



people with disability

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NGO in Special Consultative Status with the  
Economic and Social Council of the United Nations

## People with Disability Australia (PWDA)

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### Joint Standing Committee on Electoral Matters

### Inquiry into and report on all aspects of the conduct of the

### 2016 Federal Election and matters related thereto

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**Submission**  
**2 December 2016**

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Disabled  
People's  
Organisations  
Australia

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## **About People with Disability Australia**

**People with Disability Australia (PWDA)** is a leading disability rights, advocacy and representative organisation of and for all people with disability. We are the only national, cross-disability organisation - we represent the interests of people with all kinds of disability. We are a non-profit, non-government organisation.

PWDA's primary membership is made up of people with disability and organisations primarily constituted by people with disability. PWDA also has a large associate membership of other individuals and organisations committed to the disability rights movement.

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. PWDA was founded in 1981, the International Year of Disabled Persons, to provide people with disability with a voice of our own.

PWDA is also a founding member of Disabled People's Organisations Australia ([DPO Australia](#)) along with Women With Disabilities Australia, First Peoples Disability Network Australia, and National Ethnic Disability Alliance. DPO's are organisations that are led by, and constituted of, people with disability.

The key purpose of DPO Australia is to promote, protect and advance the human rights and freedoms of people with disability In Australia by working collaboratively on areas of shared interests, purposes, strategic priorities and opportunities. DPO Australia has been funded by the Australian Government to be the recognised

coordinating point between Government/s and other stakeholders, for consultation and engagement with people with disability in Australia.

## **Introduction**

PWDA welcomes the opportunity to respond to this inquiry's terms of reference. We have kept our response short and focused on some issues related to the general administration of the election and part 1 (d) of the terms of reference.

During October 2016 we surveyed our members, stakeholders and other people with disability on their experience of the 2016 Federal election. We undertook a similar survey after the 2013 election. In addition to other feedback from our members, this has helped inform our response to this Inquiry.

We note that the equivalent committee on electoral matters in NSW very recently released their report on the administration of the 2015 NSW Election and made a recommendation of requiring identification when voting in person. We strongly reject this recommendation as it will have a negative effect on rates of voting for people with disability, a group of voters who already face multiple barriers to accessing this most basic of rights in our democratic way of government. There are a number of people with disability without driver's license, proof of age card or passport. The safeguards proposed, especially a statutory declaration, are also not accessible for some people with disability. PWDA and others will continue to work with the NSW Government to ensure that this recommendation isn't adopted and we strongly urge this committee against making a similar recommendation.

## **Recommendations**

- That the JSCEM support increasing the resources of the AEC for future federal elections to ensure that the queues experienced at the 2016 Federal election are not experienced again.
- That the JSCEM support the expansion of electronic voting to ensure that a wider range of people who experience difficulties voting on election day, pre-poll or postal vote, can vote via secret ballot.
- That the JSCEM endorse legislative change to the adaptation of NSW's iVote system, while allowing the AEC to look at the development of other forms of electronic and internet voting.
- That the JSCEM adopt the recommendations 9-1 through 9-7 of the *Australian Law Reform Commission's Inquiry into Equality, Capacity and Disability in Commonwealth Laws* (ALRC Report 124).
- That the JSCEM undertake an inquiry into implementing fixed parliamentary election dates for the Australian Parliament.

- That the JSCEM and AEC monitor developments in other jurisdictions that increase the participation and knowledge of voters with disability and adapt these innovations in time for future federal elections and votes.
- That the AEC strengthen its Disability Inclusion Strategy 2012-20 to increase the number of people with disability employed both as permanent and temporary staff.

## **Policy Context**

The United Nations *Convention on the Rights of Persons with Disabilities* (CRPD) was adopted by *the United Nations General Assembly* in December 2006 and entered into force at the international level on 3 May 2008. Australia ratified the CRPD on 17 July 2008 and it entered into force with respect to Australia 30 days later on 16 August 2008.

Article 29 of CRPD is titled Participation in political and public life and is most relevant to this inquiry. It states that:

*States 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 and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities 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;*
  - 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;*

This means that the Australian Government is bound to do more to ensure that voters with disability have access to a range of voting options, enabling access to a secret ballot in a way that is accessible and equitable.

The *National Disability Strategy 2010-2020* (NDS) is currently the key national disability policy that the Australian, state and territory governments have all committed to take coordinated action to ensure that people with disability are included in all aspects of life. Equal access to civic life is covered by Policy Directions 1 and 2 of the NDS, and commits all Australian governments to take action to ensure equal participation of people with disability in civic life.

The AEC Disability Inclusion Strategy 2012-20 includes actions that they will take to ensure that elections are accessible to people with disability, ensuring compliance by

the AEC with the NDS. These action are limited by the legislative constraints contained in the *Commonwealth Electoral Act 1918* (the Act).

### **Experiences of the 2016 Election**

PWDA surveyed people with disability on their experience of the last election. The responses we received came from across the country and from people who were presented with a variety of barriers to their participation in the election. A number of respondents did not vote in the election due to these barriers.

People reported queues that were long, and for many these queues were longer when compared to previous elections. This impacted negatively on a number of people's ability to vote, due to physical pain, physical incapacity or impact on their psychosocial wellbeing. Some people's needs were accommodated, either by staff who allowed them to vote without queue, or by the provision of seating while queuing. Unfortunately this wasn't a universal experience. A number of people reported to us that that had to give up and leave a polling place due to the pain or exhaustion that they experienced as a result of these long queues. This is a situation that can be easily fixed, through the provision of staff training and access to chairs in the queue and at the polling booth.

We note that there was a problem in Queensland for voters who accessed telephone voting, targeted towards blind and low vision voters. People who used this system were issued with notices, usually in inaccessible formats for people who are blind or have low vision, suggesting that they had not voted. The AEC has addressed this issue and through our participation in the AEC Disability Advisory Committee, we have been given assurances that they are looking at their systems with service providers to ensure that this does not happen again. We welcome this work by the AEC and therefore don't make any recommendations on this matter. However, we note that this form of voting has been welcomed by many voters who are blind or have low vision and should continue to be available until the Act is changed to allow a better system, such as the NSW EC iVote system.

The uncertainty of the timing of federal elections makes it difficult for the AEC to ensure a consistent level of accessible polling places for people with disability. Contributing to this is the fact that the Australian Parliament currently has short terms, with election dates set as little as 33 days out from election day. This makes planning for accessible polling places very difficult. Moving to fixed date elections would allow greater access to voting for people with disability.

People who responded to the survey have again raised the issue of *how to vote* (HTV) information not being provided in accessible formats. While this is largely an issue that needs to be addressed by political parties, we note that the NSW JSCEM has explored how to deliver this information to people who use the iVote system.

**Recommendation:** That the JSCEM support increasing the resources of the AEC for future federal elections to ensure that the queues experienced at the 2016 Federal election are not experienced again.

**Recommendation:** That the JSCEM undertake an inquiry into implementing fixed parliamentary election dates for the Australian Parliament.

### **Electronic and Internet Voting**

Currently a number of state and territory jurisdictions allow for different forms of electronic voting. NSW has what is considered the most advanced form of electronically assisted voting, through their iVote system. We understand that there is interest from other states to implement this system in their own elections, with two states having progressed their investigation of the adaptation of this technology.

We understand that there are legislative barriers to the AEC adopting this technology for federal elections. We believe that the experience of NSW, which has been evaluated and continuously monitored since its first use in 2011, should provide comfort to the federal parliament that the integrity of this system is strong.

We believe that the policy context, as outlined above, demands action from the Australian government to improve access to elections for people with disability. We note that there have been calls for internet voting and other forms of electronic voting. We acknowledge that there are issues that need to be addressed before internet or vastly expanded electronic voting is introduced in Australia. In this context we believe that legislative change should be made immediately to allow for a system based on iVote to be adapted at the federal level, while issues related to other forms of electronic or internet voting are addressed.

**Recommendation:** That the JSCEM support the expansion of electronic voting to ensure that a wider range of people who experience difficulties voting on election day, pre-poll or postal vote, can vote via secret ballot.

**Recommendation:** That the JSCEM endorse legislative change to the adaptation of NSW's iVote system, while allowing the AEC to look at the development of other forms of electronic and internet voting.

### **Unsound Mind**

The Australian Law Reform Commission undertook an inquiry into Equality, Capacity and Disability in Commonwealth Laws (ALRC Report 124) which reported in August 2014. We have included the list of recommendations relating to electoral matters in Appendix A to this submission. We recommend that this committee note the discussion contained in that report and adopt the recommendations made.

**Recommendation:** That the JSCEM adopt the recommendations 9-1 through 9-7 of the *Australian Law Reform Commission's Inquiry into Equality, Capacity and Disability in Commonwealth Laws* (ALRC Report 124).

## **Developments in other jurisdictions**

At the most recent AEC DAC, held on 21 November 2016, most members of the ECANZ gave updates on activities that they were undertaking in their jurisdictions. Of note were the following. The VEC has developed a communication aid app for iPad called Voters Voice. This app was trailed by people with disability who have communication support needs in Victoria's recent local government elections. This is currently being evaluated and pending the outcome should be considered by the AEC to be adapted for use in federal elections.

The NSW EC is currently addressing diversity in its workforce. This is something that the AEC should do as well, as the current commitment under their disability plan has so far failed to increase the number of people with disability employed.

Queensland is about to trial drive-in voting in a small number of electorates. This would allow people to drive up to receive a ballot paper and vote without having to leave their car. This would be appropriate for a number of people with disability, and address some of the barriers that people identified when responding to our survey of voters. This trial should be monitored by the AEC and adopted if the service evaluates well.

**Recommendation:** That the JSCEM and AEC monitor developments in other jurisdictions that increase the participation and knowledge of voters with disability and adapt these innovations in time for future federal elections and votes.

**Recommendation:** That the AEC strengthen its Disability Inclusion Strategy 2012-20 to increase the number of people with disability employed both as permanent and temporary staff.

## **Appendix A**

Taken from the *Australian Law Reform Commission's Inquiry into Equality, Capacity and Disability in Commonwealth Laws* (ALRC Report 124) available here:  
<https://www.alrc.gov.au/publications/equality-capacity-disability-report-124>

### **9. Electoral Matters**

#### **Recommendation 9–1**

The Commonwealth Electoral Act 1918 (Cth) should be amended to repeal: (a) s 93(8)(a), which provides that a person of 'unsound mind' who is 'incapable of understanding the nature and significance of enrolment or voting' is not entitled to have their name on the electoral roll or to vote in any Senate or House of Representatives election; and (b) s 118(4), which relates to objections to enrolment on the basis that a person is of 'unsound mind'.

#### **Recommendation 9–2**

State and territory governments should repeal 'unsound mind' provisions in their electoral legislation and make other changes consistent with those recommended by the ALRC with respect to the Commonwealth Electoral Act 1918 (Cth).

#### **Recommendation 9–3**

Section 245 of the Commonwealth Electoral Act 1918 (Cth) on compulsory voting should be amended to provide that it is a 'valid and sufficient reason' for not voting if a person cannot: (a) understand information relevant to voting at the particular election; (b) retain that information for a sufficient period to make a voting decision; (c) use or weigh that information as part of the process of voting; or (d) communicate their vote in some way.

#### **Recommendation 9–4**

The Australian Electoral Commission should provide Divisional Returning Officers with guidance and training, consistent with the National Decision-Making Principles, to help them determine if a person with disability has a valid and sufficient reason for failing to vote.

#### **Recommendation 9–5**

Section 234(1) of the Commonwealth Electoral Act 1918 (Cth) should be amended to provide that if any voter satisfies the presiding officer that he or she is unable to vote without assistance, the presiding officer shall permit a person chosen by the voter to assist them with voting.

#### **Recommendation 9–6**

The Australian Electoral Commission should provide its officers with guidance and training, consistent with the National Decision-Making Principles, to improve support in enrolment and voting for persons who require support to vote.

#### **Recommendation 9–7**

The Australian Electoral Commission should investigate methods of maintaining the secrecy of votes of persons who require support to vote."