

SUBMISSION OF THE

HUMAN RIGHTS AND EQUAL OPPORTUNITY

COMMISSION

TO THE

SENATE COMMITTEE ON FINANCE AND PUBLIC

ADMINISTRATION

REGARDING THE

ELECTORAL AND REFERENDUM LEGISLATION

AMENDMENT BILL 2006

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Introduction

1. The Human Rights and Equal Opportunity Commission (the Commission) is pleased to provide this submission to the Committee on Finance and Public Administration.
2. This submission deals only with the Bill so far as it provides for a trial for electronically assisted voting to assist people with a vision impairment.

Summary of recommendations

3. The Commission recommends that the Committee support the passage of the Bill; and support an extension of provision for electronic or electronically assisted voting at the earliest opportunity to include other people unable because of disability to complete a paper ballot independently and secretly.

Human rights and secret ballots for voters with a disability

4. Human rights as recognised by the Parliament in the Human Rights and Equal Opportunity Commission Act 1986 include the rights provided for in the International Covenant on Civil and Political Rights (ICCPR), to which Australia became a party in 1980. The ICCPR includes the following provisions relevant to the Committee's inquiry:

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

...

- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

5. Under Article 2 of the ICCPR parties agree to respect and ensure the rights recognised, and to take legislative measures where necessary to give effect to these rights, without discrimination "of any kind". Although disability is not one of the grounds of discrimination expressly mentioned, the Commission submits that discrimination based on disability is included within the reference to distinctions based on "other status".¹
6. The right recognised in Article 25 of the ICCPR to exercise a vote by secret ballot extends to Australia citizens with disabilities. People with disabilities are clearly included within "all individuals" in the terms of Article 2 and "every citizen" in the terms of Article 25.
7. Article 25 of the ICCPR, in referring to and prohibiting "unreasonable restrictions" on exercise of the right to vote, contemplates that there may be reasonable restrictions. The Commission submits that restrictions may be reasonable on the basis that they are necessary to ensure the integrity of the ballot such that the ballot does reflect "the free expression of the will of the electors". For this reason, the Commission accepts the approach adopted by the Government in this Bill in providing for electronically assisted voting only on a trial basis and limited in its scope to people with a vision impairment.
8. The Commission notes, however, that other Australians are also currently unable to exercise the right to vote by means of a secret ballot, because of other disabilities affecting their ability to read or fill in a ballot in paper form. While supporting the passage of the Bill in its current form, the Commission therefore recommends that the Committee support the earliest possible extension of electronically assisted voting to include eligibility for any elector requiring this facility in order to be able to exercise effectively the right to a secret ballot.

¹ See Concluding Observations of the United Nations Human Rights Committee on Ireland, (2000) UN Doc.A/55/40, para 422-451, par 29(e). A complaint about discrimination on the basis of disability was ruled inadmissible for failure to exhaust domestic remedies in *Cziklin v Canada* (741/97).