

# SUBMISSION 68



people with disability

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## People with Disability Australia Incorporated

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

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Joint Standing Committee on Electoral Matters  
Department of House of Representatives  
PO Box 6021  
Parliament House  
CANBERRA ACT 2600

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## **Inquiry into the 2007 Federal election**

People with Disability Australia Incorporated (PWD) is a national disability rights and advocacy organisation. Its primary membership is made up of people with disability and organisations primarily constituted by people with disability. PWD also has a large associate membership of other individuals and organisations committed to the disability rights movement. PWD was founded in 1981, the International Year of Disabled Persons, to provide people with disability with a voice of our own. PWD has a cross-disability focus – we represent the interests of people with all kinds of disability.

PWD has advocated for the rights of people with disability to participate in electoral processes for many years. We have participated in the Australian Electoral Commission (AEC) Disability Advisory Committee and the New South Wales Electoral Commission (NSWEC) Advisory Committee on the Equal Access to Democracy Plan. Despite the work of electoral authorities many people with a disability are still unable to cast a secret and verifiable vote. This is especially relevant for people with vision impairment, mobility impairment and people with limited hand function. Barriers also exist to enrolment for people with psychiatric and/or intellectual disability.

We are pleased to have the opportunity to make a submission to the Committee. We are available to make verbal submissions to any hearings that may be held by the committee if the committee so desires. PWD would also draw attention to previous written submissions made to this committee during 2007 that focused on accessibility of polling places.

## **Accessibility**

PWD has previously commented on the lack of access of polling places. We believe that it is imperative that a target is adopted that stipulates that all sites utilised by the AEC be fully compliant with Australian Standard 1428 Part 2. We acknowledge the commitment of the AEC in their Disability Action Plan to ensure that all buildings permanently occupied by the AEC are compliant with this standard.

For many of our members accessibility would also mean being close to accessible transport nodes. Many people with disability are still unable to use much of the public transport system and are forced to spend large amounts on specialist travel, such as wheelchair accessible taxis.

## **Electoral Reform of 2006**

Amendments to legislation relating to Federal elections were made in 2006. These focused on the timeframes that relate to enrolment, including new enrolment and changes to enrolment, once an election is called. PWD believes that this reform disproportionately affects some people with disability who have problems navigating enrolment and changes to their enrolment details.

PWD is supportive of the changes made that allowed a trial of electronically-assisted voting machines. We hope that an evaluation by users is undertaken by the AEC. We urge that this trial be expanded so as to allow any voter who requires this technology to be able to access it at their local polling place.

## **Exclusion from Enrolment**

PWD has concerns about section 93 part (8) of the *Commonwealth Electoral Act 1918*. PWD believes the concepts in this section are not a well defined. The Act states that a citizen may be disqualified from voting if the person “is, because of being of unsound mind, incapable of understanding the nature and significance of enrolment and voting”.

As enrolment and voting are two fundamental rights of a system of parliamentary democracy PWD is concerned that a person can be disqualified on the basis of having a disability. We are also concerned that the Act is silent on who can make the decision that a person is to be disqualified. We feel that this is therefore a section of the Act that is open to abuse and open to being used as a form of abuse towards people with disability. PWD argues that due to the problematic nature of this section of the Act that it should be amended to remove this disqualification from voting.

PWD works with a number of people with intellectual impairment or psychiatric impairment who are able to understand the ramifications of enrolment and voting but could be judged to fall into this definition inappropriately. Typically this judgement would 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 is one of the reasons we believe their needs to be a more rigorous system in place that clearly outlines the system and how it should be approached.

The New South Wales Electoral Commission (NSWEC) report on the administration of the 2007 state election contained details on its own experience in declared institutions. The report stated that “in many cases managers advised the NSWEC that this service will not be required as their residents are too sick or frail to vote.” We are concerned about how this determination was made as it has the potential to deny people their individual right to vote. We believe that the individuals concerned need to be able to make the assessment themselves. If for example 99 of 100 people in the declared institution were too ‘sick or frail’ then the one person who was not has been disenfranchised. PWD is not aware of such reports during the Federal Election in 2007 but does not imagine that the situation is any different as the declared institutions and staff are likely to be similar.

When discussing capacity in relation to people with disability, PWD advocates that an assumption should be made from the beginning that a person does have the capacity to understand the implications of a decision, in this case enrolment and voting. The onus is then on the person who is questioning capacity to prove that a person lacks the capacity. PWD argues that this proof must be put before an independent person and that there must be an easily accessible avenue of appeal if someone has made such a determination. This would be an avenue available inline with the idea of procedural fairness and natural justice and one, for example, which is available to people whose capacity has been judged by the NSW Guardianship Tribunal.

In addition the Act outlines a test of “understanding the nature and significance of enrolment and voting”. It could be argued that people 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.

The NSW Attorney Generals Department (AGD) has developed a Capacity Toolkit that outlines when capacity might need to be questioned and includes guidelines to assess capacity. The NSW AGD Capacity Toolkit outlines 6 principles of assessing capacity, they are:

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
6. Substitute decision making is a last resort.

PWD agrees that these principles are important though the use of substitute decision making when it comes to voting would not be appropriate.

PWD would like to see the current section of the Act that disqualifies people from enrolment and voting on the basis “of being of unsound mind, incapable of understanding the nature and significance of enrolment and voting” removed. PWD would like to see a stronger system of opting out of the electoral roll that takes into consideration the principles outlined in the NSW AGD’s Capacity Toolkit. We feel that this sort of system would be less problematic than the current system for the reasons outlined above. This system would have to include flexible systems that allow people to opt out on a long term basis or a short term basis, allow people with episodic impairments to not have to pay fines when their impairment or disability has prevented them from voting.

## **International Context**

The Federal government has stated publically that it supports the ratification of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). Article 29 of the UNCRPD is titled ‘Participation in Political and Public Life’ and states that signatories must ensure access 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;”*

PWD believes that this framework must be adopted and would urge the parliament to make further legislative change before the next federal election.

### **Anti-discrimination Legislation**

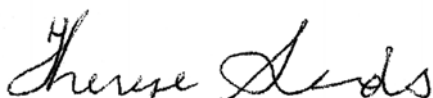
PWD is concerned that over 15 years has lapsed since the Federal government passed the Disability Discrimination Act 1992 (C'th) yet the Federal electoral system has not caught up with the intent of the legislation and the electoral system does not provide for a fully accessible election.

PWD finds it inexcusable that a number of people with disability, such as those with a vision impairment, cannot cast a secret ballot. PWD finds it unacceptable that a number of people with physical impairment cannot access their local polling place to cast their vote. PWD is concerned that hearing augmentation or AUSLAN interpreters are not widely available to people with hearing impairment. PWD considers it unjustifiable that easy English and other accessible forms of information are not widely distributed to people, including people with intellectual impairment.

Thank you for the opportunity to make this submission on the 2007 Federal Election. We hope that the ideas raised in this submission can be implemented in time for the next Federal election. PWD is glad to see the improvements made for people with disability that are outlined in the AEC Disability Action Plan. It is a welcomed improvement on past practice. We urge the government to take this opportunity to create a legislative framework that builds on this work and can allow people with disability living in Australia to participate fully and equally in this important part of political life.

If you would like to discuss any of the matters raised in this submission, please contact Dean Price, Senior Advocate, in our Systemic Advocacy Unit.

Yours sincerely



**THERESE SANDS**  
Co-Chief Executive Officer (Acting)