

REPORT – Enrolment for 2013 Federal Election

Justice Action was recently engaged in a series of nation-wide enquiries with all of the States and Territories of Australia, to ascertain what efforts and structures had been made to guarantee that all eligible prisoners, forensic patients and involuntary patients had been enrolled to vote in the upcoming Federal Election on the 7th September, 2013. The deadline for enrolment was 8pm (EST) on Monday 12th August.

The results collected were troubling to say the very least – especially since voting is a fundamental civil right for any citizen in a democracy like Australia.

The research carried out by JA revealed a fundamental lack of consistency and adequate consideration being put into the preparations for ensuring that all these Australians have their fair opportunity to participate on Election Day.

Why is it important?

This issue is of vital importance for those affected, and a concern for all those who value democratic values. The right to vote is, at its very core, a question of a person's status in society.

A person who is able to vote has the same voice in our democracy as every other Australian; a prisoner gets one vote just like Rudd or Abbott, when it comes to ballot time.

It is a question of equality that has been fought hard to win and to preserve throughout Australian history.

Eligibility

Australia is quite unique in the fact that both registration and voting are mandatory for all citizens over eighteen years of age. Those who are inside institutions against their will depend on those in charge to be afforded a proper chance to participate in society by being properly informed of this duty.

Australian prisoners who are serving a sentence of less than three years are ineligible to vote under current law. Mental Health patients are vulnerable to lose their voting rights if they are deemed to be 'unsound of mind' by a medical practitioner.

Overall, it seems that there are already many challenges for eligibility to vote, so ensuring that those who remain are given adequate opportunity to participate is fundamental.

Roach v Commonwealth case

The recent case of *Roach v Commonwealth of Australia (2007)* was a pivotal moment in the fight to protect the civil right of prisoners to vote in Australia.

The case involved the fight by the female prisoner, Vickie Roach, to overturn the Howard Government's decision in 2006 to take away the right to vote from all Australian prisoners. When the High Court held that the law was not valid, it was a huge victory for prisoners throughout the country and for democracy.

The Research

For this report, Justice Action contacted the various parties who were involved in the enrolment process, or who had a duty of care to ensure that prisoners, forensic patients and involuntary patients were enrolled to vote. This involved contacting the Australian Electoral Commission (the AEC), Corrective Services in each state, and the health services responsible for the administration of consumers such as forensic patients and involuntary mental health patients.

These parties were contacted through email and by phone to find out what measures they were taking to ensure the registration and enrolment of all eligible persons in their respective systems.

The results discussed below are based on the direct feedback we received through conversations with the AEC, the Department of Corrective Services and mental health services in each state.

The Results

The AEC

Our interactions with the AEC were mainly positive and respectful in this process; particularly in relation to the enrolment of prisoners. In regard to the enrolment of Mental Health patients, there was a lot of confusion among the states, with many of the commissions being uninformed as to what policies were in place for Forensic and Involuntary patients. The responses varied, from assuming that they would follow the same processes as those in place for prisoners to claiming that it was the individual responsibility of the patient.

NSW

Corrective Services

In NSW, corrective services had done a fairly good job of ensuring eligible prisoners were registered and enrolled. There were arrangements in place to ensure that enrolment forms were distributed among prisoners, completed and returned to the AEC in the required time frame.

Both the NSW AEC and NSW Department of Corrective Services confirmed these arrangements, and this consistency between agencies makes it appear as though prisoners in NSW were given the opportunity to enrol.

Mental Health

The 18 districts, which make up the NSW health system, reflected a broad range of independently controlled systems.

The results show that a majority of the districts were poorly organized with some areas in denial over the extent of the situation; saying that there were no forensic or involuntary mental health patients within their jurisdiction so the enquiry did not apply to them. One representative even asked JA if we could help their patients to enrol.

Justice Health is an additional organisation that is responsible for all forensic mental health patients in NSW. They had advised that there were procedures in place to ensure enrolment of patients but would not provide details as to what these procedures were.

It was not until we contacted one of the forensic hospitals directly that we were advised that the enrolment of forensic patients in NSW follows the same procedures as the enrolment of prisoners.

The issue here is that the enrolment process for prisoners cannot be easily applied to mental health consumers. Depending on the severity of the mental illness, consumers may require assistance with completing the forms and there has been no confirmation that such assistance was provided. Furthermore, prisoners were required to return their enrolments through replied paid envelopes.

This begs the question; for patients deemed to be of unsound mind and in state care, why was it the responsibility of the patients to ensure their enrolment status instead of making arrangements between health services and the AEC to ensure the receipt of these enrolment forms?

WA

Corrective Services

The corrective services in WA seem to have made an effort in the top end of the administration to carry out the registering process. However, at the lower levels, there appears to have been a failure to carry out these planned measures effectively.

Mental Health

The health system in WA was not able to provide an account of the measures taken to ensure the enrolment of forensic patients or involuntary patients. As such, patients in the state run the risk of being denied their civil right to vote.

NT

Corrective Services

NT Corrective Services was not able to provide an account of the measures taken to ensure the enrolment of forensic patients or involuntary patients. As such, patients in the state run the risk of being denied their civil right to vote.

Mental Health

It looks as though, health services in the Northern Territory had done a fairly good job of ensuring eligible prisoners were registered and enrolled. They had distributed forms, provided assistance to consumers completing the forms and arrangements had been made within the department to ensure that all enrolment forms were collected and received by the AEC before the cut-off time.

In this instance, it appears that the Northern Territory have recognized the significance of the right to vote amongst one marginalized group in the community however have not been considered as an equal priority. Out of sight, out of mind.

Tasmania

Corrective Services

In Tasmania, corrective services seem to have done a fairly good job of ensuring eligible prisoners were registered and enrolled. Ensuring that all prisons had received and distributed enrolment forms to eligible prisoners; which served as a comfort considering the AEC had informed Justice Action they had only sent enrolment forms to one correctional facility when there are 6 in the state.

Mental Health

In Tasmania, "Forensic Mental Health Services have implemented processes" to ensure the enrolment of patients. It was not made clear what processes were being followed and so it is possible that these patients may not have been aware of the need to enrol to vote.

Queensland

Corrective Services

In Queensland, Corrective Services appear to have done a fairly good job of ensuring eligible prisoners were registered and enrolled. There were arrangements in place to ensure that enrolment forms were distributed among prisoners, completed and returned to the AEC in the required time frame.

Both the QLD AEC and QLD Department of Corrective Services confirmed these arrangements, and this consistency between agencies makes it appear as though prisoners in NSW were given the opportunity to enrol.

Mental Health

The results show that a majority of the districts seemed poorly organized, with the department expressing the opinion that it was an “individual responsibility” of each patient to ensure that they are enrolled.

From this, it is highly likely that no processes had been in place to ensure enrolment of forensic and involuntary patients nor would any unenrolled patients have been aware of the need to enrol.

South Australia

Corrective Services

In South Australia, Corrective Services appear to have done a fairly good job of ensuring eligible prisoners were registered and enrolled. There were arrangements in place to ensure that enrolment forms were distributed among prisoners, completed and returned to the AEC in the required time frame.

Both the SA AEC and SA Department of Corrective Services confirmed these arrangements, and this consistency between agencies makes it appear as though prisoners in NSW were given the opportunity to enrol.

Mental Health

The health system in South Australia was not able to provide an account of the measures taken to ensure the enrolment of forensic patients or involuntary patients. As such, patients in the state run the risk of being denied their civil right to vote.

Victoria

Corrective Services

Corrective Services in Victoria was not able to provide an account of the measures taken to ensure the enrolment prisoners. As such, prisoners in this state run the risk of being denied their civil right to vote.

Mental Health

There has appeared to be a lot of miscommunication in this state in regards to who is responsible for ensuring the enrolment of forensic and involuntary patients. The Department of Health itself has stated that they are not responsible as health services were delivered by independently constituted health services.

Furthermore, the AEC advised that that the enrolment of forensic and involuntary patients in the state were being coordinated with the Thomas Embling Hospital. This institution is *one* health service and, while it may cater to forensic mental health patients, it does not care for all involuntary patients in the state.

From this, it would appear that a large proportion of the state's forensic and involuntary mental health patients were deprived of the opportunity to enrol in the upcoming election.

ACT

Corrective Services

The Corrective Services in the ACT seem to have made an effort in the top end of the administration to carry out the registering process. However, at the lower levels, there appears to have been a failure to carry out these planned measures effectively.

Despite the AEC sending out enrolment forms to the prisons directly, the prisons had informed JA that unless the forms were addressed to the prisoners themselves, the prisoners would not have received any enrolment forms. We suspect that a similar scenario has occurred in Western Australia.

Mental Health

In the ACT, Health Services appear to have done a fairly good job of ensuring eligible prisoners were registered and enrolled. There were arrangements in place to ensure that enrolment forms were distributed among prisoners, completed and returned to the AEC in the required time frame.

Both the ACT AEC and ACT Mental Health Services confirmed these arrangements, and this consistency between agencies makes it appear as though mental health patients in the ACT were given the opportunity to enrol.

Conclusion

The results showed that in a number of states voting is not recognised as a right of citizenship and is instead being treated as though it is a privilege. Personnel in some states, such as South Australia, Victoria and Tasmania, were unaware that voting was a right as well as a responsibility of every citizen in Australia. Furthermore, these organisations were not aware of their duty of care over citizens detained in state care; that it was their responsibilities as State 'carers' to ensure prisoners and mental health patients were enrolled to vote.

There is also the problem of the right to vote by detained citizens being recognised but the procedures in place to uphold this right are not implemented correctly. This could be because there was not enough forward planning on the issue and so no policy had been created previously that could be implemented for any or all elections. Also, the personnel responsible may recognise the right of such citizens to vote however they may not consider it a high priority compared to other responsibilities. This could risk enrolment applications not being received by the Electoral Commission before the cut-off

or prisoners and patients themselves not being aware of the need to confirm their enrolment status.

Clearly, some states have done a far superior job of ensuring that processes to ensure enrolment were carried out in a well-structured and efficient manner. For others, there appears to have been a lot of miscommunication of what the roles of each organisation actually were in the process, with some neglecting to acknowledge their responsibilities to and the rights of these people in State Care.

It is clear that there needs to be some revision of how these institutions ought to work with other agencies and government departments to ensure that the few rights held by people detained by the state are upheld.