

**Electoral Reform Green Paper  
Strengthening Australia's Democracy  
December 2009**

**Prepared for the Electoral Reform Secretariat  
Department of the Prime Minister and Cabinet  
Australian Government**



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## EXECUTIVE SUMMARY

The Physical Disability Council of NSW (PDCN) appreciates the opportunity to provide feedback and recommendations to the Department of the Prime Minister and Cabinet on the Electoral Reform Green Paper – Strengthening Australia’s Democracy.

In summary PDCN recommends that all components of the electoral system provide total access for both Commonwealth and State Government authorities, and that this be reflected in their Corporate and Disability Action Plans.

## TERMS OF REFERENCE

*The following discussion points were copied from the most relevant chapters.*

### Chapter 4 - The Franchise

- 4(a) *Are the current arrangements for the franchise appropriate for modern Australia?*
- 4(b) *Should any categories of non- citizens have the right to vote in Australian elections?*
- 4(c) *To what extent should Australian citizens living overseas be permitted to vote in Australian elections?*
- 4(d) *Should the voting age and/or enrolment age for Australian elections be lowered?*
- 4(e) *Should the current exclusions from the franchise be maintained, amended or abolished, in particular for:*
  - *Persons serving a prison sentence of three years or more?*
  - *Persons of unsound mind?*

- 4(f) *Are there any other aspects of the franchise that you consider should be reformed?*
- 4(g) *Should the franchise be uniform across Australia?*

#### Chapter 11 - Polling

- 11(a) *Should any actions be taken in response to the rise in early voting?*
- 11(b) *What changes, if any, are needed to the current postal vote processes for federal elections?*
- 11(c) *Should electronic voting be utilised to a greater extent in Australia?*
- *If so, what form of electronic voting should be used?*
- 11(d) *Are additional mechanisms required to reduce the possibility for multiple voting?*
- *If so, what mechanisms should be introduced?*
  - *Do you think the current rules surrounding the casting of provisional votes should be changed? If so, how?*
- 11(e) *Should a requirement for voters to provide identification on election day be introduced?*
- *If so, what form/s of identification should be required?*
- 11(f) *Do you have any other suggestions for the future location of polling places in Australia?*
- *In particular, do you have any suggestions about the location of polling places for homeless persons or those in Indigenous communities?*
- 11(g) *Do you think compulsory voting should continue in Australia?*
- 11(h) *What areas of the current polling arrangements do you think would particularly benefit from harmonisation between Commonwealth, states and territories?*
- *Do you think that it is appropriate for federal and state or territory elections to be held on the same day? <sup>1</sup>*

## RECOMMENDATIONS

**Recommendation 1:** That the Australian Government complies with all relevant articles contained in the *Convention on the Rights of Persons with Disabilities* including the following: Article 29, Article 4(1)(b), Article 4(3), Article 12, Article 9.

**Recommendation 2:** The exclusion of persons of 'unsound mind' from the franchise should be removed from the *Commonwealth Electoral Act 1918*. Instead there should be a presumption of capacity whereby all persons who are of voting age should be enrolled to vote, and supported to exercise their right to vote.

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<sup>1</sup> Australian Government – Electoral Reform Green Paper Strengthening Australia's Democracy (2009)

**Recommendation 3:** PDCN recommends that all components of the electoral system provide total access including written and electoral information, enrolment, postal voting, access to all venues including the location of the Returning Officer and all polling venues.

**Recommendation 4:** PDCN recommends that the Australian Electoral Commission's *Disability Action Plan 2008 - 2011* identifies that all components of the electoral system will be totally accessible..

**Recommendation 5:** To ensure consistency it is recommended by PDCN that all electoral commissions; commonwealth and state provide total access to all components of the electoral system.

## ABOUT PDCN

PDCN is the peak body representing people with physical disabilities across New South Wales representing approximately 700,000 residents. PDCN focuses on issues relevant to people with physical disabilities, as an inclusive society is achieved when people with physical disabilities are involved in every aspect of political, social, economic and cultural life. Access to the built environment is essential to facilitate community inclusion in all aspects of daily living.

Membership of PDCN includes people with a range of mobility issues, from young children and their carers, to aged people, living across NSW in either Greater Sydney Metropolitan area or rural NSW, representing people from a wide range of socio-economic circumstances.

PDCN effectively networks with other advocacy organisations on common goals and issues. Subsequently PDCN strives to bring about significant, permanent and positive changes to the circumstances of people with physical disabilities. The goal is to secure equal civil and human rights for our constituency.

## COMMENT

### A) Convention on the Rights of Persons with Disabilities

**Recommendation 1:** That the Australian Government comply with all relevant articles contained in the Convention on the Rights of Persons with Disabilities including the following: Article 29, Article 4(1)(b), Article 4(3), Article 12, Article 9.

Following ratification of the *Convention on the Rights of Persons with Disabilities* (CRPD) in July 2008, Australian government activity needs to recognise the following Articles:

- Equal participation in political and public life, including the right to vote, to stand for elections and to hold office. (Article 29)
- Legislative reform to eliminate laws and policies that discriminate against people with disability (Article 4(1)(b))
- Consultation with people with disability should be consulted and actively involved in all decision making that affects them (Article 4(3))
- Measures to ensure supported decision making processes to maximize individual legal capacity. Article 12 provides that persons with disabilities enjoy legal capacity on all aspects of life on an equal basis with others. (Article 12)
- Strategies to ensure access to the support required to exercise their ability to pursue the activities included in Article 29.
- Identify and eliminate obstacles and barriers and ensure that persons with disabilities can access their environment, transportation, public facilities and services, and information and communications technologies. (Article 9).

### B) Legislative Reform

**Recommendation 2:** The exclusion of persons of 'unsound mind' from the franchise should be removed from the Commonwealth Electoral Act 1918. Instead there should be a presumption of capacity whereby all persons who are of voting age should be enrolled to vote, supported to exercise their right to vote.

The *Commonwealth Electoral Act 1918* prevents people of an 'unsound mind' from being able to vote due to their inability of understanding the nature and significance of enrolment and voting. There is no definition of 'unsound mind'

provided in legislation or at common law, and hence its interpretation is vague and ambiguous.<sup>2</sup>

This provision is in violation of the right of equality and non-discrimination to political life, as outlined in the *International Convention on Civil and Political Rights* (ICCPR), and also contravenes fundamental principles of the CRPD. Disenfranchisement of persons of unsound mind could cover persons with a range of physical, mental, intellectual impairments and persons with complex dual disabilities.

**Recommendation 3:** PDCN recommends that all components of the electoral system provide total access including written and electoral information, enrolment, postal voting, access to all venues including the location of the Returning Officer and all polling venues.

Under the *Australian Constitution* voting is not only a right but also a duty, it is compulsory to vote and you may be fined if you do not. To minimise the risk of fraud and increase community access, PDCN will continue to campaign for increased access to all components of the electoral system, including: written and electoral information, enrolment, postal voting, access to all venues including the location of the Returning Officer and all polling venues.

The following list includes a variety of options adopted by different electoral authorities to encourage the participation of people with disabilities in the voting process. PDCN does not support these alternative strategies, due to the increased risk of fraud, and/ or the impact of fostering negative attitudes:

- 'Special' or mobile voting centres at targeted locations, usually located at a nursing homes, accommodation facilities or hospital sites.
- 'Electoral visitor voter' program where an Electoral Officer collects the completed electoral forms from the occupants home address.<sup>3</sup>
- 'Drive- in Polling Places' program where the passenger or driver with a disability meets the Electoral Officer at a designated location.<sup>4</sup>

PDCN is not in favor of the introduction of electronic voting, if introduced in isolation of other methods of casting a vote, as many older persons do not have internet access. Even with the significant increase in community internet usage over the past decade, it can not be assumed that usage is consistent across all

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<sup>2</sup> Human Rights Law Resources Centre - Enhancing Democracy: A Human Rights-Based Approach to Electoral Reform (Dec 2009)

<sup>3</sup> *Electoral Commission of Queensland* <http://www.ecq.qld.gov.au/asp/index.asp?pgid=171>

<sup>4</sup> *Western Australia Electoral Commission*.  
[http://www.waec.wa.gov.au/voting/making\\_voting\\_convenient/seniors.php](http://www.waec.wa.gov.au/voting/making_voting_convenient/seniors.php)

age groups. Usage varies enormously with a greater than 80% usage for people aged between 15- 24 years, with only a 20% for older persons aged over 65 years.<sup>5</sup>

## C Disability Action Plan

**Recommendation 4:** PDCN recommends that the Disability Action Plan 2008 – 2011 note that all components of the electoral system will be totally accessible.

**Recommendation 5:** To ensure consistency it is recommended by PDCN that all electoral commissions; commonwealth and state provide total access to all components of the electoral system.

PDCN believes that accessible polling booths need to be provided in community settings across all electorates, without a two tiered systems with polling booths providing total access, accessible only with assistance or no access. PDCN believes there is the term 'accessible only with assistance' is unclear, ambiguous and hence lacks credibility.

Data from PDCN indicates that for the Federal elections in November 2007, 15% of polling places were accessible, a modest increase of 14% for the NSW State elections held earlier that same year, and in the recent Local Government elections in 2008, 32 (18%) local government electorates were identified as not having at least one polling place that provided access. Though data collected for the same Local Government elections by NSW Electoral Commission reflects differences in interpretation, with 21.1% of polling places providing wheelchair access, and 42.5% of polling places providing access with assistance. These differences in data illustrate problems associated with using inconsistent information and benchmarks.<sup>6</sup>

Governmental facilities such as Centerlink or Medicare facilities, or shopping centres should be considered as possible venues suitable for polling, as these facilities generally provide good access to the built environment, access to public transport, and located within a community setting, as suggested in the *Electoral Reform Green Paper*.

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<sup>5</sup> Australian Bureau of Statistics 8146.0 (2005-6) Household use of Information Technology

<sup>6</sup> NSW Electoral Commission Report on the Local Government Elections 2008

Action 2.2 of the Australian Electoral Commission's *Disability Action Plan 2008 – 2011* identifies the following actions relevant to polling places:

- 2.2.1 Review and where necessary amend the Polling Place Inspection Checklist in consultation with the Disability Advisory Group to ensure any changes in access standards or other relevant matters are incorporated.
- 2.2.2 Review polling places to maximise number complying with AS1428 (Australian standard for building accessibility).
- 2.2.3 Consult with local disability organisations re polling place locations and problems, especially during polling place reviews, and report back to State Offices.
- 2.2.4 Provide Polling Place lists in accessible formats marked to indicate wheelchair access in pre- election advertising, on the Internet, through call centres and direct to Federal, State and Territory peak disability organisations. Include a clear explanation of what each of the accessibility ratings means and clear signposts on the website for people who do not have strong English language proficiency.
- 2.2.5 Develop and display appropriate accessible signage to indicate wheelchair access available through an alternative entrance.<sup>7</sup>

With nearly twenty years since the adoption of the *Disability Discrimination Act 1993* and the availability of resources on the Australian Human Rights Commission website, PDCN is unable to determine why the tasks identified in this action have not been completed as yet. Furthermore PDCN believes that 100% of polling places should provide complete access, and that all Disability Action Plans, whether Commonwealth or State need to state this as a key performance indicator.

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<sup>7</sup> Australian Electoral Commission – Disability Action Plan 2008- 2011  
[http://www.aec.gov.au/pdf/publications/disability\\_action\\_plan.pdf](http://www.aec.gov.au/pdf/publications/disability_action_plan.pdf)