



people with disability



**People with Disability Australia Incorporated (PWD)  
Disability Discrimination Legal Centre (NSW)**

**Submission: Electoral Reform Green Paper – Strengthening Australia’s  
Democracy**

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## 1 Introduction

The New South Wales Disability Discrimination Legal Centre (“**DDLC**”) and People with Disability Australia Incorporated (“**PWD**”) welcome the development of the Green Paper *Strengthening Australia’s Democracy*.

PWD and DDLC actively participated in the drafting of CRPD. Our organisations have played key roles in the ratification of CRPD including being central to the development of the disability sectors input in to the National Interest Assessment. We continue our involvement through the development of the first Non-Government Organisations (NGO) Shadow Report on Australia’s compliance with CRPD.

It is our position that Australian Government’s at all levels have a legal duty to provide accessible voting and enrolment for people with disability under the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and the *Disability Discrimination Act 1992 (C’th)* (DDA) as well as various state and territory human rights and anti discrimination legislation.

This submission outlines the government’s international and legal obligations under international agreements and domestic human rights and disability discrimination law and has made recommendations to improve the franchise of people with disability.

The ability of people with disability to vote independently and in secret has been a key focal point for our organisations over a number of years. We have made submissions to the Australian Parliament’s Joint Standing Committee on Electoral Matters Inquiry into the Administration of the 2007 Federal Election and Related Matters. Recently we have also made submissions concerning the proposed reforms to the *Parliamentary Electorates and Elections Act (NSW) 1912* in 2006. Our organisations have also made submissions to the NSW Parliament’s Joint Standing Committee on Electoral Matters Inquiry into the Administration of the 2007 NSW Election and Related Matters and Inquiry into the Administration of the 2008 Local Government Election and Related Matters.

PWD and DDLC supported the introduction of electronically assisted voting (EAV) trials at the federal level. Our organisations worked with the Australian Electoral Commission and our constituent groups throughout the development and roll out of these trials. Our organisations maintain our support for EAV trials, with extended reach, as a step towards introducing permanent options for all voters that are also accessible for a range of people with disability.

A highlight in our campaign for achieving electoral rights for people with disability was the success of a case run by DDLC, *Fittler v NSW Electoral Commission and anor (No.2)*<sup>1</sup>, where it was found that a failure to provide a ballot paper in Braille was unlawful discrimination. In

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<sup>1</sup> [2008] NSWADT 116

the 2008 Local Government Elections, Mr Fittler was provided a ballot in Braille, which enabled him to vote independently for the first time.

We strongly recommend that our recommendations are seriously considered, as these will ensure our human rights are met and the equality of all Australian citizens. These recommendations need to be implemented as a single package. Single recommendations may result in creating a segregated system for people with disability, rather than providing individuals with a choice in their method of voting that is the same as other voters.

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## **2 About DDLC**

The NSW DDLC was set up in 1994 to help people with disability to use disability discrimination laws. Our role is to provide accurate and easy to comprehend advice to people with disability in NSW who want to make a complaint of disability discrimination. We give free legal advice, run disability discrimination cases and represent people with cases of disability discrimination.

The NSW DDLC aims for a society where people will be able to participate in all aspects of life through the:

- removal of barriers;
- elimination of discrimination;
- empowerment of people with disabilities;
- promotion of awareness; and
- ability to exercise rights.

DDLC's objectives are:

- To promote community awareness of the potential to use discrimination laws to advance the rights of people with disabilities;
- To provide legal services for people with disabilities, their associates and representative organisations, who have been discriminated against;
- To ensure the effective participation of people with disabilities in the management and operation of the Centre;
- To reform laws and change policies, practices and community attitudes that discriminate against people with disabilities;
- To develop and be involved in appropriate networks; and
- To maintain the necessary infrastructures and administration systems in order to further the Centre's aims and objectives.

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## **3 About PWD**

People with Disability Australia Incorporated is a national disability rights and advocacy organisation. We exist within the international human rights framework and provide a number of activities, which

include individual, group and systemic advocacy, consumer protection, information, education and training.

Individuals with disability and organisations of people with disability are our primary voting membership. We also have a large associate membership of people and organisations committed to the disability rights movement.

We were founded in 1980, in the lead up to the International Year of Disabled Persons (1981), to provide people with disability with a voice of our own. We have a fundamental commitment to self-help and self-representation for people with disability, by people with disability.

We have a cross-disability focus – membership is open to people with all types of disability. Our services are also available to people with all types of disability and their associates.

We are governed by a Board of directors, drawn from across Australia, all of whom are people with disability. We employ a professional staff to manage the organisation and operate our various projects. A majority of our staff are also people with disability.

We are part of an international network of disabled peoples organisations through Disabled Peoples International.

We have a vision of a socially just, accessible, and inclusive community, in which the human rights, citizenship, contribution, potential and diversity of all people with disability are recognised, respected and celebrated.

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## **4 Summary of recommendations**

### **Recommendation 1:**

That all polling sites utilised by the electoral commission's across Australian jurisdictions be fully compliant with Australian Standard 1428: Design for Access and Mobility, Part 2.

### **Recommendation 2:**

That polling venues be close to accessible transport nodes

### **Recommendation 3:**

That information on how to vote and accessible polling venues be made available to persons with disability in a timely, user-friendly, and accurate manner.

### **Recommendation 4:**

That section 183, 184A and Schedule 2 of the *Commonwealth Electoral Act 1918* be amended to allow a postal vote on the basis of disability.

### **Recommendation 5:**

That the *Commonwealth Electoral Act 1918* be amended to allow postal vote applications to be submitted electronically.

**Recommendation 6:**

That the electoral timetable be re-examined in relation to rural and remote areas with a limited postal service.

**Recommendation 7:**

That the *Commonwealth Electoral Act 1918* be amended to provide for reasonable adjustments to enable people with disability to vote independently and in secret.

**Recommendation 8:**

That section 93(8)(a) of the *Commonwealth Electoral Act 1918* that disqualifies people from enrolment on the basis of being of 'unsound mind' be amended. In particular the test of 'unsound mind' should be changed to so that there is a presumption of capacity. Any conclusion reached as to whether a person lacks capacity to participate in the electoral process, should be decision specific in that the determination that a person lacks capacity should only apply to voting in a particular election.

**Recommendation 9:**

That section 245 of the *Commonwealth Electoral Act 1918* be amended to include people with an intellectual or psychiatric disability who are unwell at election time, as a sufficient reason under section 245(4) for the failure to vote.

**Recommendation 10:**

That electronically assisted voting be trialled, with cooperation across jurisdictions. After thorough assessment and improvement, electronically assisted voting should be implemented on a permanent basis.

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## 5 Legal Obligations

### National Law

Disability discrimination is unlawful in Australia.

The laws that make disability discrimination unlawful include:

- *Disability Discrimination Act 1992 (Cth) (DDA)*
- *Anti-Discrimination Act 1977 (NSW) (ADA)*

### International Law

Freedom from discrimination is a basic human right recognised at international law.

Australia is obligated under the following international human rights treaties and declarations:

- *Convention on the Rights of Persons with Disabilities (CRPD)*
- *International Covenant on Economic, Social and Cultural Rights (ICESCR)*
- *International Covenant on Civil and Political Rights (ICCPR)*
- *Declaration on the Rights of Mentally Retarded Persons (DRMRD)*
- *Declaration on the Rights of Disabled Persons (DRDP)*

## ***Convention on the Rights of Persons with Disabilities***

Australia ratified the Convention on 17 July 2008. Under the *CRPD*, Article 29 provides that State parties guarantee persons with disabilities, political rights and the opportunity to enjoy them on an equal basis with others. This includes the right and opportunity for people with disability to vote and be elected. Australia has recently ratified with Optional Protocol to *CRPD*, which provides an international avenue to seek remedy to breaches of the *CRPD*.

*Article 29* provides that states must

- i) Ensure that voting procedures, facilities and material are appropriate, accessible and easy to understand and use
- ii) Protect the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;
- iii) Guarantee the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;

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## **6 Social Model of Disability**

The *CRPD* enshrines a social model conception of people with disability. People with disability are to be viewed as “holders” of rights, not “objects” of welfare or medical treatment. ‘Disability’ does not reside in the individual as the result of some impairment, but is the result of societal and environmental barriers. This means that ‘disability’ in Australia depends on the criteria and practices of society, and in the case of voting-of the government.

Australia must conduct better practices in society, so that Australian citizens do not face disadvantage.

A failure to provide accessible, independent and private voting procedures in Australia is the disability; it is not a problem with the person.

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## **7 Issues**

Effective, systematic improvements need to be made to current voting procedure to entitle people with disability the right to vote freely and independently.

Change is needed in the following areas:

- 1. Access**
- 2. Ensuring a secret ballot**
- 3. Electronically Assisted Voting**

4. Legal issues surrounding the exclusion of people being of “unsound mind” from the electoral roll
5. Penalty Notices

## 7.1 Access

### Accessibility of polling places

An increase in accessible polling booths is required rapidly, with the aim of achieving full accessibility. Ensuring that one polling place in each locality (suburb, town or centre depending on the individual nature of the electorate) contained within an electorate would make a noticeable improvement for people with disability. Accessibility in this context must take into account the need of people with physical disability, vision impairments and cognitive impairments.

It is imperative that all polling sites utilised by the Australian Electoral Commission, and their state and territory counterparts, be fully compliant with Australian Standard 1428: Design for Access and Mobility, Part 2. It is understood that there are limited accessible venues available for short term rental. This means forward planning needs to occur, to ensure accessible venues are hired. In jurisdictions with fixed term elections, this process should be able to be implemented with little problem.

It is also imperative that polling venues be close to accessible transport nodes. An accessible building may be of no use if the cost of getting there is prohibitively expensive, such as having to get an accessible taxi because of the unavailability of accessible public transport.

***Case study:** One of our (DDLC) clients stated that her closest accessible polling booth was 45 minutes away by electric wheelchair and would cost around \$20 to \$50 if she caught a taxi. Consequently, our client decided to vote at her closest polling booth, which was ten minutes away by electric wheelchair. However, as the polling booth was not accessible, she was forced to vote outside. She did not have sufficient privacy and felt very undignified. Furthermore, our client was unable to place the ballot in the ballot box herself as the ballot box was outside the building and therefore had to rely on electoral officials to do it for her.*

### Access to information

The provision of information must address the various needs of people with disability. All information that is produced by the AEC and its counterparts should be written in easy English. All information should also be available in a range of alternative formats.

Information regarding accessible polling venues must also be made available to people with disability in a timely and accurate manner. The information being available as quickly as possible is particularly important while working towards complete accessibility of all polling places.

Information available at the time of voting must be available in accessible formats including the availability of hearing augmentation and the presence of AUSLAN interpreters. These measures will result in the improvement of the franchise for people who are deaf or hearing impaired.

**Case study:** One of our (PWD) clients stated that at his local polling booth there was no easy English information available. The polling booth official was unable to communicate the steps required to fill out the ballot paper. Fortunately he had visited the booth with his father, and his father provided instructions. Our client did feel pressured to vote for a particular candidate, as he was aware that his father had voted for that party all of his life.

## Postal Voting

The following problems currently exist with postal voting, preventing equal access to democracy for people with disability:

1. Section 183 and schedule 2 of the *Commonwealth Electoral Act 1918* does not permit a person to cast a postal vote purely due to disability. Although, a postal vote is permitted if a person is more than 8 kilometres away from the nearest polling booth on the day of the election, not all polling booths are accessible and therefore people with a disability who have to travel more than 8 kilometres to a nearest accessible polling booth must also incur additional travel costs. These sections should be amended to allow a postal vote on the basis of disability. The NSW has recently reformed its legislation to allow people with disability to more easily register for a postal vote.
2. The *Commonwealth Electoral Act 1918* still prevents postal vote applications from being submitted electronically. This adversely impacts some people with disability who experience difficulty travelling to the post office to submit an application, and makes it more likely that they will be excluded from the process. The *Commonwealth Electoral Act 1918* should be amended to allow for a postal vote to be applied for via the AEC (or state or territory counterpart) website. Of note, on 11 May 2009 the Australian Parliament's Joint Standing Committee on Electoral Matters encouraged the implementation of options to facilitate electronic transactions by electors in Australian Government elections, as evidenced in the Proof Committee Hansard<sup>2</sup>.
3. People living in rural and remote areas with a weekly postal service are excluded from entering a timely application and postal vote. This disproportionately affects a number of people with disability, especially Aboriginal and Torres Strait Islander people, many of whom do not have the means to travel to a polling booth on election day. The electoral timetable should be re-examined to avoid this exclusion.

The electoral system should be open to all citizens. The opportunity for people with disability to register as a General Postal Voter is not a comprehensive solution to equalising access in the electoral system. There should be a system that is universally accessible to all people rather than special systems for people with disability. PWD and DDLC therefore argue that it is inadequate to implement postal voting reforms without at the same time increasing access to polling and pre-polling venues is inadequate.

## 7.2 Ensuring a secret ballot

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<sup>2</sup> Proof Committee Hansard, Joint Standing Committee on Electoral Matters, Reference: Conduct on the 2007 federal election and matters related thereto, 11 May 2009, Canberra

The Green Paper states that a secret ballot is an essential element of Australia's system of democracy. However, access to a secret ballot is not available to many people with disability. The following problems currently exist that prevent a secret ballot for people with disability:

1. People who are blind or vision impaired are also unable to vote in secret. *Fittler v NSW Electoral Commission and anor (No.2)*<sup>3</sup>, found that failure to provide a ballot paper in Braille at a local government election in NSW was unlawful discrimination. In *Fittler v NSW Electoral Commission and anor (No.2)*<sup>4</sup> the tribunal found that the failure to allow Mr Fittler to vote privately was discriminatory. The tribunal stated that the failure to afford privacy was a 'serious consequence, because the activity that Mr Fittler was excluded from was not trivial: it was a dimension of his right to participate on an equal footing in Australia's democratic process'<sup>5</sup>. The tribunal heard uncontested expert evidence from Mr Bryan Mercurio of the Faculty of Law, University of New South Wales, that the "right to vote in secret is now such a well-established, deep-rooted principle that many view absolute secrecy of the ballot as a necessary ingredient to maintaining democratic integrity"<sup>6</sup>. The tribunal adopted Mr Mercurio's opinion that "voting with assistance at the polling station means that voters are denied the rights and protections associated with the secret ballot"<sup>7</sup>. The tribunal held that the loss of privacy when voting was significant, and that its effect was that electors who could not comply with the Electoral Commissions requirements received a different service: voting with assistance and therefore without privacy.
2. Section 234 of the *Commonwealth Electoral Act 1918* prevents a secret ballot for some people with disability. While the section aim to assist people with disability by enabling them to be assisted by another person when casting their vote or providing their preferences to another person, it fails to provide for reasonable adjustments for people with disability, so that a vote may be cast independently and in secret on an equal basis with other voters. This is in breach of section 24 of the *Disability Discrimination Act 1992* (Cth) as the service of providing people with the facilities to enable them to vote is provided on different terms and conditions. Section 234 of the *Commonwealth Electoral Act 1918* should be amended to provide for reasonable adjustments to enable people with disability to vote independently and in secret. Some suggested alternative means to print ballot papers are discussed below.

### 7.3 Electronically Assisted Voting

DDLC and PWD strongly recommend that electronic voting be trialled and implemented across all jurisdictions. Electronic assisted voting (EAV) has been shown to greatly improve the franchise of people with disability.

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<sup>3</sup> [2008] NSWADT 116

<sup>4</sup> [2008] NSWADT 116

<sup>5</sup> *Ibid* at 42

<sup>6</sup> *Ibid*

<sup>7</sup> *Ibid* at 43

The various Acts covering elections across Australian jurisdictions outline to a greater or lesser degree the form that a ballot paper should take. PWD and DDLC believe that there needs to be reforms across jurisdictions to allow for alternative ways of voting, such as EAV. In addition, the Australian Human Rights Commission has supported the use of electronic voting machines for people who are unable to cast a secret ballot by pencil and paper due to a physical disability and for people who cannot effectively use written instructions in completing a ballot paper due to an intellectual or learning disability, as such people may benefit from having their input read back to them electronically. <sup>8</sup>

**Case study:** *A man known to both PWD and DDLC utilised EAV during the 2007 Federal Election. It was the first time in his life that he was able to vote independently and verify that he had filled out his ballot correctly. He described it as an empowering experience.*

## **The Report on the 2007 Election Electronic Voting Trials**

Unfortunately the Report on the 2007 Election Electronic Voting Trials recommended that EAV for electors who are blind or vision impaired should be discontinued in future federal elections due to the high average cost per elector.<sup>9</sup>

PWD and DDLC believe that the discontinuation of EAV would be in breach of national disability discrimination law and international agreements. PWD and DDLC also argue that the Report's recommendation to discontinue the Trials is based on an insufficient analysis of the Trials. In addition, although extra costs may be required to provide people with disability with equal rights, "there is of necessity a trade off in allowing one group of electors to exercise the same quality of franchise as most of the community and the availability of resources."<sup>10</sup>

850 blind or vision impaired voters successfully cast their votes electronically at the 2007 Federal Election. 97 per cent of respondents to the evaluation survey were very satisfied or satisfied with the use of the electronic voting machines.<sup>11</sup>

## **7.4 Legal issues surrounding the exclusion of people being of "unsound mind" from the electoral roll**

### **Obligations under the *United Nations Convention on the Rights of Persons with Disabilities***

It is important to acknowledge Australia's obligations under the Convention on Rights of Persons with Disabilities (CRPD) which was ratified by Australia in July 2008. The issue of the exclusion of people being of unsound mind from the electoral roll is covered by Article 12 and Article 29 of CRPD.

Article 12 provides for equal recognition before the law, which focuses on capacity. Specifically, it states in paragraph 4:

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<sup>8</sup> Report on the 2007 Election Electronic Voting Trials, pp.61-62

<sup>9</sup> Ibid., p. 65

<sup>10</sup> Ibid., pp.55-56

<sup>11</sup> Ibid., p.51

*“State Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person’s circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person’s rights and interests.”*

Article 29 of CRPD provides for participation in political and public life, which includes voting. In relation to voting, it states:

*“(i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;*

*(ii) Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;*

*(iii) Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;”*

These international obligations are not reflected by the exclusion of people being of unsound mind from being excluded from the electoral roll, under the *Commonwealth Electoral Act 1918*, as outlined below.

### **Objections to the Eligibility to Vote under the Commonwealth Electoral Act 1918 (the Act)**

Section 93 of the Act provides for the classes of people who are excluded from the electoral roll:

*“(8) A person who:*

*(a) by reason of being of unsound mind, is incapable of understanding the nature and significance of enrolment and voting; or*

*(c) has been convicted of treason or treachery and has not been pardoned;*

*is not entitled to have his or her name placed on or retained on any Roll or to vote at any Senate election or House of Representatives election.”*

Section 114 of the Act provides for objection to enrolment:

*“(1) A person enrolled for a Subdivision may object to the enrolment of another person for that Subdivision on the ground, other than the ground specified in paragraph 93(8)(a), that the other person is not entitled to be enrolled for that Subdivision.*

*(1A) an “elector” may object to the enrolment of another person on the ground specified in paragraph 93(8)(a), whether or not the elector is enrolled in the same Subdivision as the other person.”*

*Under section 4, interpretation, “an “Elector” means any person whose name appears on a Roll as an elector”.*

*“(3) A DRO<sup>12</sup> shall not object on the ground set out in paragraph 93(8)(a).”*

*Under section 116 of the Act provides grounds for an objection to be dismissed:*

*“(4) If*

*(a) an objection is made on the ground specified in paragraph 93(8)(a); and*

*(b) the objection is not supported by a certificate of a medical practitioner;*

*the DRO shall dismiss the objection without giving notice to the challenged elector.”*

*Section 120 of the Act provides for review of a decision by an Australia Electoral Officer:*

*“(1) Where a Divisional Returning Officer for a Division:*

*(a) notifies a person under section 102 that a claim by the person for enrolment, for transfer of enrolment or for age 17 enrolment has been rejected; or*

*(b) notifies a person under section 118 that the person's name has been removed from a Roll in pursuance of an objection;*

*the person may, before the expiration of the period of 28 days commencing on the day on which the notification is given, request the Divisional Returning Officer, in writing, to refer the claim or the objection, as the case may be, to the Australian Electoral Officer for the State that includes that Division for review.”* Section 121 of the Act provides for a review of a decision made by an Australian Electoral Officer by the Administrative Appeals Tribunal:

*“(1) Application may be made to the Administrative Appeals Tribunal for review of:*

*(a) a decision made by an Australian Electoral Officer refusing an application made under subsection 94A(1) or 96(1); or*

*(b) a decision made by an Australian Electoral Officer under subsection 120(6); or*

*(c) a decision made by an Australian Electoral Officer under section 93A or 98A to refuse to include in a Roll, or transfer to a Roll, the person's name; or*

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<sup>12</sup> Divisional Returning Officer

*(d) a decision made by a Divisional Returning Officer under section 105 to alter a Roll kept by the officer (including a decision to add or remove a person's name from the Roll.”*

### **Summary of the Current Law**

Under paragraph 93(8)(a) of the *Commonwealth Electoral Act 1918*, a person who by reason of being of unsound mind, is incapable of understanding the nature and significance of enrolment and voting is not entitled to have their name placed or retained on the electoral roll. The Act sets out how a person’s enrolment can be objected to on the basis of them being of unsound mind. Any person on the electoral roll can object to the enrolment of another person being placed or retained on the electoral roll due to them being of unsound mind. However, the objection must be supported by a medical certificate.

Further, there are avenues for the person who is said to be ‘incapable of understanding the nature and significance of enrolment and voting’ seek review by an Australian Electoral Officer and then by the Administrative Appeals Tribunal. Despite there being an appeal process in place, we are concerned how this would work in practice.

The test set as to whether the person in question understands “the nature and significance of enrolment and voting” is unsuitable. It could be argued that people of ‘sound mind’ do not understand the “nature and significance of enrolment and voting”. It is a person’s right to make a bad decision regardless of whether they have a disability that impacts on their decision making capacity.

A more appropriate test to assess legal capacity would be one embracing the principles in the NSW Attorney General’s Department’s Capacity Toolkit<sup>13</sup>. The Capacity Toolkit outlines the following 6 principles of assessing capacity:

1. Always presume a person has capacity;
2. Capacity is decision specific;
3. Don’t assume a person lacks capacity based on appearances;
4. Assess a person’s decision making ability – not the decision they make;
5. Respect a person’s privacy; and
6. Substitute decision making is a last resort<sup>14</sup>.

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<sup>13</sup> Capacity Toolkit, Attorney General’s Department of NSW, Diversity Services Unit.

<sup>14</sup> Ibid, p 27 .

Taking these principles into account, in making a determination as to capacity to vote, an assumption should be made from the beginning that a person does have the capacity to understand the implications of their decision. The onus should then fall on the person questioning capacity to prove that a person lacks the capacity. This evidence should then be put before an independent person. There should also be an easily accessible avenue of appeal if a determination is made against a person with disability. This process would be in line with obligations under Article 12 of the *Convention on the Rights of Persons with Disabilities*, procedural fairness and natural justice.

### **Concluding remarks in regards to the issue of unsound mind**

PWD and DDLC strongly recommend that the definition of 'unsound mind' used in the legislation be amended as it does not give a clear indication as to whether the person has the capacity to participate in the electoral process. A more appropriate definition of 'unsound mind' may be 'a lack of capacity to exercise a choice'. In his judgement Gleeson CJ in *Roach v Electoral Commission*<sup>15</sup> stated that the rationale for not granting people of unsound mind franchise is related to the capacity to exercise choice.

We also recommend any conclusion reached as to whether a person lacks capacity to participate in the electoral process, should be decision specific, in that the determination that a person lacks capacity should only apply to voting in a particular election.

## **7.4 Penalty Notices**

Section 245 of the *Commonwealth Electoral Act 1918* provides for penalty notices for those who fail to vote at an election.

People with disability may inadvertently suffer under this section. For example, a person with an intellectual disability may be unable to understand when booths are open and their location, and a person with a psychiatric disability may be unwell during an election. DDLC and PWD recommend that such a reason would be sufficient for the failure of an elector with disability to vote at an election, and thereby not receive a penalty notice.

This section should be amended to include people with disability, who because of their disability, are unable to vote at an election, as a sufficient reason under section 245(4)(d) for the failure to vote.

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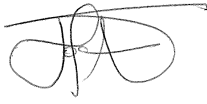
## **8 Conclusion**

Voting and in particular by secret ballot is a fundamental human right. The enrolment and voting methods and systems must be open and accessible to all people.

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<sup>15</sup> *Roach v Electoral Commissioner* [2006] HCA 43

Australian Governments must reform its legislation to conform with current national and international legal obligations under human rights and disability discrimination law. We urge the government to allow people with disability living in Australia to participate fully and equally in political life.



**Jo Shulman**

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**Therese Sands**

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