



people with disability

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

Joint Standing Committee on Electoral Matters
Department of House of Representatives
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Inquiry into the 2007 Federal election

During the hearing of your committee held on 23 July 2008 People with Disability Australia Inc. (PWD) was asked to take questions on notice. We are pleased to have the opportunity to provide further information to the Committee about the disqualification of voters under section 93 part (8) of the *Commonwealth Electoral Act 1918* and issues relating to political donations and fundraising.

PWD has advocated for the rights of people with disability to participate in electoral processes for many years. We are currently on 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.

PWD has also advocated for people with disability when the issue of legal capacity has arisen. Recently the NSW Attorney General's Department (AGD) has consulted on this issue. PWD developed a response to the AGD's discussion paper with the assistance of Blake Dawson. The AGD launched its capacity toolkit on 31 March 2008 and released the toolkit on 1 April 2008. PWD does recommend the document to the committee as a good reference point.

PWD has 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 respected and celebrated. The issue of political donations allowing greater access to politicians is a concern to PWD as it can limit the access of people with disability to their elected representatives. The link between poverty and disability is well established. Any system or practice that allows people with more wealth easier access to democracy and decision makers detracts from our vision of a socially just and inclusive community.

Exclusion from Enrolment

PWD has previously raised concerns about section 93 part (8) of the *Commonwealth Electoral Act 1918*, believing that the concepts in this section are not 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”. PWD maintains these concerns.

During the committee hearing there was discussion of the term ‘unsound mind’. It was suggested that this is a term with its history in the legal system. It was also suggested that the term was archaic. PWD believes that it is an archaic term and regardless of its history its modern meaning is not accessible to people, and is out of touch with modern standards in a plural and diverse society. PWD believes the law, as well as being discoverable, should be accessible and understandable.

PWD through its initial submission raised an objection to the test included in the Act which implements 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. PWD’s position, therefore, is that the concept of “unsound mind” be removed from the legislation.

Currently PWD does not have the resources or legal expertise to provide a form of words for draft legislation, as was requested by the Chair of the Joint Standing Committee on Electoral Matters. PWD would be happy to work with the Office of Parliamentary Counsel or others who have expertise in drafting legislation.

Political donations, fundraising and related issues

Mr Morrison asked PWD to follow up on issues relating to political donations, fundraising and the issue of access to politicians. As mentioned at the committee hearing this area was not as significant to PWD as other aspects of the JSCEM inquiry.

PWD’s work is always focused on achieving its vision of a socially just, accessible and inclusive community. PWD supports any moves that allow greater access of all constituents to their elected representatives and creates a level playing field rather than privileging those who can afford to make donations to political parties or pay to attend expensive meals with key decision makers.

PWD recognises that the proceeds of fundraising are often spent on advertising, to promote the messages and policies of the parties in an election. PWD strongly supports the principles of freedom of speech, but would like to point out that little attention is paid to promoting these messages and policies in a variety of formats, which can inform the electoral choices of people with differing impairments. PWD would be supportive of a more regulated fundraising regime, with a requirement for policies and political messages to be delivered in a range of formats which can communicate with all voters.

International Context

The Federal government has now ratified 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 into legislation as soon as possible so that the Federal Government can comply with the UNCRPD. This should lead to practical measures to ensure that the individual needs of voters with disability are met, and that greater efforts are made to ensure that the 20% of the population who have disability are adequately represented in civil life by members of parliament who are people with disability.

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. 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



MICHAEL BLEASDALE
Co-Chief Executive Officer (Acting)