

Submission

No 9

Review of the Parliamentary Electorates and Elections Act 1912 and the Election Funding, Expenditure and Disclosures Act 1981

Organisation: Australian Centre for Disability Law

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The Chair
Joint Standing Committee on Electoral Matters
Parliament of New South Wales
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Sir/Madam:

Review of the *Parliamentary Electorates and Elections Act 1912* and the *Election Funding, Expenditure and Disclosures Act 1981*

1. The Australian Centre for Disability Law (**ACDL**) is a community legal centre which specialises in disability discrimination and human rights law and policy. We provide legal advice and representation to persons with disability and their associates and undertake law reform, continuing legal education, and community legal education activities.
2. ACDL would like to thank the committee for the opportunity to make a contribution to this important inquiry. Our submission will focus on the questions regarding the appropriateness of the existing regarding the entitlement to enrol and vote in New South Wales and whether the *Parliamentary Elections and Electorates Act 1912* (**the PE&E Act**) provides appropriate voting options for electors with a disability and rural and remote electors.

Whether existing provisions regarding the entitlement to enrol and vote in New South Wales is appropriate

3. Section 25 of the PE&E Act disqualifies a person from voting if they are found to be incapable of understanding the nature and significance of enrolling and voting, due to 'being of unsound mind'.
4. ACDL is greatly concerned about this section for the following reasons:

The section allows a person to be disqualified from voting on the grounds of disability.

- (a) The PE&E Act fails to state who can make this disqualification decision. This judgement could be made by someone who is not engaged with the person regularly, someone who does not understand the complex nature of capacity,

or someone who has a desire to exert control over the person. This means the section is open to being used as a form of abuse towards persons with disability.

- (b) Persons with an intellectual impairment or psychiatric impairment who **are** able to understand the ramifications of enrolment and voting could be judged to fall into this definition inappropriately.
 - (c) The section's test as to whether the person in question understands "the nature and significance of enrolment and voting" is unsuitable. It could be argued that persons of 'sound mind' do not have this understanding when it comes to the electoral system. This is not a test applied to a person of 'sound mind'. 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.
- 5. An incorrect assessment of a person's capacity can result in the denial of a fundamental human right to make autonomous decisions, thereby depriving persons with disability the opportunity for self-determination.
 - 6. Furthermore, in accordance with Article 12 of United Nations *Convention on the Rights of Persons with Disabilities (CRPD)*, legal capacity ought to be recognised and persons ought to be provided with support to exercise their capacity.
 - 7. Therefore, it is our position that s. 25 of the PE&E Act be repealed in order to eliminate any possibility of persons being wrongfully classified as being of unsound mind and consequently being unable to enrol and vote in New South Wales.

Whether the PE&E Act provides appropriate voting options for electors with a disability and rural and remote electors

- 8. Article 29 of the CRPD provides for the participation in political and public life. It states that
 - “State Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others and shall undertake to:
 - (a) Ensure that persons with disabilities can effectively on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disability to vote and be elected, inter alia, by:
 - (i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use.....”
- 9. Given that Australia has ratified CRPD and the right to vote is a civil and political right, it is immediately realisable. Therefore, Australia must amend all laws related to voting so that it reflects Article 29.

10. ACDL would like to acknowledge the introduction of technology assisted voting, which enabled persons to cast their vote via the phone or internet, in the 2011 NSW State Election as this enabled many persons with disability, in particular persons with vision impairments and persons with dexterity impairments, to vote in secret for the first time. Section 120AB of the PE&E Act outlines who is able to vote electronically. This now fulfils s. 103 of the PE&E Act as it enables persons with disability to have a secret ballot. This also resolves the problems previously encountered by postal voting as persons can apply online.
11. Although, this was a positive step, it is arguable that it continues to breach of s. 24 (b) of the *Disability Discrimination Act 1992* (DDA), given the fact that although persons with disability are able to cast a secret vote through technology assisted voting, this is still on different grounds to everybody else. Persons using technology assisted voting were required to vote prior to polling day and the system was not available at polling booths.
12. Persons with disability feel that it is important that they are visible at polling booths on polling day so that political parties and other candidates are aware that they are an important part of their constituency and that their issues are brought to the political forefront.
13. It is therefore, our position that technology assisted voting be available at polling booths in order for persons with disability to be able to participate in voting on an equal basis with others.
14. It is our position that all polling booths ought to be fully accessible in accordance with the *Disability (Access to Premises – Buildings) Standards 2010*. This encompasses hearing augmentation.
15. Please contact Fiona Given at fgiven@disabilitylaw.org.au if you would like to discuss this submission further.

Yours sincerely

FIONA GIVEN
Policy Officer