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NSW Disability Discrimination Legal Centre

**Submission to the Joint Standing Committee
on Electoral Matters concerning the
operation of the 2004 Federal Election**

31 March 2005

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A. The NSW Disability Discrimination Legal Centre

When the *Disability Discrimination Act* was passed in 1992, the Federal Government took the unusual and innovative step of investigating the increased demand on legal aid services likely to arise from the clear establishment of rights for people with disability. As a result of that investigation it was decided that funding should be allocated to the Community Legal Centre sector to set up, in each State and Territory, a new centre to assist people with disability to make complaints under the new law.

Since its inception in 1994, the NSW Disability Discrimination Legal Centre (NSW DDLC) has had three key operational areas in mind: the delivery of direct legal services, the development and delivery of community legal education and the undertaking of policy work in areas relevant to disability discrimination and human rights. Over the years the Centre has trialled various methods of delivering legal advice services, at all times keeping focused on the need to ensure the method chosen is non-discriminatory.

NSW DDLC aims to promote a society where all people can participate in all aspects of life through:

- the removal of barriers, whether physical or attitudinal;
- the elimination of discrimination;
- the empowerment of people with disability;
- education and awareness of the rights of people with disability, and
- advocating publicly and privately for recognition of rights of fair, equitable and non-discriminatory treatment.

The objectives that underpin these aims include:

- to promote community awareness and education of the legal options available to people with disability to enforce their rights;
- to provide timely, accurate and balanced legal services for people with disability, their associates, advocates and representative organisations where discrimination has occurred;
- to ensure the effective participation of people with disability in the management and operation of our Centre and in the wider community;
- to reform laws and policy, practices and community attitudes that discriminate against people with disability;
- to develop and be involved in strategic disability services and networks, and
- to maintain the necessary infrastructure and administrative systems in order to further the aims of the Centre and the disability community.

B. Terms of reference and summary of our submission
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Terms of reference

We were advised by an officer of the Office of the Committee Secretary, Joint Standing Committee on Electoral Matters, that there are no pre-determined terms of reference for submissions to the Joint Standing Committee on Electoral Matters (JSCEM) concerning the operation of the 2004 Federal Election and that we are at liberty to submit on any matters that arise for our stakeholders and the wider disability community.

Summary of our submission

The NSW DDLC submission focuses on equal access for all people to exercise their democratic right to an independent, free and secret vote at Federal Elections. Every person in Australia of voting age, whether they have a disability or not, ought to be provided with services and facilities enabling them to:

- independently access and review political party and candidate information;
- independently access and review how-to-vote and related information on an upcoming election;
- independently access polling places and polling booths (on or before polling day); and
- independently and secretly cast their vote in independently verifiable ballot boxes (or similar receptacles).

Our submission identifies current inadequacies in the Federal Election process that prevent equal access to Australians with a disability and prevent them from exercising their fundamental and inalienable democratic right to vote independently. The submission begins by focusing on the current system of paper ballots and paper-based voting and the reasons why we regard this system as inherently discriminatory for some people with disability in Australia. Our submission then explores various alternative formats and adjustments that are available and used throughout the world for voting. Alternative formats and adjustments include the provision of Braille ballot papers, the use of Internet voting and the use of offline computerised e-voting.

While there is an emphasis in the submission on adjustments that need to be made for people who are blind or vision impaired, our aim is for equal access to voting for all people, irrespective of their disability.

C. Voting in Federal Elections at present

Introduction

The current electoral system reflects a consensus on the importance of the right to cast an independent and secret vote in Australia. This idea stems from the notion that equality is the bedrock of democracy and democracy cannot be achieved unless an individual is given the means to vote secretly according to his or her own preference. Despite these ideals, the implementation of universal suffrage has been slow and still remains unavailable for some in the disability community. An analogy to the plight of Indigenous Australians is warranted. It was not until 1962, when the *Commonwealth Electoral Act 1918 (Cth)* was amended, that adult suffrage was extended to Indigenous Australians.

“Even then, full equality at Commonwealth elections did not eventuate until 1983 when enrolment for and voting in Commonwealth elections were made compulsory for Aboriginal, as it already was for other Australians.”¹

The subsequent transformation of the *right* of every Australian to vote to a *duty* had the effect of “encourag[ing] the electoral commissions to treat every vote as sacred and to expend considerable efforts in ensuring adequate access to the ballot”². There are a number of fundamental principles underpinning Australia’s current voting system.

“Australia[n]...elections are run according to a set of principles designed to ensure free and fair elections. These principles include: transparency, security, professionalism, accuracy, secrecy, timeliness, accountability, [and] equity.”³

We submit that the benefit of these principles must be extended to all Australians who are eligible to vote and that agencies and organisations responsible for Federal Elections in Australia are responsible for the realisation and espousal of all of these principles, and in particular, the principles of secrecy and equity.

The importance of a secret and independent vote stems from Australia’s tradition of political equality, which is considered to be central to the notion of democracy and which Australia has worked very hard to accomplish.

“Previously, electors were polled by voice, in a public venue or forum. As a result, voters were much more open to bribery, intimidation and undue influence. This process effectively disenfranchised and left voiceless vulnerable and dependant voters. Those voters, in particular, benefit most from the secret ballot, as it offers protection from undue influence from those with power over them or on whose care they rely.”⁴

¹ Orr G; Mercurio B; Williams G; “Australian Electoral Law: A Stocktake”; 2(3) *Election LJ* 2003, 383-401 at 390.

² Orr G; Mercurio B; Williams G; “Australian Electoral Law: A Stocktake”; 2(3) *Election LJ* 2003, 383-401 at 390.

³ Green P; “The Politics of the Future: The Internet and Democracy in Australia. The Internet and the Electoral Process” presented to the Australian Political Science Association’s Politics of the Future seminar at the Australian National University on 5 October 2000 available from http://www.seo.nsw.gov.au/publications_resources/pubsfordownload/index.html

⁴ Mercurio B; “Discrimination in electoral law: Using technology to extend the secret ballot to disabled and illiterate voters”; 28(6) *ALJ* 2003 at 272.

Current inadequacies of the voting system at Federal Elections - for blind and visually impaired people.

Our stakeholders have identified the following areas of inadequacy in the Federal Election ballot system that prevent or significantly hinder blind and visually impaired people from casting an informed, secret and independent ballot in Australian Federal Elections:

- That the current system requires a blind or visually impaired voter, (and for that matter any voter with a disability) to attend a polling place to cast a paper ballot in a ballot box. The votes are then manually counted or electronically counted. Presently Australian voters with a disability can vote via a General Postal Vote (GPV) or can vote with assistance at the polling booth on election day. Although these mechanisms are designed to accommodate people with a disability to allow them to participate in the voting process, we submit that the GPV alternative is unsatisfactory and exclusionary and encourages that blind people, vision-impaired people, illiterate and dyslexic people, people with a spinal injury and people with other physical disabilities to stay at home. This is patronising, disempowering and archaic, not only because such people are denied the communal experience of voting at a polling place on election day, but more importantly, because such people still require the assistance of another person to 'mark' the paper ballot paper and cast their vote on their behalf.

"Voting as a GPV is...unacceptable as the election materials and ballot paper are only available and posted in print form. Blind, limited arm movement and illiterate voters are reminded again of their dependency by being forced to rely on others, in effect, to vote for them. In addition, having disabled and illiterate voters voting by post segregates them from the rest of the voting public on polling day and excludes them from receiving polling day literature or from considering later-breaking political developments. To many Australians, the act of voting at the ballot box is an ingrained part of the election process. The fact that, for one day, all citizens of our community gather together and vote is a deeply entrenched symbol of democracy. Special needs voters should not be treated as second-class citizens or excluded from this important representation of democracy in action."⁵

In a media release published on the Australian Electoral Commission (AEC) website on 6 September 2004, it was stated that information on the 2004 Federal Election would be made available in alternative formats in the lead up to election day.

"Key election voting information will be made accessible in audio file format from the AEC's website at www.aec.gov.au. This information will also be made available in Braille, audio cassette and large print formats. All formats will cover essential and practical information about the election including how to vote, how votes are counted and where to access AEC services and more information"⁶

⁵ Mercurio B; "Discrimination in electoral law: Using technology to extend the secret ballot to disabled and illiterate voters"; 28(6) *ALJ* 2003 at 273.

⁶ "Election 2004 Information Available in Alternative Formats" available from http://www.aec.gov.au/_content/what/media_releases/2004/september/2004_alt_formats.htm

Provision of election information in alternative formats still does not redress the inadequacy of providing ballot papers that are available only in printed form. The insistence that all voters use paper format ballot papers is outdated, discriminatory and inefficient.

In a paper delivered by Phillip Green to the Australian Political Science Association's "Politics of the Future" seminar in October 2000, Green indicates the viability of using electronic format:

"The use of paper ballots in Australian elections is one of the main ways in which we meet [the] principles for free and fair elections. Paper ballots are transparent...Paper ballots are also secret...This is not to say that paper ballots are the only way to achieve transparent, secure, free and fair elections...any electronic substitute for paper ballots has to be at least as good at ensuring that these principles are met"⁷

Green highlights just how crucial it is for a vote to be cast secretly:

"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."⁸

Current inadequacies of the voting system at Federal Elections – for deaf and hearing impaired people

Our stakeholders have identified the following areas of inadequacy in the Federal Election ballot system that prevent or significantly hinder deaf and hearing-impaired voters from casting an informed, secret and independent ballot in Australian Federal Elections:

- That not all candidate, party and Australian Electoral Commission television advertising for Federal Elections is captioned.

Current inadequacies of the voting system at Federal Elections – for people with a physical disability

Our stakeholders have identified the following areas of inadequacy in the Federal Election ballot system that prevent or significantly hinder people with a physical disability from casting an informed, secret and independent ballot in Australian Federal Elections.

- That some polling places are not physically accessible for voters with a physical disability (for example, they are not wheelchair accessible); and

⁷ Green P; "The Politics of the Future: The Internet and Democracy in Australia. The Internet and the Electoral Process" presented to the Australian Political Science Association's Politics of the Future seminar at the Australian National University on 5 October 2000 available from http://www.seo.nsw.gov.au/publications__resources/pubsfordownload/index.html

⁸ Mercurio B; "Discrimination in electoral law: using technology to extend the secret ballot to disabled and illiterate voters"; 28(6) *ALJ* 2003 at 272.

- That voters with a physical disability who are unable to 'mark' the ballot paper independently are forced to seek the assistance of an electoral official or another personally chosen representative to 'mark' the ballot paper on their behalf and then to place the ballot paper manually in a ballot box. That representative is then privy to that person's vote.

Current inadequacies of the voting system at Federal Elections – for people with a spinal injury

Our stakeholders have identified the following areas of inadequacy in the Federal Election ballot system that prevent or significantly hinder people with a spinal injury from casting an informed, secret and independent ballot in Australian Federal Elections:

- That some voters find travelling outside their home or spinal injury ward accommodation to attend a polling booth extremely difficult and sometimes impossible;
- That not all polling places and polling booths are wheelchair accessible;
- That not all polling places have adequate amenities for voters who have a spinal injury, such as accessible toilets; and
- That voters with a severe physical disability that affects their mobility (such as quadriplegic people) are prevented from casting a secret vote as they are forced to seek the assistance of an electoral official or another personally chosen representative to 'mark' the ballot paper on their behalf and then to place the ballot paper manually in a ballot box. That representative is then privy to that person's vote.

Current inadequacies of the voting system at Federal Elections – for people with a disability that affects their literacy (like Dyslexia)

Our stakeholders have identified the following areas of inadequacy in the Federal Election ballot system that prevent or significantly hinder people with a disability that affects their literacy (like Dyslexia) from casting an informed, secret and independent ballot in Australian Federal Elections:

- That voters with Reading Disorder (also called Dyslexia) often distort, substitute or omit words when reading, encounter errors in comprehension and, if they can read at all, read very slowly.⁹

⁹ Diagnostic and Statistical Manual of Mental Disorders, 4th ed, American Psychiatric Association, Washington, DC, 2000 at 52.

Current inadequacies of the voting system at Federal Elections – for people with a psychological or psychiatric disability (like Agoraphobia)

Our stakeholders have identified the following areas of inadequacy in the Federal Election ballot system that prevent or significantly hinder people with a psychological or psychiatric disability (like Agoraphobia) from casting an informed, secret and independent ballot in Australian Federal Elections:

- That the current voting system does not adequately accommodate persons who have Paranoid Personality Disorders or Anxiety Disorders such as Agoraphobia, as they are prevented from attending a polling place because they risk experiencing the following symptoms if they attend the polling place: palpitations, sweating, trembling, nausea or abdominal distress, a fear of dying or a fear of losing control. That people with Agoraphobia often have anxiety about being in places or situations from which escape might be difficult.¹⁰
- That the current voting system does not adequately accommodate people with Schizophrenia who often may be unable to attend a polling place because of delusions, hallucinations, disorganised speech, or disorganised behaviour.¹¹

D. Recommended adjustments and reform to the voting system in Federal Elections

Recommended adjustments and reform – for blind and visually impaired people

We recommend that some or all of the following reasonable adjustments be implemented for all future Federal Elections to overcome the inadequacies indicated in section C. above:

- That Braille ballot papers and Braille – marked ballot boxes be used in future Federal Elections:

In November 2002, the Victorian Electoral Commission (VEC) developed Braille ballot papers in affiliation with the Vision Australia Foundation for the Victorian State Election. In this inaugural Australian trial of Braille ballot papers and other alternative format ballots, four specialised voting centres were set up in Kooyong, Essendon, Bendigo and Ballarat. The result of this trial was that blind and visually impaired voters were provided with the means to cast a secret vote in their State election. The Braille format worked in the following way:

¹⁰ Diagnostic and Statistical Manual of Mental Disorders, 4th ed, American Psychiatric Association, Washington, DC, 2000 at 441.

¹¹ Diagnostic and Statistical Manual of Mental Disorders, 4th ed, American Psychiatric Association, Washington, DC, 2000 at 297.

"The template took the form of a cardboard facsimile of the ballot paper embossed with Braille text that exactly reproduced the printed text. The boxes next to the candidate's names were cut out to enable the voter to mark their choice on to the ballot paper. Braille users were provided with a Braille Instructions Sheet, and Key to Candidates. The election official handed the voter the ballot papers clipped behind the templates, and the voters then marked the ballot paper with their choices using a pencil or stamp, and deposited them in the ballot box."¹²

We are aware that the suitability of Braille ballot papers as a reasonable alternative format very much depends on the method of electing and the sheer number of candidates for the house that is the subject of the election. In extreme cases this may make the provision of Braille ballot papers unjustifiably expensive and unviable.

"Legislative changes to the method of electing the Legislative Council may make the use of Braille ballot paper templates unviable, and therefore the development of audio electronic voting should be considered as an option down the track to enable vision impaired voters to cast a secret ballot vote."¹³

Notwithstanding this, if an electoral commission 'teams up' with peak disability service providers (who already own and use specialist expertise, premises, equipment, adaptive communication technology and client networks) to make adjustments, then many of the sunken costs no longer need to be borne by the electoral commission. We submit that the Australian Electoral Commission should actively consult and engage peak disability service providers to assist them to make these adjustments.

"The strategy of the VEC partnering with a peak service provider such as Vision Australia Foundation proved to be very successful. The trial based on this strategy enabled the VEC to improve and increase electoral services to a small number of people with special needs, particularly the frail elderly people with disabilities by using the specialist expertise, premises, adaptive communication technology and client networks of Vision Australia. In addition, the strategy was cost-effective, because the VEC did not have to purchase or store major items of equipment such as closed circuit television or Braille embossers."¹⁴

¹² Report on Early Voting Centres at Vision Australia: A summary of Market Research and Stakeholder Feedback available from http://www.seo.nsw.gov.au/publications__resources/pubsfordownload/index.html

¹³ Report on Early Voting Centres at Vision Australia: A summary of Market Research and Stakeholder Feedback available from http://www.seo.nsw.gov.au/publications__resources/pubsfordownload/index.html

¹⁴ Report on Early Voting Centres at Vision Australia: A summary of Market Research and Stakeholder Feedback available from http://www.seo.nsw.gov.au/publications__resources/pubsfordownload/index.html

- That facilities be provided for online and internet voting:

Another viable option is the provision of facilities for online and internet voting. The utility of internet voting in providing greater access for people to vote is far-reaching. Not only would this assist people with a mobility disability, a physical disability, a psychiatric disability, people who are blind or visually impaired and people with a spinal injury, it would also assist the elderly and frail and those living in very remote rural communities. We submit that the utility of internet voting far outweighs any alleged security risks involved. Employing 'firewalls' or closed system networks and other IT security programs and measures and allocating PIN numbers are but some of the methods available to ensure any security risks are minimised. The Australian Electoral Commission could liaise and consult with banking and financial institutions or utilities or organizations (like Australia Post or Telstra), who enable their customers to transact with them online, for advice on best practice security measures to protect the online voting process.

The implementation of online and internet voting need not be wholesale, but could be confined to use by registered users or specific polling places. That way the potential security and any cost concerns would be significantly reduced, if not entirely allayed. Another option may be to install online and internet voting (equipped or, at least, compatible with adaptive technology) in specified and advertised polling places so that blind and vision impaired voters can use the facilities to cast an independent and secret vote.

"Internet voting should be limited initially to voting in the polling place, where the environment is controlled. Although this keeps security to a high level, it does not improve the convenience factor for the voter."¹⁵

- That a trial of closed system electronic voting be trialled at the next Federal Election:

Green's acknowledgment of the fallibility of a purely paper-based voting system demands the trial and implementation of alternative format voting, like closed system electronic voting:

"Paper ballots, while they may have many virtues, also have problems. In particular, they are slow to count, and counting of hand-written numbers is prone to error. In a complex system such as the Senate system or the ACT's Hare-Clark system, mistakes made in reading a handful of poorly-written numbers on ballot papers can change the outcome in close contests, or lead to costly recounts and delays."¹⁶

¹⁵ Barry C; Dacey P; Pickering T; Byrne D; "Electronic Voting and Electronic Counting of Votes" available from

http://www.seo.nsw.gov.au/publications__resources/pubsfordownload/index.html

¹⁶ Green P; "The Politics of the Future: The Internet and Democracy in Australia. The Internet and the Electoral Process" presented to the Australian Political Science Association's Politics of the Future seminar at the Australian National University on 5 October 2000 available from

http://www.seo.nsw.gov.au/publications__resources/pubsfordownload/index.html

Green recommends the implementation of a system whereby votes may be captured electronically in order to circumvent the time-consuming and mistake-prone process of counting votes manually. This has already been implemented by other electoral commissions in Australia and we submit that it should be implemented for future Federal Elections.

“Electronic counting for complex proportional representation scrutineers is used for elections for the Senate, the ACT Legislative Assembly and upper houses in NSW, Western Australia and South Australia”¹⁷

We encourage and call for the implementation and use of such technology to allow every person to actually cast their own vote. The implementation of such a system would directly empower and enfranchise voters who have a disability and who currently do not have equitable access rights to casting secret and independent ballots as other Australians who do not have a disability. By insisting that people with a disability should use general postal voting or should request the assistance of a friend, family member or polling representative, people with a disability are left disenfranchised, patronised and treated as second-class citizens.

Recommended adjustments and reform – for deaf and hearing impaired people

We recommend that the following reasonable adjustments be implemented for all future Federal Elections to overcome the inadequacies indicated in section C. above:

- That all candidate, party and Australian Electoral Commission television advertising for Federal Elections be captioned.

Recommended adjustments and reform – for people with a physical disability

We recommend that the following reasonable adjustments need be implemented for all future Federal Elections to overcome the inadequacies indicated in section C. above:

- That facilities for internet voting be provided at the next Federal Election:

Many of the trials using internet voting that have occurred in the United States and the United Kingdom were carried out with a view to making voting more convenient and accessible to the wider public and thereby encouraging more people to vote. While Australia’s system sees voting as compulsory for all permanent residents of Australia, such adjustments are nevertheless warranted to reduce the incidence of people not voting and people inadvertently casting an informal vote.

¹⁷ Green P; “Transparency and Elections in Australia: The Role of Scrutineers in the Australian Electoral Process” in *Realising Democracy: Electoral Law in Australia*; Federation Press, 2003, Sydney at 226.

We are merely noting internet voting as one of a number of alternative formats and adjustments that could be considered, developed and adapted to improve access to voting for people with a physical disability. We are aware that, at present, there are some security concerns with internet voting. However, we submit that because each day now people engage in on-line Internet commercial transactions (like banking, purchasing of goods and paying bills) and there is a sufficient level of security and safety that people are comfortable to transact in this way, then there is really nothing preventing electoral authorities from using this same technology.

"Electors who experience a disability would gain much from being able to register and then vote as an e-voter. Presently, electors with mobility and vision disabilities find it difficult to access the voting services that enable them to cast a secret ballot. Electoral Commissions have few options regarding making all polling locations friendly for electors with mobility disabilities as they do not own the buildings. Other electors, even if they can access a polling place, have difficulty casting a secret ballot as they may require the assistance of an electoral official or trusted friend to assist them to mark their ballot paper. If the option was available for electors experiencing a disability to register as an e-voter, it would provide greater choice and options for these electors to access voting services. Whilst it would not be a total solution for all electors experiencing a disability it would at least provide greater diversity of choices."¹⁸

- That facilities for closed system electronic voting be provided at future Federal Elections:

The term 'electronic voting' (or 'e-voting') covers a variety of alternative voting facilities and formats - from lever-arch or punch-card machines that have been used in the United States, to online and internet voting, to a form of voting that Bryan Mercurio describes in the following way:

"a form of e-voting where voters would still have to travel to a polling place and get their name marked off the roll as normal, but would retire to vote via a private offline computer terminal or touch-screen machine as opposed to a private booth to vote with a pencil and paper."¹⁹

We submit that computerised e-voting would be the most beneficial, secure and cost-effective alternative method of enabling people with a wide range of disabilities to exercise their democratic right to cast independent, informed and secret votes. Computerised e-voting is recommended as an alternative to paper ballots because it allows voters with a physical disability (in addition to blind or visually impaired voters) to cast independent and secret votes:

¹⁸ Barry C; Dacey P; Pickering T; Byrne D; "Evolution not Revolution" available from http://www.seo.nsw.gov.au/publications_resources/pubsfordownload/index.html

¹⁹ Mercurio B; "Beyond the Paper Ballot: Exploring Computerised Voting" in *Realising Democracy: Electoral Law in Australia*; The Federation Press, Sydney 2003 at 231.

"In this age of technological convenience, reasonable accommodation could be made for special needs voters to ensure their right to vote in secret. For instance, visually impaired and blind voters could easily use special large print, Braille or voice-recognition computer software to cast their ballot without assistance without much financial or administrative burden to the electoral system. Likewise, voters unable to read or write in English, whether they be illiterate or from a non-English speaking background, could also be accommodated through the use of voice-recognition software"²⁰

As mentioned above, voice-recognition software would be a cost-effective and functional auxiliary aid that would considerably enhance computerised e-voting.

The advantages of computerised e-voting are considerable:

o Efficiency and convenience:

"Currently, the average Australian takes eight to nine minutes to cast their ballot for the Commonwealth House of Representatives, while voters using e-voting systems in various European parliaments only take an average of 30 seconds to vote"²¹

o Accurate and expedited vote counting and results:

"Electronic voting would benefit more than most from e-voting, as the e-voting system would distribute preferences automatically and eliminate the time-consuming process of manual counting and allow for election results to be known much more quickly than under the present system."²²

o Reduction in informal votes:

Bryan Mercurio explains that the reason why e-voting has a lower rate of informal votes than normal voting processes is because:

"E-voting's low rate of informal votes is due to the design of the system, which attempts to ensure the voter properly casts their ballot by leading the voter through the process and confirming that the selections the voter made are the ones they intended to make. In addition, e-voting takes the risk of human error or bias...out of the equation."²³

²⁰ Mercurio B; "Discrimination in electoral law: using technology to extend the secret ballot to disabled and illiterate voters", 28(6) *ALJ* 2003 at 272.

²¹ Mercurio B; "Beyond the Paper Ballot: Exploring Computerised Voting" in *Realising Democracy: Electoral Law in Australia*; The Federation Press, Sydney 2003 at 231.

²² Mercurio B; "Beyond the Paper Ballot: Exploring Computerised Voting" in *Realising Democracy: Electoral Law in Australia*; The Federation Press, Sydney 2003 at 233.

²³ Mercurio B; "Beyond the Paper Ballot: Exploring Computerised Voting" in *Realising Democracy: Electoral Law in Australia*; The Federation Press, Sydney 2003 at 233.

o Long-term savings:

“While the short-term costs of implementing e-voting can be high, e-voting has the ability to significantly lower the cost of elections in the long term...[as it would] greatly ease administrative burden on election officials...and...save electoral commissions the monetary and environmental cost of printing ballots.”²⁴

Computerised e-voting has been trialled very successfully in the United States and also in Brazil. In both countries it was found to be a cost-effective and efficient method for carrying out voting.²⁵

Recommended adjustments and reform – for people with a spinal injury

We recommend that the following reasonable adjustments be implemented for all future Federal Elections to overcome the inadequacies indicated in section C. above:

- In order to overcome the problems that may arise for the Australian Electoral Commission in claiming that it cannot provide access to a polling place because it does not own the building or place in which polling is being held, it is our recommendation that a number of specialist voting centres be set up around the country for people with spinal injury, learning disabilities and visual impairment. The voting centres would be open for a number of days before the election and be staffed by volunteers who are familiar with assisting people with these disabilities. The fact that the voting centres are open for a number of days would make voting for electors with spinal injuries more convenient;
- That voice recorded computer voting be available so that a person with a spinal injury who at present requires the assistance of someone else to vote, could carry out the voting process entirely independently; and
- That early voting centres and computerised e-voting facilities be provided.

Recommended adjustments and reform – for people with a disability that affects their literacy (like dyslexia)

We recommend that the following reasonable adjustments be implemented for all future Federal Elections to overcome the inadequacies indicated in section C. above:

- That all advertising and information about elections be made available in pictorial and audio-visual formats; and
- That voice recorded ballot papers be provided.

²⁴ Mercurio B; "Beyond the Paper Ballot: Exploring Computerised Voting" in *Realising Democracy: Electoral Law in Australia*; The Federation Press, Sydney 2003 at 234.

²⁵ Mercurio B; "Discrimination in electoral law: Using technology to extend the secret ballot to disabled and illiterate voters"; 28(6) *ALJ* 2003 at 274.

Recommended adjustments and reform – for people with a psychological or psychiatric disability (like agoraphobia)

We recommend that the following reasonable adjustments be implemented for all future Federal Elections to overcome the inadequacies indicated in section C. above:

- That voters with Agoraphobia, Paranoia, Schizophrenia or any other related psychological or psychiatric disorder be provided with facilities to vote from home, if they so require (whether this is provided by a telephone system, internet or e-voting).

E. Importance of other supports

The gist of our submission is that we seek reform to the Federal electoral process that strives for equity and achieves better accessibility, but at the same time does not compromise the tenets of our electoral system: transparency, secrecy, accountability and equality.

Training

Mercurio stresses that electoral commissions need to conduct training, not only for the general public on how to use the computerised e-voting machines (perhaps by the introduction of the machines in local shopping centres and other public venues months before the Federal Election to properly and widely trial the new system) but also for electoral and polling staff involved in the electoral process. Mercurio reviewed the effectiveness of adequate training for computerised e-voting by looking at various counties in Florida, some of which implemented training well before the trial of e-voting and some of which did not.

Palm Beach County “undertook to educate voters in the new system, taking the machines to grocery stores, music concerts and other public venues months before the election to demonstrate the technology to allow the public to trial the machine. Electoral staff also benefited from these demonstrations, as votes were retrieved as if it were a real election.”²⁶

Mercurio notes:

“In contrast, two other counties, Broward and Miami-Dade...underestimated the value of training, with Miami-Dade providing only four hours of training and Broward providing no training for the workers on the new system.”²⁷

The benefits gained from sound training were clear on election day. It is therefore essential that appropriate training is provided to electoral staff and the wider community for the implementation of computerised e-voting and other alternative voting formats and facilities.

²⁶ Mercurio B; “Beyond the Paper Ballot: Exploring Computerised Voting” in *Realising Democracy: Electoral Law in Australia*; The Federation Press, Sydney 2003 at 239.

²⁷ Mercurio B; “Beyond the Paper Ballot: Exploring Computerised Voting” in *Realising Democracy: Electoral Law in Australia*; The Federation Press, Sydney 2003 at 239.

Empirical trials

Data and results from trials in the United Kingdom, the United States, Victoria and the Australian Capital Territory provide strong evidence of how successful and empowering computerised e-voting can be for a democratic society.

"The e-voting trials [in the United Kingdom] were evaluated against the following criteria: accessibility, secrecy of vote, accuracy, deliberation, security, authentication, timeliness of results, and verifiability."²⁸

"The decision by the UK government to pilot several different electronic voting, electronic vote recording and electronic vote counting systems at the May 2002 local government elections in England, was a significant step towards modernising an electoral system, by building public confidence in new systems and testing their technical robustness."²⁹

"One of the most interesting aspects of recent ACT elections is the emerging use of electronic voting. It was trialled by the ACT Electoral Commission in the 2001 ACT election and again in 2004. Votes are given a paper barcode, which when swiped, brings up a ballot paper for the required electorate. Paper votes are transferred to computer and combined with the electronic votes before the computer program distributes the preferences."³⁰

Trials are very useful because they allow an opportunity to test the viability of a new system by exposing it to a small group and thereby minimising the risk of any major technological catastrophe. We strongly submit that the Australian Electoral Commission ought to, at the very least, trial computerised e-voting at the next Federal Election. Trials held in Australian jurisdictions to date, like the ACT with computerised e-voting and Victoria with Braille ballot papers have been very successful and ought to be expanded to the Federal jurisdiction.

Use of user guides and manuals

In the trial of Braille ballot papers in the November 2002 Victorian State Election, the VEC developed and distributed a procedural manual that was designed specifically for the specialised voting centres. Manuals were distributed to all staff involved along with a three-hour training session on:

"election procedures, the use of laptop computers to mark electors off the electoral roll, and operating instructions for closed circuit television and the Braille ballot paper templates."³¹

We submit that such manuals should be developed for use with computerised e-voting and other alternative voting formats and facilities at all future Federal Elections.

²⁸ Barry C; Dacey P; Pickering T; Byrne D; "Evolution not Revolution" available from http://www.seo.nsw.gov.au/publications_resources/pubsfordownload/index.html

²⁹ Barry C; Dacey P; Pickering T; Byrne D; "Evolution not Revolution" available from http://www.seo.nsw.gov.au/publications_resources/pubsfordownload/index.html

³⁰ Parliamentary Library Research Note; "The 2004 ACT election" 29 November 2004, no.23, 2004-2005.

³¹ Report on Early Voting Centres at Vision Australia: A summary of Market Research and Stakeholder Feedback available from http://www.seo.nsw.gov.au/publications_resources/pubsfordownload/index.html

Volunteers familiar with assisting various disability groups

Use of volunteers from Vision Australia was welcomed by the users of the specialised voting centres in the Victorian trial of Braille ballot papers in 2002. Electoral and polling staff were trained and had experience of the needs of blind and visually impaired voters.

“Vision Australia and voting centre staff were instrumental to the success of the trial.”³²

As a result of the training, advertising, close monitoring and implementation of volunteers who were conversant with the special needs of particular voters, the overall result was that:

“there were no significant operational problems at the centres during the election period.”³³

This initiative should also be employed by the Australian Electoral Commission at all future Federal Elections.

Advertising

A broad, early and informative advertising campaign will be essential to the success of implementing computerised e-voting and other alternative voting formats and facilities.

In the Victorian trial of Braille ballot papers:

“the early voting centres were advertised through Vision Australia’s communications network, including information provided to clients by Vision Australia staff, through articles in newsletters, and by advertisements on radio station 3RPH”³⁴

F. Future directions and concluding thoughts

The cost-effectiveness, availability and utility of modern technology are proven. Each day, virtually each hour, we communicate, transact and go about our daily tasks using computers and associated technology. The implementation of a computerised e-voting system for Federal Elections, we submit, is a viable and ultimately cost-effective strategy that can be implemented right now.

“While assisted voting was once necessary, modern technology has advanced and we can now have virtually all voters casting their ballots without assistance; therefore, it is unnecessary to force special needs voters to rely on the honesty of the person in the polling booth with them marking the ballot paper.”³⁵

³² Report on Early Voting Centres at Vision Australia: A summary of Market Research and Stakeholder Feedback available from http://www.seo.nsw.gov.au/publications_resources/pubsfordownload/index.html

³³ Report on Early Voting Centres at Vision Australia: A summary of Market Research and Stakeholder Feedback available from http://www.seo.nsw.gov.au/publications_resources/pubsfordownload/index.html

³⁴ Report on Early Voting Centres at Vision Australia: A summary of Market Research and Stakeholder Feedback available from http://www.seo.nsw.gov.au/publications_resources/pubsfordownload/index.html

³⁵ Mercurio B; “Discrimination in electoral law: Using technology to extend the secret ballot to disabled and illiterate voters”; 28(6) *ALJ* 2003 at 275.

The other important feature of the electoral process is accountability for the process itself, which is also enhanced by computerised e-voting.

“Elections in Australia are characterised by centralised, professional and, by and large, completely independent electoral commissions...The inverse of independence is accountability. In practical governance terms, electoral commission accountability in Australia usually rests with the relevant minister, who is then responsible to parliament. However, electoral commission accountability cannot end there. The electoral agencies must in some respects be directly accountable to parliament and to the electorate at large.”³⁶

Clearly what is needed to see computerised e-voting in place is support from Parliament and major political parties.

“The implementation of any form of e-voting will require substantial review and reform of current electoral laws.”³⁷

Mercurio suggests the Legislature needs to review (and, where necessary, amend and expand) the definition of “ballot paper”, the process of vote recounts, secret ballots and privacy issues. Other areas that require review include the criminalisation of vote tampering:

“special care would need to be taken in drafting provisions relating to the criminalisation of all forms of corrupting or tampering with or attempting to corrupt or tamper with e-voting machines...the accuracy of the machines is essential to the success of an election under e-voting and so particular consideration and stiff penalties would have to be addressed specifically.”³⁸

We agree with Barry, Dacey, Pickering and Byrne when they say that:

“The Federal, State and Territory parliaments should amend their Electoral Acts to enable a trial of e-voting to be implemented at Federal, State and Territory elections for...[e]lectors with a disability”³⁹.

³⁶ Orr G; Mercurio B; Williams G; “Australian Electoral Law: A Stocktake”; 2(3) *ELJ* 2003 at 400.

³⁷ Mercurio B; “Beyond the Paper Ballot: Exploring Computerised Voting” in *Realising Democracy: Electoral Law in Australia*; The Federation Press, Sydney 2003 at 238.

³⁸ Mercurio B; “Beyond the Paper Ballot: Exploring Computerised Voting” in *Realising Democracy: Electoral Law in Australia*; The Federation Press, Sydney 2003 at 238.

³⁹ Barry C; Dacey P; Pickering T; Byrne D; “Evolution not Revolution” available from http://www.seo.nsw.gov.au/publications__resources/pubsfordownload/index.html

There have been some expressions of interest by statutory authorities in Australia to seek to incorporate some of the changes that have already been successfully implemented in this area in other countries. Representatives from the AEC and the VEC went to the United States in 2000, to “observe first hand developments in the use of electronic voting and electronic vote counting at the Presidential elections.”⁴⁰ Another delegation of representatives from the AEC and the VEC “visited the UK and Ireland to observe first hand developments in electronic voting, electronic vote recording, and electronic vote counting.”⁴¹

Computerised e-voting is recognised internationally as a cost-effective, accessible and equitable way for voters in democratic societies to cast secret and independent votes. As stated by Mercurio:

“Several nations already allow visually impaired and blind voters to cast their ballots in secret.”

In our submission, it is incumbent upon Australia to join these nations now.

⁴⁰ Barry C; Dacey P; Pickering T; Byrne D; “Evolution not Revolution” available from http://www.seo.nsw.gov.au/publications__resources/pubsfordownload/index.html

⁴¹ Barry C; Dacey P; Pickering T; Byrne D; “Evolution not Revolution” available from http://www.seo.nsw.gov.au/publications__resources/pubsfordownload/index.html