penalty has been paid.
- (3) If a notice of withdrawal is served, the Commission must refund the amount of any penalty paid on an infringement notice before it is withdrawn.

170. ***Penalties to be paid for offences under infringement notices***

The penalty fixed for an offence for which an infringement notice has been issued is 50% of the penalty under section 166(1).

171. ***Payment of penalty***

- (1) If the person pays the penalty shown on the infringement notice within the time shown in the notice or, if the authorised officer allows, at any time before the service of the summons in respect of the offence--
 - (a) further proceedings may not be taken in respect of the offence; and
 - (b) no conviction is to be recorded against the person for the offence.
- (2) A penalty paid under this section must be applied as if the offender had been convicted of the offence in the Magistrates' Court on a charge filed by the authorised officer who served the infringement notice.

172. ***Infringement notice not to prejudice further proceedings***

- (1) If--
 - (a) a person served with an infringement notice has not paid the penalty within the time specified in the infringement notice; or
 - (b) an infringement notice is withdrawn--proceedings may still be taken or continue for the alleged offence.
- (2) If proceedings have been taken or continued for an alleged offence because the person has not paid the penalty specified in the infringement notice and a conviction is imposed by the

Magistrates' Court, the conviction must not be taken to be a conviction for any purpose except in relation to--

- (a) the making of the conviction itself; and
- (b) subsequent proceedings which may be taken in respect of the conviction itself, including proceedings by way of appeal.

173. ***Enforcement of infringement penalty***

Payment of the infringement penalty may be enforced in accordance with Part 2 of Schedule 7 to the **Magistrates' Court Act 1989** if--

- (a) the infringement notice is an infringement notice within the meaning of Schedule 7 to that Act; and
- (b) the infringement penalty has not been paid within the time specified in the infringement notice; and
- (c) the infringement notice has not been withdrawn; and
- (d) proceedings have not been taken under section 172.

9. Annexure C – Section 96 of the *Commonwealth Electoral Act 1918* (Cth)

96. Itinerant electors

(1) A person who:

- (a) is in Australia; and
- (b) because the person does not reside in any Subdivision, is not entitled to be enrolled for any Subdivision;

may apply to the Australian Electoral Officer for a State for enrolment under this section for a Subdivision in that State.

(2) The application must be:

- (a) in the approved form; and
- (b) signed by the applicant; and
- (c) attested to by a person referred to in paragraph 98(2)(c).

(2A) The Australian Electoral Officer shall cause the name of the applicant to be added to the Roll:

- (a) for the Subdivision for which the applicant last had an entitlement to be enrolled;
- (b) if the person has never had such an entitlement, for a Subdivision for which any of the applicant's next of kin is enrolled;
- (c) if neither paragraph (a) nor paragraph (b) applies, for the Subdivision in which the applicant was born; or
- (d) if none of paragraphs (a), (b) and (c) applies, the Subdivision with which the applicant has the closest connection.

(2B) The Australian Electoral Officer shall also annotate the Roll so as to indicate that the person is an itinerant elector.

(2C) Until an annotation under subsection (2B) is cancelled, the person to whom the annotation relates is entitled to be treated as an itinerant elector.

(3) Notwithstanding anything contained in subsection 99(1) or (2), while a person is entitled to be treated as an itinerant elector by virtue of an annotation under subsection (2B) to the Roll for a Subdivision, the person is entitled to:

- (a) have his or her name retained on the Roll for the Subdivision; and
- (b) vote as an elector of the Subdivision.

(4) Where an application under this section is received by an Australian Electoral Officer after 8 p.m. on the day of the close of the Rolls for an election to be held in the Division to a Subdivision of which the application relates, the name of the applicant shall not be added to the Roll for the

Subdivision, and the annotation of the Roll under subsection (2B) in relation to the applicant shall not be made, until after the close of the polling at that election.

(5) Where an Australian Electoral Officer:

- (a) grants or refuses an application made under subsection (1); or
- (b) is of the opinion that an application made under that subsection cannot be proceeded with because of the operation of subsection (4);

the Australian Electoral Officer shall notify the applicant in writing of that decision or opinion, as the case may be.

(6) Where an Australian Electoral Officer notifies a person under subsection (5) of a decision to refuse an application made under subsection (1), the notice shall include a statement to the effect that a person whose interests are affected by the decision may, subject to the *Administrative Appeals Tribunal Act 1975*, if he or she is dissatisfied with the decision, make an application to the Administrative Appeals Tribunal for review of the decision.

(7) Where a person who has applied under subsection (1) to be treated as an itinerant elector:

- (a) resides in a Subdivision for a period of 1 month or longer;
- (b) forms the intention to depart from Australia and to remain outside Australia for a period of 1 month or longer; or
- (c) ceases to be entitled to enrolment;

the person shall, as soon as practicable, give notice in writing to the Australian Electoral Officer to whom the application under subsection (1) was made of the happening of the event referred to in paragraph (a), (b) or (c), as the case may be.

(8) Subject to subsection (9), where a person who is being treated as an itinerant elector under this section resides in a Subdivision for a period of 1 month or longer, the person ceases to be eligible to be treated as an itinerant elector under this section on the expiration of that period of 1 month.

(9) A person ceases to be entitled to be treated as an itinerant elector under this section if:

- (a) while the person is being so treated, a general election is held at which the person neither votes nor applies for a postal vote;
- (b) the person ceases to be entitled to enrolment; or
- (c) the person departs from Australia and remains outside Australia for a period of 1 month or longer.

(10) Where the Australian Electoral Officer who has caused the name of a person to be added to the Roll for a Subdivision of a Division under this section becomes aware that the person has ceased to be entitled to be treated as an itinerant elector under this section by virtue of subsection (8) or (9), he or she must:

(a) if the person ceases to be entitled otherwise than because of paragraph (9)(b) and the Australian Electoral Officer is aware that the person resides in the Division---cause the annotation made in relation to the person under subsection (2B) to be cancelled; or

(b) in any other case---cause the enrolment of the person on the Roll for the Subdivision to be cancelled.

(11) If, after an application is made by a person under this section to be treated as an itinerant elector and before the person's name is added to the Roll and an annotation under subsection (2B) is made in relation to the person, an event occurs by reason of which, if the name had been so added and the annotation so made, the person would cease to be entitled to be treated as an itinerant elector under this section, whether immediately or otherwise, then:

(a) where the name was not added to the Roll, and the annotation was not made, before the Australian Electoral Officer to whom the application was made became aware of the happening of the event--the Australian Electoral Officer shall not cause the name to be added to the Roll under this section or cause the annotation to be made; or

(b) where the name is added to the Roll and the annotation is made---the person ceases to be entitled to be treated as an itinerant elector immediately after the name is added and the annotation is made.

(12) For the purposes of this section, a person shall be taken to reside at a place if, and only if, the person has his or her real place of living at that place.

(13) In this section:

"Australia" does not include Norfolk Island.

10. Appendix A – Approved Form for Claim to Vote

**11. Appendix B – Approved Forms for Enrolment as Itinerant
Elector**