



NATIONAL CHILDREN'S AND YOUTH LAW CENTRE

SHOULD CHILDREN HAVE THE RIGHT TO VOTE?

DISCUSSION PAPER 003/95
DECEMBER 1995

THE UNIVERSITY OF
NEW SOUTH WALES



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ISBN: 0 646 26698 5
Discussion Paper Series ISSN: 1321-4624

Contents

	page
1.0 Introduction	1
2.0 The basis of the right to vote	2
2.1 Voting as a democratic right	2
2.2 Universal suffrage	2
2.3 Voting and citizenship	3
2.4 Voting as part of citizenship education.....	4
2.5 Voting and inclusiveness.....	4
2.6 Voting and the age of majority	5
2.7 Capacity to make political choices.....	6
2.8 Voting and youth perceptions of politics and politicians.....	7
2.9 Voting and age discrimination	7
2.10 Voting and military service	7
2.11 Voting as universal human right	8
3.0 Other avenues for youth participation in politics.....	10
3.1 Youth lobby groups	10
3.2 Membership of political parties	10
3.3 Youth parliaments	11
3.4 Official agencies speaking for children	12
4.0 Arguments against lowering the voting age	13
4.1 Children are incapable of making rational and informed judgments on political issues	13
4.2 Children are dependent on adults economically and in other ways	13
4.3 Parents can be expected to reflect the views of their children	14
4.4 Children would not express their own wishes would be influenced or manipulated by adults	14
4.5 Voting is a privilege only for those prepared to take on civic responsibilities of maturity	14
4.6 If children want equal rights they must forfeit their special advantages	15
4.7 Childhood is an apprenticeship for life and children should wait until adulthood before voting	15
4.8 Politicians can be trusted to promote and protect the interests of children	16
4.9 Children are heavily subsidised by government and make no contribution to the economy	17
4.10 Children are not interested in politics	17
4.11 Children are not clamouring for the right to vote	18
4.12 No other country gives children the right to vote so it cannot be a good idea	19
5.0 Issues involved in lowering the voting age	20
5.1 At what age should children have the right to vote?.....	20
5.2 Capacity.....	20
5.3 Independence.....	20
5.4 Contributions and responsibilities.....	20
5.5 Fixing an age.....	21
5.6 Should voting rights be optional or compulsory for under 18s	21
5.7 Other public and private responsibilities	23
6.0 Conclusion.....	24

Should Children Have the Right to Vote?

I think we should be allowed to vote and take on the responsibility of deciding the future

South Australian young person quoted in pilot study on attitudes to voting

One of the most important rights that should be available to the young is the right to vote.

John Holt, 'Escape from Childhood: The Needs and Rights of Children' (1975)

The exclusion of children from voting is part of a broader exclusion of children from decision-making. Children in all societies are denied rights to make decisions about their affairs which adults take for granted and consider to be essential to a democratic way of life.

Bob Franklin, 'Votes for Children' Childright Bulletin No: 85 April 1992

Our democracy is based in the premise that groups of people will stand up for their own interests and rights. But generally speaking children and young people are not in the position to do this. Children are a large but uniquely uninfluential sector of the population. They are particularly powerless and vulnerable, and are generally highly restricted in both the extent to which they can take decisions about their own lives and the extent to which they can participate in society's overall decision making processes.

Martin Rosenbaum and Peter Newell 'Taking Children Seriously' (1991)

The child who is capable of forming his or her own views shall have the right to express those views freely in all matters affecting the child

Article 12 United Nations Convention on the Rights of the Child

Should Children Have the Right to Vote?

1.0 Introduction

In a country that takes such pride in democracy, in the concepts of universal suffrage and the notion of 'one person one vote' it is surprising that so little thought has been given to laws which deny all children and young people under the age of eighteen the right to vote.

Children and young people find themselves in the company of 'people of unsound mind', of prisoners and serious criminals in being denied the right to vote.

This discussion paper considers the basis of the right to vote and the arguments for and against lowering the voting age.

The paper has been prepared because many young people who have contacted or been consulted by the National Children's and Youth Law Centre (NCYLC) since 1993 have talked about their feelings of powerlessness in the political system. A lowering of the voting age is seen by them as one way of addressing this problem.

The NCYLC is the only Australian *national* community legal centre working exclusively for and with children and young people. It is a joint project of the University of New South Wales, the University of Sydney and the Public Interest Advocacy Centre, initially funded by the Australian Youth Foundation.

The NCYLC promotes the rights and interests of all Australian children and young people by advocacy, lobbying, test case litigation, information collection and dissemination and research. Since its inception, the NCYLC has made over sixty submissions on laws and policies which affect children and young people and has handled over 3,500 inquiries.

2.0 The basis of the right to vote

2.1 Voting as a democratic right

Democracy is a system in which the will of the people is paramount. People express their will through their elected representatives who sit in Parliament and vote on their behalf. The right to vote and to stand for election are essential to the democratic system.¹

Australians believe in democracy. Fundamental to democracy is the principle of universal suffrage, 'one person one vote'. Women gained equal voting rights in South Australia a century ago and have long had the right to vote in all states of Australia. Aboriginal people were denied the vote until 1967. We now see it as unjust and insupportable that Australia's indigenous people should have for so long been denied the fundamental right to have a say in the choice of political leaders and policies.

The right to vote can be seen as the most important of all rights. It is the means by which people can exercise some influence over the nature and quality of the society in which they live and over laws and policies which will affect them in their daily lives. It is at the very heart of democracy. As a United States Supreme Court judge has said: 'Other rights, even the most basic, are illusory if the right to vote is undermined'².

2.2 Universal suffrage

Australians see their system as one of 'universal suffrage' yet we deny under 18s (representing 26% of the population) the right to vote.

The only other groups denied the right to vote in Australia are sentenced prisoners, criminals who have committed serious offences and psychiatric patients. Imprisoned criminals are presumably denied the right to vote by way of punishment for their criminal behaviour or because that behaviour is judged to merit forfeiture of their citizenship rights during the period of punishment³. Psychiatric patients under compulsory orders no doubt lose their right to vote because their incapacity is presumed because their unsoundness of mind and need for institutional containment is taken as proof of their incapacity.

Why has the right to vote and to stand as a candidate in parliamentary election been denied to children and young people? Their disenfranchisement cannot be justified in terms of their anti-social behaviour or any proven mental or physical incapacity. In New South Wales, even people who are so physically incapacitated that they cannot sign the enrolment or voting form can vote.⁴ One does not have to pass a test in English language, literacy, intellectual ability or political knowledge to qualify to vote. Not even an eyesight test is required! In the case of children it has long been presumed that they should be excluded from the democratic process but the reasons for their exclusion have not been identified. It is as if it was self-evident that youth was a disadvantage.

¹ A Bill of Rights for ACT - Issues Paper Attorney-General's Dept (1993) para 131

² Justice Black in *Wesberry v Saunders* (1964) 376 US 1 at 17

³ In 1995 the Commonwealth Joint Standing Committee on Electoral Matters recommended a change in the law to enfranchise prisoners but their recommendation was not accepted

⁴ Parliamentary Electorates and Elections Act 1912 s32

Politicians often speak about the rights and obligations of Australian citizenship and exhort young people to be more aware of the rights and responsibilities that flow from their status as Australian citizens. On 27 September 1994, the then Deputy Prime Minister Brian Howe, in an address to the Australian Labour Party Conference remarked that:

Labor recognises that to be an Australian citizen is not just about the enjoyment of civil and political rights. Rather, to be a citizen is to be able to fully participate in the life of the community by sharing the general standard of living and in the quality of life. Being a citizen implies a social and economic status as well as a civil and political one.....

Considerable resources are currently being outlaid by the Commonwealth government on citizenship education in schools. The Minister for Schools, Hon. Ross Free, announced in January 1995 a national program of civics education to assist in the development of an informed and knowledgeable citizenry and one which would be able to contribute to the political debate in an educated and informed manner. The government is putting \$20 million into a civics and citizenship education program in Australian schools.

Bob Franklin has commented that children are a unique political group in democracies in that they constitute a clear violation of the democratic principle that no individual or group should be subject to laws which they have not participated in making⁵. With the current Australian emphasis on 'citizenship' and on the rights and obligations flowing from this status, it is perhaps time to reconsider the question of voting rights for children. If we want them to behave as responsible citizens we need to give them some stake in society and some opportunity to influence its policies and priorities. Brian Simpson has made this point:

Perhaps the strongest argument in favour of lowering the voting age is that it would reverse the trend in recent years to scapegoat young people for various social problems. It would redress a power imbalance which makes young people easy targets for politicians who want to make a name for themselves. By giving young people some power they would have to be included in society's decisions and perhaps better decisions would result. It might just help reduce some of the alienation which the political exclusion of young people currently causes.⁶

In an interesting legal development Justice Gaudron of the High Court of Australia in the *Teoh* decision advanced the argument that fundamental rights were acquired by children by reason of their status as Australian citizens stating that:

Citizenship involves more than obligations on the part of the individual to the community constituting the body politic of which he or she is a member. It involves obligations on the part of the body politic to the individual, especially if the individual is in a position of vulnerability. And there are particular obligations to the child citizen in need of protection. So much was recognised as the duty of kings, which gave rise to the *parens patriae* jurisdiction of the courts. No less is required of the government and the courts of a civilised democratic society.⁷

While it was the best interests principle that was in issue in *Teoh*, the decision adds some force to the argument that the democratic right to vote might be seen as flowing from one's status as an Australian citizen.

⁵ Franklin, B (ed) *The Rights of Children* Oxford: Blackwells (1986) and *Votes for Children* Childright Bulletin 1992
⁶ Simpson, B "Democracy: Give Children the Vote" *Alternative Law Journal* v18 no4 (1993) pp190-191
⁷ Minister of State for Immigration and Ethnic Affairs v Ah Hin Teoh High Court of Australia 7 April 1995

2.4 Voting as part of citizenship education

4

Children learn by doing. They learn about decision making by making decisions. They can learn about politics and the electoral system by being able to express their views and preferences through the ballot box.

This argument has been developed by John Holt who has written:

The other great reason for giving people control over their government, and hence over their lives, is that it may and probably will make them more informed and responsible. People do not always learn from experience, but without it they do not learn at all. And experience is not enough, they must have not just experience but the ability to affect experience. If they think their choices and decisions will make a difference to them, in their own lives, they will have every reason to try and choose and decide more wisely. But if what they think makes no difference, why bother to think?⁸

2.5 Voting and inclusiveness

The principle of inclusiveness is widely accepted. The idea is that those who are affected by decisions should be part of the decision-making process.

One Federal MP has described children and youth as the 'most unrepresented minority' in Australia and has pointed out that, in a country that can take pride in its increasing tolerance towards minority groups, the interests of a very significant minority group, those of youth, are too often overlooked and devalued.⁹

This view has been echoed by other commentators. The Western Australian Children's Services Council made the point that children, because of their lack of political power, are wholly dependent on the goodwill of adults, 'Without political impact children and young people must rely on adults to voice their concerns in the public arena. Too often, however, the response is one which suits adults in preference to children.'¹⁰

Maira Rayner, then Equal Opportunity Commissioner of Victoria, wrote:

We expect people to stand up for their own rights. Children cannot demand remedies for their wrongs. They are a largely uninfluential section of the community. They do not have access to the means of exerting power, or protecting their own vulnerability. They do not play any part in the processes which determine the policies which affect them. They, unlike other subjects of discrimination, are peculiarly unable to organise themselves politically.¹¹

John Holt, views the right to vote as a matter of justice and argues that 'to be subject to the laws of a society without having any right or way to say what those laws should be is a most serious injustice'. He puts it this way:

If I am going to be affected by what you decide, I should have a say in it. If you are going to have control over me, then I should have some over you.¹²

8 ibid p118

9 Fed MP Rodney Sawford Port Adelaide, SA - Historic House Hansard 28 May, 1992.

10 W.A. Children's Advisory Council (1992) p2

11 Rayner, M "Children's rights in Australia: do we need the Convention?" 12 to 25 v1 no3 (1991) pp22-25

12 Holt, J Escape from Childhood: The Needs and Rights of Children Penguin (1975) p118

The right to vote is seen as one of a bundle of rights which children acquire at midnight before the day of their 18th birthday. In recent times the voting age has tended to move in tandem with the age of majority. The age of majority is the point at which a child attains legal adulthood, it marks the passage from the dependant legal status of 'minority' or 'infancy' to the full legal status of 'majority' or 'adulthood'. At common law a minor is deemed to be under a general incapacity to exercise the rights of citizenship and to perform civil duties or to hold public or private offices or perform the duties incidental to them¹³. In law, growing up is not a continuous and cumulative process, it is an instantaneous transformation from childhood to adulthood.

While the law has long recognised a chronologically determined legal threshold between childhood and adulthood, the specific age has moved upwards and downwards to take account of the social thinking of different generations.

At one stage the age was 12 for girls and 14 for boys. One hundred years ago the age of majority was 21 for males and females but a lower 'age of discretion' of 14 for girls and 16 for boys was recognised¹⁴. A parent could not enforce a custody order against a reluctant child who had attained the age of discretion. In Australia, the age of majority was reduced to 18 in the late 1970s in the Commonwealth and in each state and territory¹⁵. It had earlier been reduced to 18 in the United Kingdom¹⁶. Today the age of majority has become largely irrelevant. The *Gillick* case¹⁷ decided that in the absence of any statutory provision children could make their own decisions when they had acquired the requisite capacity. Powers acquired by children at the age of 18 are almost all now set by statute law.

While it may be convenient to fix a chronological age at which children attain full legal powers, a rigid aged-based criterion fails to take account of the considerable variations in maturity of individual children and young people, the varying degrees of maturity and competence needed to handle different situations and the degree of harm that may result from an immature or unwise decision.

Children under the age of 18 cannot marry (without parental consent), cannot (with some exceptions) enter into binding contracts and they cannot change their names or vote. While there may be serious adverse consequences of entering into an unwise marriage or a disadvantageous contract there is little chance of harm to a minor resulting from a change of name and even less from an injudicious vote.

While minors are protected from some of the responsibilities of adulthood, they are still required to pay taxes, they can be bankrupted for non-payment of enforceable debts and they can be sued in negligence and other torts if they are found to be able to distinguish right from wrong¹⁸.

The *Gillick*¹⁹ decision resulted in a significant shift in the common law away from a fixed age approach to a individual capacity approach to children's powers. In *Gillick* it was accepted that children have the right to make decisions for themselves when they have

¹³ Halsbury Laws of England 4th ed para 604

¹⁴ *Agar-Ellis v Lascelles* (1883) 24 Ch D 317,326

¹⁵ Irving T, Maunders D, Sherington G *Youth in Australia: Policy Administration and Politics* (1995) pp150 ff

¹⁶ Family Law Reform Act 1969 (UK) s9(1) with effect from 1 January 1970

¹⁷ *Gillick v West Norfolk and Wisbech Area Health Authority and Anor.* [1985] 3 All ER 578, (1986) AC 112, [1986] 1 FLR 224 followed in *Secretary, Department of Health and Community Services v JWB (Marion's Case)* (1992) 175 CLR 218

¹⁸ Halsbury Laws of England 4th ed para 626

¹⁹ See note 17

attained the intelligence and understanding to make an informed judgment on the matter⁶ in issue. The rationale for the decision in *Gillick* casts doubt on the value and appropriateness of the concept of a fixed 'age of majority'. Capacity is an elastic concept measured taking into account the developmental maturity of the individual child, the complexity of the decision the child may be asked to make and the seriousness of the consequences to the child who makes an unwise or immature decision.

2.7 Capacity to make political choices

While young children may be shown to lack the capacity for complex decision making, the capacity argument is untenable when applied to adolescents. By the age of 13 a young person has acquired 'the major components of a mature political self'²⁰. A New Zealand Royal Commission in 1986²¹, having reviewed a range of research evidence, rejected the proposition that young people lack the capacity to make political judgments.

A study by Furnham and Stacey suggests that many young people below the age of 15 do not conceive of the community as a whole but tend to conceptualise government in terms of specific and tangible services. The research suggests that it is near the end of adolescence (by 15 years in the research sample) that young people take into account the long range effects of political action, and use philosophic principles for making political judgements.²² Other writers have argued that children learn about politics at a very young age (often from their parents) and that they have a much more sophisticated perception of political issues than adults give them credit for²³.

However, research evidence that children do not have a wider view of society and political processes may only reflect the reality that they receive little encouragement to be involved in social and political issues and have little incentive to be involved in matters over which they have no influence. If politics is viewed as adult business, children will tend to leave it to the adults.

At what age is a child capable of making a political judgment? This question is probably not capable of precise answer. One would need to know about the capacity of children to understand political issues and to weigh opposing considerations. Children whose lives are clearly affected by political decisions are more likely to develop political understanding. A child whose quality of life is seriously diminished by aircraft noise, poor housing or police harassment is more likely to be 'politicised' than one whose life is unaffected.

It is also necessary to identify whether for adults voting is a considered political choice based on factual information about the different candidates, the parties they represent, the policies they proclaim and the credibility to be attached to their promises or whether it is an expression of family or personal loyalties and ideologies or heavily influenced by media messages:

To a large extent the research on political socialisation has treated children and adolescents as passive interpreters of political information that they receive. But young people seek out political information and on occasion reject the information that they receive. In this sense new political meaning may be created by children in particular circumstances. They also carefully select out and subtly change information to fit into their interpretative framework²⁴.

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- 20 Dawson R.E., Prewitt K and Dawson K.S. *Political Socialisation USA*: Little Brown (1977) quoted in Franklin, B *Votes for Children* *Childright Bulletin* 1992; Ormond C et al, *Journal of Adolescence* v14 no3 (1991) pp275-291
- 21 *Democracy at Work* Report of Royal Commission on the Electoral System (1986) p235
- 22 Furnham & Stacey, B *Young People's Understanding of Society* (1991) pp19-34
- 23 Coles R *The Political Life of Children* Houghton Mifflin Boston 1986
- 24 Furnham & Stacey, B *Young People's Understanding of Society* (1991) p33

Those who argue against giving children the vote tend to stress the seriousness and difficulty involved in making political choices. But the degree of maturity and political knowhow needed for voting is quite low. In several Australian states children can consent to medical treatment at 16 or earlier²⁵ yet an assessment of the benefits and risks of medical treatment requires greater maturity and can have more serious consequences than exercising a choice through the ballot box. Because one person's vote is only one among millions the political damage that can be done by an immature or ill-informed political choice is minimal. Because voting is by secret ballot it is unlikely that any personal harm will be suffered by a young person who votes unwisely.

Many young people have a distrust of politicians.

In an AGB McNair survey conducted in April 1994, 78% of young people said they had no respect for politicians and 88% said they had very little confidence in state or federal members of parliament. Similar dislike and distrust of politicians was indicated in a poll in 1989 by the Australian Council for Educational Research²⁶.

One can only conjecture as to the reasons for this suspicion or antagonism. These views are shared by many adults as well. It may be a manifestation of the 'tall poppy syndrome'. It may be that because adolescents have no defined place in the political system they have had little personal experience (be it good or bad) of politicians and their views reflect common stereotyped views of politicians. Or it may be that their views are based on personal experience.

There is certainly resentment felt by young people at the negative images of youth behaviour promoted by some politicians and sections of the media. There is a depth of feeling that children and young people are often used as convenient scapegoats by politicians who know that they can be targeted for negative comments knowing that they will thereby not lose votes.

Whatever the reasons for youth scepticism towards politics and politicians, it is a cause for concern. If young people feel alienated from political leaders and political institutions they are likely to feel alienated from society. If they are able to see that politicians are representing youth interests this alienation might be lessened.

2.9 Voting and age discrimination

There are laws in every Australian state and territory (other than Tasmania) making it unlawful to discriminate against any person on the grounds of their age²⁷. While these anti-discrimination laws do not override voting ages laid down by statute, they establish a principle that no person should be disadvantaged because of their youth unless there are compelling reasons for differential treatment. If the voting age cannot be justified in terms of the young person's lack of capacity it may be characterised as age discrimination.

Denial of political rights on the basis of an arbitrary age restriction is *prima facie* discriminatory. It should be for those who argue against lowering the voting age to justify their position.

2.10 Voting and military service

In Australia²⁸ the voting age has often been linked with the age at which young people can fight in the armed forces. There may not be any obvious logical connection between young people's capacity to fight in a war and their capacity to make a political choice but there are strong emotional arguments that if one is old enough to die for one's country one should be old enough to have a say in the running of the country.

²⁶ Australian Council for Educational Research Political Knowledge & Political Attitudes: A Study of Australian 14 year olds (1994)

²⁷ For details see National Children's and Youth Law Centre Discussion Paper 'Youthism - Young People and Age Discrimination'

²⁸ Military service was also a major factor in the lowering of the voting age in the United States: see W.W. Cultice, Youth's Battle for the Ballot: A History of the Voting Age in America Westport: Greenwood (1992)

In World War II, when the voting age was 21, Australian servicemen sent overseas were given a special right to vote from the age of 18. In 1966, the Federal government passed legislation giving the vote to members of the defence forces serving in Vietnam and Malaysia. The fact that young people were conscripted into the armed forces caused some commentators to remark that the older generation was willing to imperil the lives of young people but was unwilling to give them a say in public affairs. These precedents had some influence on the later reduction to 18 of the age of majority and the accompanying lowering of the voting age²⁹.

2.11 Voting as a universal human right

Article 21 of the Universal Declaration of Human Rights (1948) provides that

everyone has the right to take part in the government of his country, directly or through freely chosen representatives. The will of the people shall be the basis of the authority of government, this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage...

This principle is restated in Article 25 of the UN Covenant on Civil and Political Rights (ICCPR) which states that

every citizen shall have the right and the opportunity, ... without unreasonable restrictions: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; and (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage....

No complaint has been made to the Human Rights Committee by Australia or any other country claiming that restricting the right to vote to under 18s is an 'unreasonable restriction' and breaches the principle of 'equal suffrage'. In the report summarising the response of Australian non-governmental organisations as part of Australia's fourth report under ICCPR, only the NCYLC directly raised the issue of the voting age commenting that the present situation is unreasonable and that 'anyone of or over school leaving age should be eligible to take part in the conduct of public affairs and to vote'. Defence for Children International is quoted in the same report: 'Australia has a long way to go in providing avenues for children and young people to participate in the political process at national, state and local government levels'.³⁰

The NCYLC is willing to assist some young people to complain to the UN Committee on Human Rights. The complaint would allege that the failure to grant a vote to under 18s amounts to a breach of their right to 'take part in public affairs either directly or through freely chosen representatives' and that the arbitrary age limit is not a 'reasonable restriction'.

Article 12 of the UN Convention on the Rights of the Child (CROC) assures to all Australian children a right to express their views in matters which affect them. The only qualification is that they are capable of forming their own views.

Yet children and young people under the age of 18 are denied the right to express their views in the political arena. When one considers the battles fought and won by women and by Aboriginal and Torres Strait Islander people it is surprising, perhaps, that protagonists for children's rights have seldom argued strongly that children should be enfranchised.

²⁹ Youth in Australia: Policy, Administration and Politics T Irving, D M aunders and G Sherington MacMillan Education Australia Ltd (1995) p149

³⁰ Australia's Third Report under the International Covenant on Civil and Political Rights - a consolidated response from Australian non-government organisations prepared by the Human Rights Council of Australia Sept (1994) p65

Although in most Australian states and territories young people can have their names added to the electoral role at the age of 17, nowhere can young people cast a vote until they turn 18. Because elections are normally held every three years, young people on average are able to cast their first vote at the age of 19 1/2. 10

3.0 Other avenues for youth participation in politics

3.1 Youth lobby groups

While there is a wide range of youth groups in Australia there is not a well organised youth political lobby. It is a phenomenon of modern day politics that special interest lobby groups exert considerable influence within the political process. Examples are the women's lobby, the family rights lobby and the pro-gun lobby.

Peter Newell, an English children's rights advocate, has written:

Politicians are under pressure to devise and present policies in a way which reflects the self-interest of various constituent groups of adults ranging from war widows to farmers and from mortgage payers to commuters: they are not under the same degree of pressure with regard to children and young people. As a result, the impact of policies on children and young people receives less care and attention. Children may be the subjects of a fair amount of political rhetoric, but unfortunately the rhetoric tends to be empty and unconnected to practical policies.³¹

The peak youth body in Australia is the Australian Youth Policy and Action Coalition (AYPAC). In 1995 AYPAC launched a campaign to have the voting age lowered to 16 or younger for all Federal, State, Territory and local elections and set out the arguments for lowering the voting age in a comprehensive discussion paper '... seen but not heard'³².

3.2 Membership of political parties

Membership of political parties is open to young people below the voting age.

At the age of 15 a young person can join the Australian Labor Party and local Young Labor Groups. NSW Young Labor debated the issue of lowering the voting age at their most recent conference but this has not been incorporated into Young Labor policy³³.

At 16 one can join a Young Liberal branch and have opportunities to participate in local branch discussions and in the formulation of policy initiatives to be presented to the Young Liberal Council, the policy making body of the Young Liberal Movement. The Young Liberals have not taken a position on the lowering of the voting age but the Liberal Party Platform includes a commitment to an Australian nation 'in which the youth of the nation is given every encouragement to develop its talent to the full, recognising that from its ranks will come the leaders of tomorrow'³⁴.

The Young Democrats have no lower age limit for membership and there are members aged eleven and possibly younger. At their National Convention in September 1995 they voted in favour of lowering the voting age to 16. At 16 enrolment would be optional, but voting compulsory for any 16 or 17 year old who was enrolled³⁵. Hon. Richard Jones, a Democrat member of the New South Wales upper house has indicated his intention to introduce a private member's Bill to lower the voting age³⁶.

Inquiries indicate that the Western Australian Greens have no lower age limit for membership.

31 Rosenbaum M and Newell P Taking Children Seriously (1991) p10
 32 ... seen but not heard: voting rights for young people Canberra: AYPAC (April 1995)
 33 Information supplied by NSW Young Labor, GPO Box 1746, Sydney 2001
 34 Information supplied by Young Liberal Movement, 47-51 Riley St, Woolloomooloo
 35 Information supplied by Senator Sid Spindler's office
 36 Daily Telegraph Mirror March 21 (1995) p12

An interesting initiative supported and encouraged by the YMCA movement in Australia has been the creation of Youth Parliaments. The first was held in Brisbane in 1963 and Youth Parliaments are now established in all Australian states and territories other than Queensland and New South Wales.

Young people between the ages of 15 and 25 are encouraged to form groups and to put forward ideas which form the basis of Bills introduced into the Youth Parliament. Before the Youth Parliament sits there is a week's intensive activity where the various groups come together in a residential setting and debate and discuss ideas put forward and decide which proposals should be put before Parliament in the form of draft legislation.

On the Parliamentary sitting day members of the groups are divided at random into government and opposition. A number of Bills are introduced and there is debate on each Bill. After the debate members of the Parliament cast a vote not on party lines but in accordance with their personal views formed after having heard both sides of the argument. Details of all motions that have been passed are sent to a government member of the State or Territory government in question. While the government may choose not to act on the decisions of the Youth Parliament they will at least be aware of the views of the participants.

It would be easy to dismiss Youth Parliaments as a forum which encourages young people to play at politics without giving them any political power. But the organisers see the scheme as providing four separate but interrelated benefits for young people:

- **Education and empowerment:** By learning how the political system works young people are empowered to use the system to get their views considered
- **Lobbying:** Young people can put forward their views on matters that they have identified as being important
- **Public speaking and research:** The young people involved have the opportunity to research and prepare arguments and to present these arguments in a public forum
- **Broader personal development:** Young people gain experience and self-confidence in working in a group setting, articulating their views and seeking to gain wider acceptance of those views.

It is fundamental to the Youth Parliament scheme that young people are in charge of the organisation and make the decisions³⁷.

Does the experience gained by young people at Youth Parliaments motivate them to seek opportunities to participate fully in the political system? While records are not complete, Bills to lower the voting age have been debated and voted on a number of occasions with mixed results. The issue was debated in the Victorian Youth Parliament in 1991 and again in 1992. In each case a Bill to introduce optional voting at 16 was passed. The first Youth Parliament for the Northern Territory in 1995 considered a 'Right to Vote at 16 Bill' to 'encourage the participation of young Territorians in the democratic process of government'. The Bill established a non-compulsory right to vote in local and state elections. It was debated and voted on, but failed to gain the support of the House by a small margin. One section of the Bill contained an acknowledgment that 'not all young people

wish to be enfranchised, as apathy is rampant in many parts of society'. Also in 1995, the South Australia Youth Parliament considered a 'Young Australian's Voluntary Voting Bill' which would have allowed young people to enrol at 15 and to vote at 16 in state and local authority elections. Enrolment and voting was to be optional. This Bill also failed by a small margin³⁸.

13

It emerges from these experiments in youth democracy that young people themselves are divided on the question of whether they would like to have the opportunity to vote. Their interest in the topic is evidenced by the fact that the issue has been raised on at least four occasions. In 1995 two Youth Parliaments put youth voting rights forward as an important issue. In all cases it was proposed that 16 be the age at which young people could first cast their vote and that voting should be optional.

3.4 Official agencies speaking for children

Even if children are denied a direct voice in political decision making they can be given an indirect voice. There are a number of ways in which this can be achieved. One is through the appointment of a statutory body with responsibility for promoting the interests of children such as a Commissioner for Children (as in New Zealand) or a Children's Ombudsman (as in Norway)³⁹. Another is by the establishment of an Office of Children's Affairs (along similar lines to the Office of Women's Affairs attached to the Prime Ministers Office). A cabinet position of Minister for Children or Minister for Youth Affairs could be created. Australia has, at both Commonwealth and state and territory level rejected the concept of a Children's Ombudsman or Commissioner for Children.

The Liberal and National parties in their youth policy for the 1996 Federal election stated their belief that it is essential that the ministerial arrangements of the Commonwealth government give a high profile to youth issues and recognised that 'the starting point for addressing the needs of young Australians is to ensure that the interests and views of young people themselves are effectively represented in government'. They assured voters that a Coalition government would ensure that young Australians are given an effective voice in government by the appointment of a Cabinet Minister with responsibility for youth affairs. An assurance was given that the Minister for Youth Affairs would meet regularly with young Australians in an informal environment in their towns and suburbs⁴⁰. In March 1996 the newly elected Liberal Coalition government honoured its commitment to give the Minister of Youth Affairs cabinet status and Senator Amanda Vanstone, formerly shadow Attorney-General, was appointed Minister of Youth Affairs in addition to her other portfolio of Employment, Education and Training.

At Commonwealth level there is a Youth Bureau within the Department of Employment, Education and Training (DEET) but it has a largely coordinating role and would not claim to be a voice for children or a watchdog of children's interests. The Bureau's main priorities have been the development and co-ordination of youth policy, targeted support for homeless and at risk youth and implementation of youth training⁴¹. Most State and Territory governments have an Office of Youth Affairs or other youth agency but these offices have lowly rank in government administration and little power. Most have suffered from the vagaries of changing political priorities and many have been targets for retrenchment or restructuring. They are attached to a variety of different government departments with frequent moves from one department to another. While they have

³⁸ Information provided by Ben Hubbard, YMCA Youth Parliament Co-ordinator.

³⁹ See National Children's and Youth Law Centre Discussion Paper Why Australia Needs a Commissioner for Children

⁴⁰ Coalition Youth Policy released February 1996

³⁶ Information provided by Francis Davies, Head of the Youth Bureau.

undoubtedly had an influence on policy they are part of the bureaucratic government system and are not able to speak out independently and fearlessly on behalf of children⁴².¹⁴

⁴² For a detailed coverage see Irving T, Maunders D, Sherington G Youth in Australia: Policy Administration and Politics Ch 11

4.1 Children are incapable of making rational and informed judgments on political issues

It is absurd to suggest that every person who votes exercises a rational and informed judgment having carefully scrutinised and weighed up the policies of all the candidates for election. The power to influence political and social policies through voting is the right of every person by reason of their status as a human being and a citizen of Australia. The dull as well as the bright, the weak as well as the strong, the famous as well as the infamous have a right to express a political preference through the ballot box. Voting is not a privilege restricted to those of superior intellectual prowess, maturity or political knowledge. As Bob Franklin has put it 'if the argument is really about competence and not age, then it is not children who should be excluded but the incompetent.'⁴³

While young children may be shown to lack the capacity for complex decision-making, the capacity argument is untenable when applied to adolescents. By middle adolescence, decision-making ability is well developed.⁴⁴ A New Zealand Royal Commission in 1986⁴⁵ rejected the proposition that young people, by reason of their developmental maturity, lack the capacity to make political judgments. One study suggests that many young people below the age of 15 do not conceive of the community as a whole but tend to conceptualise government in terms of specific and tangible services. It is only near the end of adolescence (by 15 years in the research sample) that young people take into account the long range effects of political action, and use philosophic principles for making political judgements.⁴⁶ But the research evidence that children do not have a wider view of society and political processes may only reflect the reality that they receive little encouragement to be involved in social and political issues and have little incentive to be involved in matters over which they have no influence.

At 15 young people can leave school and work full-time in paid employment. They are required to pay taxes from birth if they have income. Many children of 16 and even younger ages live away from home.

There is no evidence that children and young people are less informed on political and social issues than adults.⁴⁷ They are exposed to the issues of the day through education and through television and newspapers. They learn about democracy and the political process as part of general studies or through other subjects in the school curriculum.

4.2 Children are dependent on adults economically and in other ways

The German philosopher Kant believed that children should be denied the right to vote because they are incapable of what he called 'self-maintenance'. There are many other groups in modern society who are dependant on others financially or in other ways yet one would not question their right to vote. Many adults rely on social security benefits as their chief or only source of income, some elderly people and people with a disability are dependent on others for basic needs.

⁴³ Franklin, B. Votes for Children p11

⁴⁴ Ormond, C et al Journal of Adolescence v14 no3 (1991) pp275-291

⁴⁵ Report of Royal Commission on the Electoral System (1986) p 232 -240

⁴⁶ Furnham & Stacey, B. Young People's Understanding of Society (1991) pp19-34

⁴⁷ Melton G, Director of the Centre on Children, Families & the Law at the University of Nebraska-Lincoln, found the concern about children's competence in decision-making to be exaggerated, misplaced and unjustifiable.

One of the most important rights that should be available to the young is the right to vote. This right does not need to and should not depend on the young person having or exercising other rights. In other words, a young person living in every other respect as a child, as a dependant, should have the same right as everyone else to vote, just as many adults living as dependants have it.⁴⁸

4.3 Parents can be expected to reflect the views of their children

Bob Franklin has argued that children are unique in our democratic system in that they are the only group 'whose rights are entrusted to another group to be exercised on their behalf without the restraint of any mechanism of accountability or democratic control.'⁴⁹

The argument that parents can be expected to promote the interests of their children in the way they vote is a strange one. If it were taken to its logical conclusion parents would have multiple votes: one to exercise for themselves and one each for their children. The notion that the interests of children are subsumed in those of their parents or carers denies their individuality and treats them as appendages of their parents. Children in the same family may have very different views on social and political issues and the idea that a parent can reflect this variety of views in one vote is absurd. Similar arguments were used to deny women the vote: it was said they were financially dependant on their husbands or fathers who could be assumed to represent their interests in any election. Such arguments would be treated with anger and derision today.

4.4 Children would not express their own wishes would be influenced or manipulated by adults

The argument runs that politicians might win youth votes through lolly scrambles and handing out baseball cards; parents might influence their children's vote by threatening dire punishment if they did not vote as they were told. Such arguments are an insult to children. They overlook the legal position that children have the right to make decisions for themselves once they attain a sufficient level of intelligence and understanding.⁵⁰

The rights of parents to make decisions for their children dwindle as the child grows in maturity and understanding. Children's power to make decisions for themselves grows in line with their evolving capacity. Most adults are influenced by parental or family voting patterns and the fact that some children may be susceptible to adult influences should not be used as an excuse for denying all children the vote.

4.5 Voting is a privilege only for those prepared to take on civic responsibilities of maturity

In 1969, when consideration was being given to lowering the voting age from 21 to 18, adult officers of the National Youth Council of Australia (the forerunner to AYPAC) raised this as an argument for not actively promoting the lowering of the voting age⁵¹. This view continues to enjoy support today. If young people want the right to vote they have to take on the responsibilities of adulthood.

This argument can be easily dismissed. First, voting is a right and a responsibility, not a privilege. It is recognised as a right under international human rights instruments. It is inherent in the notions of democracy, universal suffrage and representative government

48 Holt, J *Escape from Childhood: The Needs & Rights of Children* Penguin (1975) p118

49 Franklin, B *Votes For Children* p10 *Childright Bulletin* No: 85 April, 1992

50 *Gillick v West Norfolk and Wisbech Area Health Authority*: see note 17

51 Irving T, Maunders D, Sherington G *Youth in Australia: Policy Administration and Politics* (1995) p202

that people affected by government decision-making should be part of the process of choosing their political leaders and influencing laws and policies.

Secondly, reference to concepts such as 'maturity' and 'civic responsibilities' beg the question. Young people can and do make a contribution to society in a multitude of ways. At 16 or 17 most young people are continuing their education (for which they receive strong encouragement from society), many are working and contributing to society through their labour and their taxes. A disturbingly large number of young people are unemployed but this is, at least partially, due to government policies and societal attitudes which give disadvantage younger unemployed. Unemployed young people often make a contribution through voluntary work and by fulfilling family responsibilities.

4.6 If children want equal rights they must forfeit their special advantages

The nub of this argument is that children should not have it both ways. They enjoy privileged status and many benefits and concessions because of their youthfulness. If they want all the rights of adults they will have to trade in these benefits and concessions. Children and young people are in many ways protected from the full force of the criminal law. Young offenders receive more lenient treatment. Children do not have to pay for their school education. They enjoy reduced fares on most forms of transport and reduced entry prices for many forms of entertainment.

The less severe treatment and punishment that children encounter under the criminal law is a recognition that the bulk of youth offending is opportunistic and of a minor nature, often resulting from inexperience. Harsh penalties are seen as likely to be counter-productive as a means of changing the behaviour of young offenders. Transport and entertainment concessions can be justified on the basis that the state makes school education compulsory thus denying children the opportunity to work full time and earn money and that this enforced lack of earned income should be compensated for by reduced costs. Lower fares and entry fees also recognise that families with children have taken on the important social and financial responsibilities associated with child-rearing and that they should be supported.

Just because a group benefits from positive discrimination in some areas, does not justify negative discrimination in others. Positive discrimination is intended to redress disadvantages suffered by a particular group in society in situations where equality of opportunity does not deliver equality in practice. It would defeat the whole purpose of positive discrimination if it was used as grounds for denial of basic rights enjoyed by people who are not part of the particular group.

4.7 Childhood is an apprenticeship for life and children should wait until adulthood before voting

This is not so much an argument as a tautology. Children cannot be allowed to vote because they are children. Similar arguments are used to justify youth rates which deny young people the right to equal pay for equal work.

This argument takes various forms. There is a protectionist argument that suggests that children should be free to get on with their education and training and not have their heads filled with political matters which are better left to the adults. This stems from a romantic view of childhood as a period of innocence and unsophistication which should not be 'stolen' from them. A cynical version of this argument is that politics is dirty business to which children should not be exposed. Another approach is that children have

to 'earn their stripes'. The right to vote is to be earned by those who have set aside childish things and have 'grown up'.¹⁸

A more subtle form of this argument is that the confidence and competence to be involved in democratic decision-making must be gradually acquired through practice. Roger Hart believes that society has an obligation to afford children gradually increasing opportunities to participate in decision-making. He believes that children need to engage in collaborative activities with people who are older and more experienced in order to learn the rights and responsibilities of citizenship. But Hart recognises that children, from the moment they enter the world, discover the extent to which they can influence events by their behaviour. In their relationships with parents, family, teachers and schools children continue to develop independence and the ability to make more and more important decisions for themselves⁵². Children can best learn by doing and they can best learn the skills of making political judgments by making political judgments.

4.8 Politicians can be trusted to promote and protect the interests of children

This argument does not bear close scrutiny. There is little evidence that politicians in Australia differ from politicians elsewhere. Australia's embarrassing failure in meeting its obligations under the UN Convention on the Rights of the Child is ample illustration of the hypocrisy of Australian politicians over children's issues. In December 1990 Australia ratified the Convention making a solemn commitment to undertake all appropriate legislative, administrative and other measures for the implementation of the rights set forth in the Convention (Art 4). That year at a World Summit for Children in New York, the then Prime Minister, Bob Hawke, joined with other world leaders in acknowledging that the well-being of children required political action at the highest level and expressed a determination to take such action and to give high priority to the rights of children. In ratifying the Convention, Australia undertook to submit reports to the UN Committee on the Rights of the Child on measures taken to give effect to these rights. Australia's first report was due in February 1993 but was not tabled in Federal Parliament until December 1995. There has been no systematic attempt either at Commonwealth or State or Territory level to review existing laws and policies or to monitor new laws and policies to ensure that they comply with the principles of the Convention. Many examples can be given of existing laws and new laws which fail to comply. The current Australian Law Reform Commission Inquiry into Children and the Legal Process will provide an opportunity for systematic review of Commonwealth laws and will hopefully lead to reform.

When the High Court of Australia in the *Teoh* decision in 1995 decided that government decision-makers were bound to take into account the principles in the Convention in reaching their decision, the Commonwealth government immediately introduced legislation to undo the effect of the decision. For this action the Federal government was accused of hypocrisy by Sir Ronald Wilson, President of the Human Rights and Equal Opportunity Commission⁵³ and many others. Senator Sid Spindler, Democrat Spokesperson on Law and Justice, commented that the Bill if passed into law:

... will condemn Australia to presenting a two-faced image to the world by allowing the government to wax lyrical about its human rights treaty commitments, but quashing any commitment that the same human rights will be protected at home⁵⁴.

⁵² Hart R.A. Children's Participation: From Tokenism to Citizenship Innocenti Essays UNICEF (1992) p4

⁵³ Reported in Telegraph Mirror 19 September (1995)

⁵⁴ Dissenting report to Senate Legal and Constitutional Legislation Committee 27 September (1995)

Young people themselves show little confidence in the willingness of politicians to promote and protect their interests. The Youth Affairs Council of South Australia has expressed views that are widely shared by other peak youth groups:

Legislation and public policy that pertains to youth has been and often continues to be devised without input from young people.... As politicians are not accountable to young people under the age of eighteen their interests are often trivialised and ignored.⁵⁵

4.9 Children are heavily subsidised by government and make no contribution to the economy

This is an economic argument which suggests that a right to vote is to be restricted to those who contribute to society in some material way. It flies in the face of the current situation in which a right to vote is based on citizenship, not on any personal contribution (be it financial or in some other form) to the benefit of society. For many years only landowners had a right to vote so that only the wealthy and powerful were enfranchised. The views of the poor and those who are being supported financially by the state are as worthy of expression as those in the higher tax brackets. The whole point of democracy is that everyone gets a say.

The economic argument is also untenable because it assumes that children and young people do not make economic contributions to society. A majority of young Australians participate in some form of paid employment be it a family business, newspaper deliveries, baby sitting, supermarket checkout. Young Australians also make a huge contribution to sporting and cultural life which, although unpaid, provides economic benefits to the community. In a 1993 Youth Poll, 75% of more than 2000 young people were involved in some form of volunteer work including environmental issues, meals on wheels, rape crisis centres, church activities, boy scouts and girl guides⁵⁶.

4.10 Children are not interested in politics

There is some evidence that many eighteen year olds do not fulfil their obligations to enrol on the electoral roll and to vote in Federal or State elections. Seventeen per cent of 17 - 24 year old Australians are not enrolled to vote according to research carried out by the Australian Electoral Commission. And some surveys suggest that 58% of 18 year olds fail to enrol to vote in their first year as eligible voters⁵⁷.

Under 18s have little incentive to be interested in politics when they have no personal influence over the people who govern Australia and the policies which set the economic and social priorities of the country. Where children do have the right to participate in and influence decision-making, they show an active interest in discussing issues and in expressing their views⁵⁸. While children are often characterised as apathetic in respect of political and social issues, their lack of interest is usually attributable to a sense that their views are not really considered and taken seriously.

The argument based on lack of interest was used to deny women and Aboriginal and Torres Strait Islander people the vote (without first asking their views). No one today would dare to argue that women are frivolous or that Aboriginal or Torres Strait Islander people are uncivilised. But we use similar arguments to deny children a universal right. In any event under Australia's system of mandatory voting, one is required to vote whether one is

⁵⁵ Stephen Clark and Fiona Underwood A Piece of the Action - Young People's Views on Voting, Politics and Participation January 1996 p10 YACSA GPO Box 2117, Adelaide SA 5001.

⁵⁶ Respect Youth Poll- A Snapshot of Young Australians 1993 Mar (1994)

⁵⁷ See Notice of Motion by Senator Robert Bell Commonwealth Hansard 1 February 1994

⁵⁸ Stevens O Children Talking Politics Martin Robertson (1982)

interested in politics or not. Voting is seen as a civic responsibility rather than as a privilege²⁰ of which those interested in politics may avail themselves.

John Holt has written:

As a practical political matter, the voting age will probably not be lowered from eighteen, to, say, sixteen until at least two things have happened. First, there must be a large bloc of sixteen to eighteen-year-olds demanding the vote and saying to politicians 'If you deny us the vote now, we will remember you when we get it'. And the politicians must know that they mean it. Secondly, this bloc of sixteen to eighteen year olds must have made an alliance with some powerful groups of older voters, including, I would hope most of the eighteen to twenty year olds⁵⁹.

Australian children are not chaining themselves to the railings and throwing themselves in front of the horses at Randwick and Flemington! If today's youth followed the example of the early suffragettes they would certainly be labelled irresponsible and their protest would be presented as evidence of their immaturity and their unworthiness. A sizeable group in society should not be denied a fundamental human right because they are not demanding it vociferously.

Although children are not an organised political force in Australian society, there are many indications that a growing number of children and youth organisations are asking for a right to vote. At the first national conference in July 1994, of the Australian peak youth body AYPAC, there was a formal recommendation that the federal government examine the possibility of lowering the age of eligibility for voting to 16. In November 1994 AYPAC made a public statement that they believed it was time that governments recognised the right of young people to participate in democracy by giving them a right to vote in all Federal, State, Territory and local body elections at the age of 16 and in April 1995 AYPAC released a major discussion paper *Seen But Not Heard! Voting Rights for Young People* AYPAC's 1996 Federal Election Campaign Kit *Pinning Down the Pollies!* contained valuable information on how young people could put their views forward and identified the extension of voting rights to under 18s as a key question for young people to ask election candidates.

The New South Wales peak youth body, Youth Action and Policy Association in November 1995 formulated a policy which supported voting rights for everyone aged 16 and above with under 18s having the option to enrol but, once enrolled, voting being compulsory⁶⁰.

The Youth Affairs Council of South Australia in June 1995 appointed two young research consultants to undertake a project which aimed to provide Australian governments, policy makers, and the wider community with information concerning citizenship and youth voting rights. The results were reported in *A Piece of the Action* published in January 1996⁶¹. Over 1300 young people aged between 13 and 25 took part in the consultations: 55% were in favour of young people in South Australia being able to vote in local, state and territory elections from the age of 16: 90.3% of those in favour indicated a preference for that voting be voluntary for under 16s. Eighty-six per cent of all respondents believed that young people should have more say about things that affect them in the community.

A recurring theme that emerged during the NCYLC's Australia wide consultation with children and young people in 1994 was that 'Young people feel they are not listened to, their views are seldom taken seriously and their importance in the community is overlooked'. They felt that their lack of power in the community was related to their lack of

59 Escape from Childhood: The Needs and Rights of Children Penguin (1975) p125

60 YAPRap 5-10 Dec 1995

61 Stephen Clark and Fiona Underwood *A Piece of the Action - Young People's Views on Voting, Politics and Participation* YACSA

a right to vote and proposed a lowering of the voting age with voting being optional for under 18s.⁶² Similar feelings of powerlessness and frustration were expressed by young people who took part in earlier national consultations with disadvantaged young Australians conducted by the Australian Youth Foundation.⁶³ and in a 1993 Youth Poll organised by the Democrats⁶⁴

4.12 No other country gives children the right to vote so it cannot be a good idea

It is true that no commonwealth country gives under 18s the right to vote. Since 1988, 16-18 year olds have been able to vote in Brazil's Constituent Assembly⁶⁵ and in Nicaragua⁶⁶. Nelson Mandela announced in 1994 that he wanted to give the right to vote to 14 year olds in South Africa. A New Zealand Royal Commission in 1986⁶⁷ considered that a strong case could be made for lowering the voting age to 16. The English Liberal Democrat party supported a reduction to 16 of the voting age there and a number of Labour Members of Parliament polled in 1988 supported the lowering of the voting age to 16⁶⁸. While it is not policy of the Australian Democrat Party to reduce the voting age the idea has support from some senior Democrats. Christabel Chamarette, a Western Australian Senator representing the Green party, has indicated that she personally supports a change in legislation to lower the voting age to 16⁶⁹. The South Australian government and a group of members of the Legislative Assembly of the Australian Capital Territory are currently considering the arguments for and against the lowering of the voting age.

62 Flynn, C. Rights into Reality: Report on National consultations with young people and children's and youth advocates Sydney: NCYLC (1994) pp4, 14, 25

63 Daniel, A and Cornwall, J. A Lost Generation Sydney: Australian Youth Foundation (1993)

64 Respect Youth Poll - A Snapshot of Young Australians 1993

65 information supplied by Brazilian Consulate General's office ;Childright Bulletin1988 No46 p3

66 See Stephen Clark and Fiona Underwood A Piece of the Action - Young People's Views on Voting, Politics and Participation p10

67 Report of Royal Commission on the Electoral System (1986) p232-240

68 Childright Bulletin1988 No46 p13; see also Childright Bulletin1987 No37p10

69 Personal communication to NCYLC 28 October 1995

5.1 At what age should children have the right to vote?

The answer to this question will depend on whether voting is seen as an incident of being a human person and a citizen of Australia (one person one vote), whether it is seen as a right and responsibility to be exercised only by those who are not dependant on others (an independence test) or those who have the capacity to make political choices (a competency requirement) or whether voting rights should be extended to those who are contributing positively to society or exercising civic responsibilities (a 'contributions and responsibilities' test).

John Holt writing 20 years ago argued that all children should have the right to vote and that age capacity and dependency were irrelevant:

The right (to vote) does not need to and should not depend on a young person having or exercising other rights... A young person living in every other respect as a child, as a dependant, should have the same right as everyone else to vote, just as many adults, living as dependants have it⁷⁰.

Arguments based on 'one person one vote' may be persuasive but it is doubtful that Australians are ready to accept that babes in arms and toddlers should be able to line up with them on election day. In the Australian context, where compulsory voting is embedded in political tradition, votes for all children may be unrealistic. Arguments based on capacity, contribution and on the exercise by young people of other civic responsibilities (eg paying taxes) are likely to carry more weight.

5.2 Capacity

If one ties voting to competency, children should be able to vote when they attain the capacity to express a political choice. To adapt the words of the House of Lords in *Gillick* and the High Court of Australia in *Marion's* case children should be able to make their own decisions when they have attained sufficient intelligence and understanding to make an informed decision about the candidates and their policies.

Because it is impracticable for every individual child to be tested periodically on political maturity and understanding, it is necessary to fix an age at which the majority of children in that age bracket will have acquired the requisite intelligence and understanding. To some extent this will be arbitrary. Research evidence tends to support 15 or 16 as appropriate ages.

5.3 Independence

While legal independence is reached on attainment of the age of majority (currently 18) actual independence is a progressive attainment. Children can work and be fully self supporting at 15. They can leave home at that age or even earlier if they can support themselves.

5.4 Contributions and responsibilities

Children can pay taxes in respect of earned or unearned income from any age. Because of the legal limitation on their working full time before the age of 15 and because of the lower wages paid to children and the young, their contribution will be less than the average adult

but is far from minimal. Much of the work performed by young people is not paid work but it nevertheless amounts to a substantial contribution.²⁴

Children and young people have considerable spending power and make a significant contribution to the economy in this way. Their opportunities for participating in the management of businesses and commercial organisations are limited by restrictive legislation and by their need to participate in education.

Within the family and community children are expected to assume a range of responsibilities at various ages.

5.5 Fixing an age

Age 12 The UN definition of youth is from the age of 12 to 25. Teenagers are seen as a separate sub-group in society.

Age 15 In Australia children reach the end of their compulsory schooling on their 15th birthday in all states other than Tasmania where the age is 16. At 15 they can work full time and need no longer depend on their parents financially. Below that age they are in a state of legally enforced dependency in that their parents can be prosecuted if they do not attend school and any employer can be prosecuted if they are employed during school hours. Fifteen is the age at which children have the opportunity to take their place in the adult world. Some choose to remain at school and further their education but that is their choice and society should not penalise them for exercising that choice.

Age 16 There is no particular reason to select 16 as the appropriate age at which children should be able to vote, yet it is the age that seems to attract the most support. This is possibly because (like 18) it is an even number! It may be because most 15 year olds are still at school. Or it may be because young people and adults today see 16 as something of a watershed between childhood and adulthood. As indicated earlier, all four of the Bills presented to Youth Parliaments in different parts of Australia opted for 16 as the voting age. The National Representative Board of AYPAC has supported a reduction of the voting age to 16⁷¹. South Australian youth groups have also expressed a preference for 16⁷².

In most States and Territories young voters can enrol at the age of 17 although they cannot vote until 18. Whatever voting age is decided upon there should be a similar provision allowing earlier enrolment.

5.6 Should voting rights be optional or compulsory for under 18s

This is not an easy question and there are arguments both ways:

Optional voting

Young people themselves have expressed a consistent preference for optional voting. All four Bills presented to Youth Parliaments demonstrate a strong preference for optional voting and this is the position supported by the Youth Affairs Council of South Australia and other peak youth bodies. One argument is that some young people who are not interested in politics or have not formed views of their own

⁷¹ ... seen but not heard: voting rights for young people AYPAC (April 1995)

⁷² Report of survey by South Western Youth Worker Network Inc P.O. Box 310, Oaklands Park SA 5046

should not be forced to cast a vote. Another argument is that 16 and 17 year olds vary²⁵ in maturity and that optional voting acknowledges this.

Compulsory voting

Australia is unusual in that for every Australian citizen entitled to vote it is obligatory to enrol on the electoral role and to vote in Federal and State elections. Any qualified person who fails to enrol and to vote can be prosecuted and fined. In local authority elections voting is usually optional. In most other English speaking countries enrolment of qualified voters is compulsory but voting is optional.

The Australian approach is that voting is not only a right but also an obligation. While this approach might be characterised as a restriction of the individual's freedom of expression (in that individual citizens are denied the opportunity express their disinterest or distaste for the political system by abstaining from voting) it can more accurately be viewed as democracy in the fullest sense of the word: everyone, including the apathetic and the antagonistic, must be involved in choosing their government. Recent attempts in South Australia to move to an optional voting system have not received popular support.

To give voters under the age of 18 the choice whether to vote or not would be to treat them differently than all other eligible voters. It would be setting a precedent and creating a sub-class. It could generate opposition from constitutionalists and politicians who might see it as the thin end of a wedge. It could also expose young people to the criticism that they want the right to vote but do not want the obligation. At a time when there is widespread feeling that children want rights, but are unwilling to assume corresponding responsibilities, their preference for optional voting could be used against them. Another argument that might be raised in opposition is that if voting for young people was optional, political parties might manipulate this by persuading young people who support their views to enrol and vote, leaving severely alone those who would not give them their vote.

Optional enrolment compulsory voting

This is the position supported by Australian Youth Policy and Action Commission, the Australian peak youth body and the Youth Affairs Council of South Australia. Under 18s who wished to vote would have to enrol and, once enrolled would be required to cast a vote under penalty of prosecution. This could create problems for young people whose interest in voting only emerged after the policies of the parties had been released in the run up to the election.

Compulsory enrolment but optional voting

Under 18s would be required to enrol and encouraged, but not required, to vote. If this option were adopted young people could make up their minds whether to vote on polling day.

Compulsory enrolment and voting but with no penalty for failure to vote

Under 18s would have to enrol and to vote but failure to vote would not attract any criminal penalty. There are examples of legal requirements that are not backed up by criminal sanctions and there are arguments for placing an obligation on young people but not criminalising their failure to meet these obligations. But again young people might be accused of wanting the best of both worlds.

Standing for election

Representing an electorate in Parliament requires considerably greater skills and sophistication than casting a vote. A Member of Parliament has the responsibility of representing the interests of the electors and of presenting their concerns to Parliament. Elected representatives become public figures and are exposed to the cut and thrust of party politics and the critical interest of the media. It might be argued that even though under 18s should be able to vote they should not be expected to assume the heavy responsibility of representing their electors and should not be exposed to the destructive aspects of politics.

Against this it can be argued that young candidates seldom succeed in being elected and that they are unlikely to be successful in gaining pre-selection and winning a seat unless they have the personal and political qualities to do the job. The voters can be relied upon to choose the person they perceive as the best for the job and young people should not be debarred from seeking to be elected.

5.7 Other public and private responsibilities

In Australia young people under the age of 18 are ineligible to be included in jury rolls and to serve on juries. If 16 and 17 year olds are considered to have the capacity to make political judgments should it not follow that they should equally be able to participate in jury service? There appears to have been no demand by under 18s to serve on juries and, taking into account the difficulty of the issues that juries have to decide and the serious consequences for the accused of a conviction, there may well be considerable resistance to opening up jury service to younger age groups. Jury service might disrupt the education of young people who were still at school.

Under Corporations Law under 18s cannot serve on the Boards of Corporations⁷³ and there are similar restrictions in relation to Incorporated Associations. This debars the younger age groups from participating in formal management of commercial or community organisations.

This paper has reviewed the arguments for and against lowering the voting age and for granting young people greater opportunities to be involved in public life.

When one considers the lively debate that surrounded proposals to extend voting rights to women and to Aboriginal people it is surprising perhaps that there has been so little public discussion in Australia and elsewhere of voting rights for young people.

The aim of this discussion paper is to provide a framework for informed discussion about the role of young people in society and their ability to influence the political, social and physical environment.

Australian society is committed to democracy and universal suffrage and those who wish to continue to exclude under 18s from exercising their choices and preferences through the ballot box have to justify that exclusion. This paper has canvassed some of the arguments for and against extending voting rights to under 18s.

Young people have different life experiences and a different perspective than adults. If our political leadership and our political and social policies are to truly reflect the views of all sections of our community, young people should have the opportunity to be part of that process. There are strong arguments in favour of including young people as participants in the political process: arguments based on universal suffrage, citizenship, fundamental human rights, age discrimination and on inclusiveness and participatory democracy.

There is one argument that is often overlooked. Young people have a range of interests, talents and perceptions. They have a lot to contribute to Australia's political and social life. Denying them participation is depriving society of this valuable contribution. Politicians often refer to children and young people as being the citizens of tomorrow. But they are actively involved in Australian society and they already make a significant contribution to the economic, social, cultural and sporting life of their local community, their State and their country. They are the citizens of today!

Young people are beginning to claim a right to vote. Adults should not feel threatened by this but should be gratified that they are wanting to take on responsibilities that have been traditionally seen as adult responsibilities. We should encourage their desire to be fully involved in our democratic way of life.

Robert Ludbrook
1 April 1996

Additional research by Jason Geisker

Commonwealth of Australia

The Whitlam Labor government in 1973 amended the Commonwealth Electoral Act to give eighteen year olds the vote after the Liberal party had opposed private members Bills to lower the voting age.

Commonwealth Franchise Act 1902 gave all men and women married or unmarried aged 21 or over the right to vote in elections for the House of Representatives or the Senate. Denied vote to 'aboriginal natives' of Australia, Asia, Africa, Pacific (but not New Zealand). Vote for aboriginals only granted in 1962⁷⁴.

Australian Constitution: s41 refers to 'adult persons'; (see also s24)

Commonwealth Electoral Act 1918 (Cwlth) ;

s 93 (1) people can enrol and vote if over 18 yrs old and an Australian citizen, or

s 93 (7) a person who is the holder of a temporary visa within the meaning of the Migration Act 1958 or is an unlawful non citizen is not entitled to enrolment.

s 93 (8) disqualifies any person from enrolment or voting at any Senate election or House of Representatives Election who:

- by reason of being of unsound mind, is incapable of understanding the nature and significance of enrolment and voting
- is serving a sentence of 5 years or longer for an offence punishable under the law of the Commonwealth or of a State or Territory by imprisonment
- has been convicted of treason or treachery and has not been pardoned.

Under s 100 a person who is 17 yrs of age can enrol.

s 41 of the Constitution assumes, rather than establishes, a Parliamentary democracy

New South Wales

In 1893 the Full Court of NSW Supreme Court decided that a married woman was not a 'person' in the eye of the law and was not entitled to vote

Parliamentary Electorates and Elections Act 1912

S 20(1) entitles persons to be enrolled who:

- have attained 18 years of age, and
- are Australian citizens

By s33A 17 year olds can be enrolled but cannot vote until they are 18.

By s21 People are not entitled to have their name placed or retained on any roll who:

- are temporary or continued treatment patients, protected people or incapable persons (within meaning of the Mental Health Act 1958) or persons detained under Part 7 of that Act ; or
- are convicted and serving a term of imprisonment of more than 12 months ; or
- are the holders of a temporary entry permit or are prohibited immigrants under the Migration Act 1958 (Cwlth).

Victoria

Constitution Act 1975

s 48 (1) entitles persons to enrol to vote as an elector for the Council and the Assembly who are:

- over 18 yrs old, and
- Australian citizens

s 48 (2) disqualifies people from having their names placed on or retained on a roll of electors who

- have been convicted of treason under the law of Victoria, or treason or treachery under the law of the Commonwealth or State or Territory and has not been pardoned, or
- have been convicted and are serving terms of imprisonment for five years or longer ;
- are either temporary entry permit holders or prohibited immigrants (under the Migration Act 1958 (Cwlth)); or
- by reason of being of unsound mind, are incapable of understanding the nature and significance of enrolment and voting.

South Australia :

30

South Australia was the second state to reduce the voting age from 21 to 18 in 1971. Three young South Australians sought to have their names included on the Commonwealth electoral role. At that time Commonwealth electoral legislation fixed the voting age at 21. In a court challenge it was held that 'adults' had the meaning in the Commonwealth legislation and that only the Commonwealth Parliament could determine the voting age: *King v Jones* (1972) 128 CLR 221

Electoral Act 1985

By s29(1) people are entitled to be enrolled on the electoral role who:

- attained the age of 18 years, and
- are Australian citizens and
- have lived at their principal place of residence for at least one month and
- are not of unsound mind.

SA does not disqualify prisoners from voting. S 29 (4) outlines what shall be taken to be a prisoner's principal place of residence for the purposes of entitlement to enrolment.

s29(2) permits provisional enrolment for 17 year olds.

By s69(2) under 18s cannot vote in an election even though provisionally enrolled.

Voting is compulsory but it is sufficient compliance if the formalities of voting are observed but the ballot paper is left unmarked s85(1)

Under 18s cannot stand as candidates for the House of Assembly or Legislative Council by reason of s52(1).

Queensland

Electoral Act 1992

s 64 (1) a person can be enrolled who:

- is entitled to be enrolled under the Commonwealth Electoral Act; or
- was entitled to be enrolled under the Elections Act 1983 on 1 December 1991.

s 66(1) The Electoral Commission must enrol a person as an elector if they are aged 17 and apply. The enrolment does not have effect until the person turns 18.

Elections Act 1983

s 21 people to be enrolled if

- over the age of 18, and
- an Australian citizen

Under s 23 people are not qualified to be enrolled or vote if they are

- mentally ill and incapable of managing their estate, or
- have been convicted in Queensland or elsewhere, and are serving a sentence of one year or longer.

Western Australia

31

Western Australia became in December 1970 the first Australian state to enact and proclaim legislation lowering the voting age to eighteen.

Electoral Act 1907

s 17 qualifies people to be enrolled as an elector for the Council and the Assembly if they are:

- Australian citizens and
- have attained 18 years of age.

s 17 (4a) entitles a person to be provisionally enrolled at age 17.

s 18 disqualifies people from being enrolled, or if enrolled, from voting if they:

- are of unsound mind
- have committed a serious crime and imprisoned for 1 year or longer, or
- are detained under the Mental Health Act 1962

Tasmania

Electoral Act 1985

s 22 (1) entitles a person to be entered on the electoral roll for the Legislative Assembly if entitled under s 29 of the Constitution Act 1934 to be so enrolled.

s 22 (2) entitles a person to be entered on the electoral roll for the Legislative Council if entitled under s 28 of the Constitution Act 1934 to be so enrolled.

Constitution Act 1934

s 28 entitles every person to vote in Council elections if they:

- are over age 18, and
- have lived in Tasmania for a continuous period of at least 6 months at any one time, and
- are natural born or on the electoral roll.

The Act does not state any grounds for disqualification from enrolling.

The Australian Capital Territory

ACT Self Government Act 1988 (Cwlth)

ACT (Electoral Act) 1988 (Cwlth)

s 72 entitles a person to be enrolled for an electorate if the person is entitled to be enrolled on the Commonwealth roll (disqualifications same as Commonwealth).

s 75 allows for age 17 enrolment.

Voting compulsory for all Australian citizens 18 or over resident in the Territory

Those disqualified are:

- People of unsound mind
- Convicted criminals sentenced for offence punishable by imprisonment of five years or more

Electoral Act 1992 (ACT) -

s72 Anyone can enrol whose address is in the electorate and is entitled to be enrolled on the Commonwealth roll otherwise than by virtue of s100 of the Commonwealth Electoral Act and the person's address is in the electorate.

s75 A young person can enrol at 17 if entitled to be enrolled for the electorate when 18

Northern Territory

Electoral Act 1980

s27 qualifies people to vote if they are entitled to be enrolled to vote under ; Northern Territory Electoral Regulations Part V from time to time in force under the Commonwealth Northern Territory Representation Act 1922 and Electoral Act 1918.

Local Authorities

Local Government Act 1993 (NSW)

s 266 - any person entitled to vote at an election of members of the Commonwealth Legislative Assembly or House of Representatives is entitled to be enrolled as an elector if resident in that ward, or the owner or occupier rateable land in the ward.

Voting is compulsory for residents but optional for non-resident rate-payers, occupiers and rate paying lessees.

s 268 - No one is entitled to more than one vote even if entitled to be enrolled as an elector for more than one ward.

s 286 - Electors on the residential roll must vote at a contested election unless exempt from voting. Electors on the non-residential roll of occupiers and rate paying lessees may vote, but are not required to vote.