



Ms Sabina Wynn
The Executive Director
Australian Law Reform Commission
GPO Box 3708
Sydney NSW 2001

Dear Ms Wynn

Re: review of equal recognition before the law and legal capacity for people with disability

Thank you for the opportunity to comment on the ALRC's review of equal recognition before the law and legal capacity for people with disability. As part of the ALRC's consultation, the review team recently met AEC officers. The purpose of this letter is to expand on issues raised at that meeting and to outline AEC activities to ensure its products and services meet the needs of people with disability.

The AEC is committed to the Australian Government's National Disability Strategy to improve the lives of people with disability. The AEC Disability Inclusion Strategy 2012-2020 ([Attachment A](#)) aims to ensure people with disability are in no way disadvantaged in the electoral system. This strategy progresses initiatives from the AEC Disability Action Plan 2008-2011.

Access to voting

Australian citizens over the age of 18 are required to enrol and vote in federal elections and referendums. The *Commonwealth Electoral Act 1918* (Electoral Act) makes provision for a voter who cannot cast an independent vote to appoint a person or polling official to complete his or her ballot paper according to instructions.

Voters who may find it difficult to get to a polling place on election day can apply to become a general postal voter to automatically receive ballot papers in the mail after an election has been announced. General postal voters do not need to re-apply for future elections.

Alternatively, someone not eligible to be a general postal voter can apply at each election for a postal vote. A new online postal vote application form was developed for the 2013 federal election and is approved by Vision Australia for accessibility.

Provision is made in polling places and pre-poll voting centres for voters to sit and vote, or to vote in a wheelchair. Ballot papers can be taken out of a polling place to a voter who for example cannot get out of a car to enter the polling place.

Mobile polling teams visit many voters who are not able to get to a polling place. Mobile polling facilities are set up in some hospitals, nursing homes, prisons and remote areas of Australia. Mobile polling is carried out around Australia on and prior to election day.

Accessible premises

Under the AEC's polling place inspection program, potential premises are reviewed against current building accessibility standards. For the 2013 federal election there were 7 697 polling places – 11.8 per cent had full disabled access and 70.2 per cent had assisted access.

Advertising of polling place locations shows which have disabled access at full or assisted levels. Signage at polling places indicates disabled access entrances and parking.

All new and renovated tenancies in the AEC divisional and state office network are Building Code of Australia AS 1428 compliant. The AEC's property plan includes rectification to provide disabled access at existing premises.

Blind and low vision voting

A secret vote is an over-riding principle of Australia's electoral system. One particular area of progress has been in the provision of options for blind and low vision (BLV) voters to vote independently and secretly.

Since the trial of electronic voting for BLV voters at the 2007 federal election, the AEC has worked closely with a BLV reference group, from peak organisations, to progress secret and independent voting solutions.

In 2010 the AEC implemented call centre voting for BLV voters following the discontinuation of the 2007 electronic voting trial. Post-election evaluation showed many voters did not consider call centre voting was independent or private, even though it was secret.

At the 2013 federal election, 2 834 BLV voters used a telephone voting service to cast a secret vote. A PIN and registration number system ensured the voter's identity remained secret. Post-election the AEC has sought feedback on the service. Evaluation will help determine how to improve this voting option and whether it should be available more broadly to people with disability. To extend this voting option requires change to the Electoral Act.

Enrolment

The AEC's enrolment service is now fully online with digital signature capture and approved by Vision Australia for accessibility. People can still enrol by completing a paper enrolment form and submitting it to the AEC if they prefer.

People with a physical disability that prevents them from writing can get someone else to complete and sign an enrolment form on their behalf.

The United Nations Convention on the Rights of Persons with Disabilities has recommended (paragraph 167 of the ALRC issues paper) "...enacting legislation to restore the presumption of the capacity of persons with disabilities to vote and exercise choice..."

The Electoral Act includes a provision whereby a person who is, by reason of being of unsound mind, incapable of understanding the nature and significance of enrolment and voting, is not entitled to have his or her name placed or retained on any Roll or to vote at any Senate or House of Representatives election. This provision is sometimes misinterpreted. Under the provision, removing a person from the electoral roll requires a signed medical certificate from a registered medical practitioner. There is no presumption about the capacity for any eligible person to be enrolled. Under this provision, to remove someone from the roll requires proof that the person is incapable of understanding the nature and significance of enrolment and voting.

There has been recent Parliamentary consideration of the 'unsound mind' provisions of the Electoral Act. Repeal of the expression 'unsound mind' was contained in the Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012. The concept of a disqualification from enrolment on the basis of incapacity to understand the nature and significance of enrolment and voting was not altered by the provisions in the bill. However, the bill proposed a broader range of qualified persons (including medical practitioners, psychiatrists, psychologists and social workers) to provide a statement, rather than a medical certificate, concerning a person's capacity to understand the nature and significance of enrolment and voting.

The bill was referred to the Joint Standing Committee on Electoral Matters (JSCEM), which was not satisfied of the need to remove or substitute the phrase 'unsound mind', or that professions other than medical practitioners should be able to make determinations about a person's capacity to understand the nature and significance of enrolment and voting.

The Government accepted the JSCEM recommendation to remove the proposed change to the 'unsound mind' provision and consequential amendments, and to retain the requirement that a medical practitioner issue a certificate.

Accessible information

The AEC website generally meets Australian Government website accessibility standards and follows the Guidelines for Information Published in Electronic Formats.

The website contains enrolment and voting information, available in large print, e-text, easy English formats and an AUSLAN video with plain English voiceover and captions.

Some publications, particularly during an election, are provided as large print, rtf, csv or e-text formats. Select publications are in other accessible formats (such as Braille and audio) on request. Candidate lists, election publications such as candidate and scrutineer handbooks and the official guide to the election (sent to all households with information on when and where to vote, polling place assistance and how to vote correctly) are available in accessible formats.

AEC publications and the website contain information for deaf and/or hearing-impaired people on how to contact the AEC through the National Relay Service.

Disability assistance information is in training material for polling place staff. The AEC provides advice to industrial organisations on election rules and procedures that include measures to maximise access and participation.

AEC Disability Advisory Committee

The AEC convenes a Disability Advisory Committee, which includes representatives of peak disability organisations, the Human Rights and Equal Opportunity Commission and representatives from state electoral commissions.

On advice from and in consultation with the Disability Advisory Committee, the AEC has made significant progress in improving services for people with disability. In addition, the AEC takes an informal advocacy role on behalf of the Disability Advisory Committee, with stakeholders such as political parties, on issues such as accessibility of information.

Joint Standing Committee on Electoral Matters

The JSCEM is the main forum for review of electoral laws and procedures. After each federal election the JSCEM conducts a detailed inquiry into every aspect of the conduct of the election. It seeks submissions and hears evidence from stakeholders and the public. The AEC will make detailed submissions and provide evidence to the JSCEM on electoral issues, as may peak disability organisations from the AEC's Disability Advisory Committee.

This comprehensive review shapes the AEC's ongoing reform agenda. It is a modernisation agenda, which aims to make it easier for all eligible voters to participate in Australia's electoral system.

Thank you for the opportunity to comment. My officers can expand on these or other matters as the ALRC conducts its inquiry, should you require. Please contact Assistant Commissioner Kathy Mitchell (kathy.mitchell@aec.gov.au or tel: 6271 4435).

Yours sincerely



(for) Ed Killesteyn
Electoral Commissioner

18 December 2013