

9. Electoral Matters

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Summary

9.1 Australia is obliged, under the *United Nations Convention on the Rights of Persons with Disabilities* (CRPD), to guarantee that persons with disability can ‘effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives’, including the right and opportunity to vote and be elected.¹

9.2 The ALRC recommends that the ‘unsound mind’ provisions of the *Commonwealth Electoral Act 1918* (Cth) (the *Electoral Act*), which relate to disqualification for enrolment and voting, be repealed. The removal of the unsound mind provisions is consistent with the recommendation by the United Nations Committee on the Rights of Persons with Disabilities (UNCRPD) that Australia ‘enact legislation restoring the presumption of the capacity of persons with disabilities to vote and exercise choice; and to ensure that all aspects of voting in an election are made accessible to all citizens with a disability’.²

9.3 The ALRC recommends a new exemption to compulsory voting based on a functional test consistent with the National Decision-Making Principles. A person without decision-making ability in relation to voting should be exempt from the penalties arising from failure to vote. The Australian Electoral Commission (AEC)

1 *UN Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 999 UNTS 3 (entered into force 3 May 2008) art 29. See also *Ibid* arts 4, 12; *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 25; *Universal Declaration of Human Rights 1948* art 21.

2 Committee on the Rights of Persons with Disabilities, ‘Concluding Observations on the Initial Report of Australia, Adopted by the Committee at Its 10th Session (2–13 September 2013)’ (United Nations, 4 October 2013).

should provide guidance material, consistent with the National Decision-Making Principles, to assist Divisional Returning Officers (DROs) to determine whether or not a person with disability had a valid and sufficient reason for not voting at an election. A person should be able to claim an exemption, or an exemption should be granted by a DRO.

9.4 Where a person with disability requires assistance to vote, they should be supported by all available means. The ALRC recommends that current provisions of the *Electoral Act* concerning permissible support be broadened, and that the AEC provide its officers with guidance and training to improve support in enrolment and voting for persons with disability. As the right to a secret vote is fundamental to the right to vote, but may be compromised by some forms of support, the AEC should also investigate methods of maintaining the secrecy of voting.

Repeal of the ‘unsound mind’ provisions

Recommendation 9–1 The *Commonwealth Electoral Act 1918* (Cth) should be amended to repeal:

- (a) s 93(8)(a), which provides that a person of ‘unsound mind’ who is ‘incapable of understanding the nature and significance of enrolment or voting’ is not entitled to have their name on the electoral roll or to vote in any Senate or House of Representatives election; and
- (b) s 118(4), which relates to objections to enrolment on the basis that a person is of ‘unsound mind’.

Recommendation 9–2 State and territory governments should repeal ‘unsound mind’ provisions in their electoral legislation and make other changes consistent with those recommended by the ALRC with respect to the *Commonwealth Electoral Act 1918* (Cth).

9.5 Under the *Electoral Act*, persons of ‘unsound mind’ are not entitled to have their names on the electoral roll or to vote in elections, and may be removed from electoral roll following objection. The ALRC recommends that these provisions be repealed.

9.6 Section 93(8)(a) and pt IX of the *Electoral Act* provide for a person’s entitlement to enrolment, their right to vote and objections to enrolment. Section 93(8)(a) provides that a person is not entitled to have their name placed or retained on the electoral roll, or to vote at any Senate or House of Representatives election, where they are a person ‘who by reason of being of unsound mind, is incapable of understanding the nature and significance of enrolment and voting’.

9.7 There are several steps involved in removing a person from the electoral roll:

- a written objection must be lodged by an enrolled elector;³
- the objection must be supported by a medical certificate;⁴
- the AEC must give the individual an opportunity to respond to the written objection;⁵ and
- the Electoral Commissioner determines the objection after making necessary inquiries.⁶

9.8 In 2012, the AEC submitted evidence to the Joint Standing Committee on Electoral Matters that 28,603 people were removed from the electoral roll on the basis of the unsound mind provision from 2008–2012.⁷ People with Disability Australia (PWDA), the Australian Centre for Disability Law (ACDL) and the Australian Human Rights Centre (AHR Centre) criticised provisions of this type, which ‘all too often’ seek to remove or limit a person’s legal agency to exercise their rights:

Frequently, this is due to a conflated understanding of legal capacity with mental capacity. For example, provisions which make exception for people with ‘unsound mind’, ‘disability’, ‘mental incapacity’ or ‘incompetence’ are expressing the view that the existence of a cognitive impairment permits a limitation on the exercise of legal agency and thus recognition of legal capacity as a whole.⁸

9.9 The policy objective of the provision is protective, to allow some persons with disability to be excused from the compulsory duty to vote. The Australian Government has stated that ‘these arrangements and review rights ensure that the rights of people with disability are not encroached’ and that the provisions are ‘considered to be consistent with Article 29 of the Convention [CRPD]’.⁹ Most democratic countries have some capacity-related qualification for voting.¹⁰

3 *Commonwealth Electoral Act 1918* (Cth) ss 114–116.

4 *Ibid* s 118(4).

5 *Ibid* ss 116–118.

6 *Ibid* s 118. There are also avenues to challenge a decision to remove a person’s name from the electoral roll. These include internal review and review by the Administrative Appeals Tribunal under the *Commonwealth Electoral Act 1918* (Cth) pt X; *Disability Discrimination Act 1992* (Cth); *Administrative Decisions (Judicial Review) Act 1977* (Cth); and by the Commonwealth Ombudsman.

7 Joint Standing Committee on Electoral Matters, ‘Advisory Report on the Electoral and Referendum (Improving Electoral Procedure) Bill 2012 (Cth)’ (August 2012) [2.66].

8 PWDA, ACDL and AHR Centre, *Submission 66*.

9 Australian Treaty National Interest Analysis, *United Nations Convention on the Rights of Persons with Disabilities* [2008] ATNIA 18 [11].

10 In 2001, only four (Canada, Ireland, Italy and Sweden) out of 63 democratic countries had no restrictions on voting by adults with mental incapacities. In 2010, the European Union Agency for Fundamental Rights found 13 of 27 European Union member states had denied voting rights to adults under measures for an intellectual disability or a mental health problem: cited in The University of Cambridge—Cambridge Intellectual and Developmental Disabilities Research Group, *Submission to the Committee on the Rights of Persons with Disabilities on the Participation of Persons with Disabilities in Political and Public Life*, 15 October 2011.

9.10 In *Roach v Electoral Commission*, the High Court found s 93(8)(a) of the *Electoral Act* to be constitutionally valid and stated that:

It limits the exercise of the franchise, but does so for an end apt to protect the integrity of the electoral process. That end, plainly enough, is consistent and compatible with the maintenance of the system of representative government.¹¹

9.11 The Joint Standing Committee on Electoral Matters reviewed the unsound mind provision in s 93(8)(a) and concluded that, given Australia's system of compulsory enrolment and voting, it provides a useful mechanism 'to protect the integrity of elections and assist those who might otherwise have to deal repeatedly with the AEC as to why they are not complying with their enrolment and voting obligations'.¹²

9.12 Stakeholders pointed to recent commentary on art 29 of the CRPD, indicating that a person's capacity should not affect their right to vote. In particular, in April 2014, the UNCRPD stated that, in order to realise the legal capacities of persons to participate in public and political life:

a person's decision-making ability cannot be a justification for any exclusion of persons with disability from exercising their political rights, including the right to vote, the right to stand for election and to serve as a member of a jury.¹³

9.13 The Human Rights Law Centre suggested that this statement is a consolidation of the movement 'away from a medical and protectionist view of disability towards a social and rights based approach in which people with disability have a right to enjoy equal legal capacity'.¹⁴

9.14 This move towards a social theory of disability is illustrated by a 2013 decision of the UNCRPD. In *Zsolt Bujdosó v Hungary*, the UNCRPD held discriminatory and invalid a Hungarian law which sought to comply with the CRPD by assessing the capacity to vote of individuals with intellectual disabilities who were previously automatically disenfranchised as subjects of guardianship. In doing so, the UNCRPD reiterated that:

Article 29 does not provide for any reasonable restriction or exception for any group of persons with disabilities. Therefore, an exclusion of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, constitutes discrimination on the basis of disability, within the meaning of article 2 of the Convention.¹⁵

11 *Roach v Electoral Commissioner* (2007) 233 CLR 162, [88] (Gummow, Kirby and Crennan JJ).

12 Joint Standing Committee on Electoral Matters, above n 7, [2.93].

13 United Nations Committee on the Rights of Persons with Disabilities, *General Comment No 1 on Article 12 of the Convention—Equal Recognition before the Law*, 2014 [44].

14 Human Rights Law Centre, *Submission 139*.

15 Committee on the Rights of Persons with Disabilities, *Views: Communication No 4/2011*, 10th Sess, UN Doc CRPD/C/10/D/4/2011 (2-13 September 2013) ('*Zsolt Bujdosó, Jánosné Ildikó Márkus, Viktória Márton, Sándor Mészáros, Gergely Polk and János Szabó v Hungary*') [9.4].

Entitlement to enrol and vote

9.15 Section 93(8)(a) of the *Electoral Act* has attracted criticism.¹⁶ The Human Rights Law Centre stated that the exclusion of persons of ‘unsound mind’ from the franchise ‘is vague, stigmatising and overly broad, and does not reflect the true capacity of people with disabilities to make decisions about voting’.¹⁷ Other stakeholders considered the provision to be ambiguous.¹⁸

9.16 Stakeholders supported removing the unsound mind provision on the basis that it is not consistent with Australia’s international law obligations.¹⁹ For example, the National Association of Community Legal Centres (NACLC) argued that the ‘most appropriate approach, and one consistent with international law, is to repeal s 93(8)(a) in its entirety and remove any restriction on eligibility for enrolment connected to capability’.²⁰

9.17 The ALRC concludes the unsound mind provision in s 93(8)(a) of the *Electoral Act* should be repealed. The phrase ‘unsound mind’ is considered ‘derogatory, judgemental and stigmatising’.²¹ As discussed in Chapter 2, words and terms should not be used that tend to lower the dignity of people with disabilities. Arguably, repeal would also be consistent with Australia’s obligations under art 8 of the CRPD.²²

9.18 In upholding universal suffrage for persons with disability, the ALRC recognises concerns about maintaining the integrity of the electoral system, especially in the context of compulsory voting. That is, there may be concern about the ‘harm that may be caused by votes cast by persons who are not able to understand the nature and significance of voting’.²³ However, in practice, no test is conducted when a person seeks to enrol or vote.

In practice the provision is ‘used’ when a person raises a concern with the AEC about another person, initiating a formal process which may result in the removal of the second person from the electoral roll. These concerns are generally raised by persons close to the elector in question, and motivated by what they see as the best interests of

16 See, eg, Human Rights Law Centre, *Submission 139*; PWDA, ACDL and AHR Centre, *Submission 66*; Public Interest Advocacy Centre, *Submission 41*; Physical Disability Council of NSW, *Submission 32*. See also People with Disability Australia and the NSW Disability Discrimination Law Centre, *Submission No 90 to the Minister of State, Electoral Reform Green Paper: Strengthening Australia’s Democracy*, 2009.

17 Human Rights Law Centre, *Submission 139*.

18 *Ibid*; Public Interest Advocacy Centre, *Submission 41*; Physical Disability Council of NSW, *Submission 32*. See also People with Disability Australia and the NSW Disability Discrimination Law Centre, *Submission No 90 to the Minister of State, Electoral Reform Green Paper: Strengthening Australia’s Democracy*, 2009.

19 Human Rights Law Centre, *Submission 139*; PWDA, ACDL and AHR Centre, *Submission 136*.

20 National Association of Community Legal Centres, *Submission 127*.

21 Human Rights Law Centre, *Submission 139*.

22 Article 8 contains a duty to undertake to adopt immediate, efficient and appropriate measures to combat stereotypes and prejudice in relation to persons with disability in all areas of life: *UN Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 999 UNTS 3 (entered into force 3 May 2008) art 8.

23 Australian Government, *Electoral Reform Green Paper—Strengthening Australia’s Democracy* (2009) 42.

the person concerned, for example protecting them from having to respond to repeated penalty notices for failure to vote at successive elections.²⁴

9.19 There is no evidence that reform to remove the unsound mind provisions would cause any new problems with regard to the integrity of the electoral system, undue influence or fraud. If the concern is protecting persons with disability from having to respond to penalty notices, there are solutions that do not involve removing the person from the electoral roll.²⁵

No new threshold test

9.20 Stakeholders were uniformly against adopting any new ‘capacity test’ of the kind proposed by the ALRC in the Discussion Paper.²⁶ The Human Rights Law Centre argued that the proposed threshold was both too high and made false assumptions about the decision-making ability required to vote:

Many people with dementia, for example, may have impaired decision-making ability regarding day to day decisions, but nonetheless maintain long-held firm views on which person or parties should be in government.²⁷

9.21 The Public Interest Advocacy Centre (PIAC) highlighted that, in some circumstances, people of ‘sound mind’ do not understand the ‘nature and significance of enrolment and voting’,²⁸ but are still entitled to vote.²⁹ This perspective was echoed by the Human Rights Law Centre:

Regardless of disability, not all voters cast their vote by understanding, retaining and weighing information relevant to an election (as required by the ALRC’s proposed decision-making test). Requiring individuals with impaired decision-making ability to vote in this way imposes a burden upon people with a disability that is not imposed upon the general population.³⁰

9.22 Trevor Ryan favoured repeal of s 93(8)(a), but argued that the ALRC should ‘focus instead on strengthened regulation of voter fraud and coercion, and greater flexibility in the enforcement of compulsory voting’:

While the proposed amendments (including the criteria, the machinery, and the persons involved in assessing capacity) adopt some of the more progressive elements of the modern, de-medicalised adult guardianship regime, this seems to be premised upon (and entrenches) a problematic conflation of the civil guardianship system and the exercise of political rights.³¹

24 Ibid.

25 Compare the denial of legal capacity to married women prior to the 19th century. Married women were denied testamentary power in relation to real property because it was regarded they might be overborne by their husbands: Henry Swinburne, *A Brief Treatise of Testaments and Last Wills* (John Windet, 1590). The woman’s capacity was denied, rather than the husband’s power checked.

26 Human Rights Law Centre, *Submission 139*; Advocacy for Inclusion, *Submission 126*; National Mental Health Consumer & Carer Forum, *Submission 100*; Trevor Ryan, *Submission 99*.

27 Human Rights Law Centre, *Submission 139*.

28 Public Interest Advocacy Centre, *Submission 41*.

29 See also, People with Disability Australia and the NSW Disability Discrimination Law Centre, *Submission No 90* to the Minister of State, *Electoral Reform Green Paper: Strengthening Australia’s Democracy*, 2009.

30 Human Rights Law Centre, *Submission 139*.

31 Trevor Ryan, *Submission 99*.

9.23 The Australian Government Electoral Reform Green Paper acknowledged there are some concerns about the provision, but considered it as necessary to protect the integrity of the electoral system. It emphasised that

in practice however, no test for ‘soundness of mind’ is conducted when a person seeks to enrol or approaches a polling booth on election day. In practice the provision is ‘used’ when a person raises a concern with the AEC ... These concerns are generally raised by persons close to the elector in question.³²

9.24 There has been some parliamentary consideration of the unsound mind provision.³³ The Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012 (Cth) presented amendments which would have removed the term ‘unsound mind’ and broadened the range of qualified persons to provide a statement (and not a medical certificate by a doctor) about the elector’s capacity to understand the nature and significance of voting. However, the Australian Government accepted the recommendation of the Joint Standing Committee on Electoral Matters, which was not satisfied that there was any ‘pressing need to remove or substitute the phrase “unsound mind” or that it breaches any international obligations in relation to rights to electoral participation’.³⁴

Removal from the electoral roll

9.25 A person may only be removed from the electoral roll based on an objection supported by a certificate from a medical practitioner.³⁵ The medical certificate must state that, in the opinion of the medical practitioner, the elector, because of ‘unsoundness of mind’, is incapable of understanding the nature and significance of enrolment and voting.³⁶

9.26 The ALRC recommends that this provision of the *Electoral Act* should also be repealed. However, while there should be no new threshold test for enrolment or voting, there should be a new exemption from compulsory voting for those who lack decision-making ability relating to voting.

9.27 State and territory governments should consider repealing comparable provisions in their electoral legislation,³⁷ consistently with recommendations relating to the review of state and territory laws.³⁸

32 Australian Government, *Electoral Reform Green Paper—Strengthening Australia’s Democracy* (2009) 42.

33 At a state level, in relation to an equivalent provision, the Victorian Electoral Matters Committee encouraged the Victorian Electoral Commission to work directly with the Department of Justice and Chief Parliamentary Counsel (Department of Premier and Cabinet) ‘to develop an appropriate terminology’: Electoral Matters Committee, ‘Inquiry into the Conduct of the 2010 Victorian State Election and Matters Related Thereto’ (May 2012) [7.49].

34 Joint Standing Committee on Electoral Matters, above n 7.

35 *Commonwealth Electoral Act 1918* (Cth) s 118(4).

36 *Ibid.*

37 See, eg, unsound mind provisions contained in the following legislation: *Parliamentary Electorates and Elections Act 1912* (NSW) s 25(a); *Electoral Act 1907* (WA) s 18(1)(a); *Electoral Act 1985* (SA) s 29(1)(iv).

38 See Ch 10.

Valid and sufficient reason for failure to vote

Recommendation 9–3 Section 245 of the *Commonwealth Electoral Act 1918* (Cth) on compulsory voting should be amended to provide that it is a ‘valid and sufficient reason’ for not voting if a person cannot:

- (a) understand information relevant to voting at the particular election;
- (b) retain that information for a sufficient period to make a voting decision;
- (c) use or weigh that information as part of the process of voting; or
- (d) communicate their vote in some way.

Recommendation 9–4 The Australian Electoral Commission should provide Divisional Returning Officers with guidance and training, consistent with the National Decision-Making Principles, to help them determine if a person with disability has a valid and sufficient reason for failing to vote.

A new functional exemption

9.28 Section 245 of the *Electoral Act* provides voting is compulsory. Section 245(4) provides that a DRO is not required to send or deliver a penalty notice if satisfied that the elector: is dead, was overseas, was ineligible to vote or ‘had a valid and sufficient reason for failing to vote’. Electors with a valid and sufficient reason for not voting do not have to pay a fine.

9.29 The ALRC recommends amendment of the *Electoral Act* to specify that it is a valid and sufficient reason for not voting, if the person cannot understand, retain and weigh information relevant to voting, or communicate their vote in some way. The wording of the recommendation is intended to be consistent with other instances in which the ALRC has recommended that some form of functional test of ability needs to be retained.³⁹

9.30 Exemption from compulsory voting would ensure there is a mechanism so that people who lack decision-making ability relating to voting are not unfairly penalised. Some form of functional test is needed to determine whether someone has a ‘valid and sufficient reason’ not to vote because, otherwise, persons with disability who are on the electoral roll may be fined for not voting when they are not able to understand what it means to vote.⁴⁰

³⁹ See, eg, in relation to eligibility to stand trial: Ch 7.

⁴⁰ Stakeholders also noted exemptions may need to apply where persons with disability did not understand when or where booths were open, could not get to a polling station, or for some other reason associated with their disability: see, eg, Public Interest Advocacy Centre, *Submission 41*; People with Disability Australia and the NSW Disability Discrimination Law Centre, Submission No 90 to the Minister of State, *Electoral Reform Green Paper: Strengthening Australia’s Democracy*, 2009.

9.31 Some stakeholders said disability should be included as a specific criterion excusing failure to vote. In particular, PIAC endorsed a submission by the PWDA and the NSW Disability Discrimination Legal Centre (DDLC) on the Electoral Reform Green Paper that s 245(4) should be amended to ‘include people with an intellectual or psychiatric disability who are unwell at election time’ as a valid and sufficient reason for failing to vote.⁴¹ The ALRC has not examined in any detail whether exemptions along these lines would be desirable, but observes that such status-based approaches may not accord with the CRPD.

9.32 The recommended exemption would cover situations where a person’s intended support failed them, or where support was not able to facilitate an expression of the person’s will and preference with respect to voting.⁴² A person should not necessarily be removed from the electoral roll in these circumstances, and the potential to vote in future elections should not be removed.⁴³

9.33 Persons with disability should not be required to provide a medical certificate when seeking an exemption from laws requiring them to vote. At present, an exemption may be given by a DRO for any valid and sufficient reason, and no particular form of proof is required. To require a medical certificate in order to claim the exemption would place too great a burden on individuals or their families.⁴⁴ Further, the AEC needs flexibility to decide that, having accepted that a person has a valid and sufficient reason not to vote in one election, subsequent failures to vote will also not be penalised—where the reason for not voting is likely to be ongoing. However, the person should remain on the electoral roll and be entitled to vote, if they can be supported to do so.

Guidance for Divisional Returning Officers

9.34 Under the *Electoral Act*, the DRO for each electorate has discretion to determine what constitutes a valid and sufficient reason for not voting.⁴⁵ The AEC states that

the original decision of the DRO as to whether a reason for not voting is valid and sufficient is based on the merits of each individual case, in accordance with the law as previously interpreted by the courts, and within the boundaries of administrative guidelines developed by the AEC to assist DROs.⁴⁶

9.35 Administrative guidelines developed by the AEC, in consultation with its Disability Advisory Committee,⁴⁷ may provide additional guidance to DROs in relation

41 Public Interest Advocacy Centre, *Submission 41*; People with Disability Australia and the NSW Disability Discrimination Law Centre, *Submission No 90* to the Minister of State, *Electoral Reform Green Paper: Strengthening Australia’s Democracy*, 2009 rec 9. See also Human Rights Law Centre, *Submission 139*.

42 PWDA, ACDL and AHR Centre, *Submission 136*.

43 *Ibid* 136.

44 Australian Electoral Commission, *Submission 2.1* to Joint Standing Committee on Electoral Matters, *Advisory Report on the Electoral and Referendum (Improving Electoral Procedure) Bill 2012 (Cth)*, (2012) [2.86].

45 *Commonwealth Electoral Act 1918* (Cth) s 245(4)(d).

46 Australian Electoral Commission, *Electoral Backgrounder: Compulsory Voting* (April 2010) [30].

47 Australian Electoral Commission, *Submission 10*.

to the potential impact of disability on electors' ability to vote. In the Electoral Backgrounder on Compulsory Voting, the AEC cites some practical examples given by the High Court of valid and sufficient reasons not to vote, including 'competitive claims of public duty', and:

Physical obstruction, whether of sickness or outside prevention, or of natural events, or accident of any kind, would certainly be recognised by law in such a case. One might also imagine cases where an intending voter on his way to the poll was diverted to save life, or to prevent crime, or to assist at some great disaster, such as a fire.⁴⁸

9.36 The ALRC recommends the AEC provide DROs with appropriate guidance and training, consistent with the National Decision-Making Principles, to help them determine if a person with disability has a valid and sufficient reason for failing to vote.

Support in voting

Recommendation 9-5 Section 234(1) of the *Commonwealth Electoral Act 1918* (Cth) should be amended to provide that if any voter satisfies the presiding officer that he or she is unable to vote without assistance, the presiding officer shall permit a person chosen by the voter to assist them with voting.

Recommendation 9-6 The Australian Electoral Commission should provide its officers with guidance and training, consistent with the National Decision-Making Principles, to improve support in enrolment and voting for persons who require support to vote.

Recommendation 9-7 The Australian Electoral Commission should investigate methods of maintaining the secrecy of votes of persons who require support to vote.

9.37 The ALRC recommends that the *Electoral Act* be amended to allow for broad support in voting. Australia's obligations under the CRPD include ensuring the accessibility of voting procedures, facilities and materials; protecting the right to vote by secret ballot; and where necessary, and at their request, allowing persons with disability assistance in voting by a person of their choice.⁴⁹

48 *Judd v McKeon* (1926) 38 CLR 380 cited in Australian Electoral Commission, *Electoral Backgrounder: Compulsory Voting* (April 2010).

49 *UN Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 999 UNTS 3 (entered into force 3 May 2008) arts 29, 4, 12. See also *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) arts 2, 25, 26; *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976); *Universal Declaration of Human Rights 1948* art 21.

9.38 Section 234(1) of the *Electoral Act* currently provides:

If any voter satisfies the presiding officer that his or her sight is so impaired or that the voter is so physically incapacitated or illiterate that he or she is unable to vote without assistance, the presiding officer shall permit a person appointed by the voter to enter an unoccupied compartment of the booth with the voter, and mark, fold, and deposit the voter's ballot paper.

9.39 In order to ensure consistency with the ALRC's overall approach to support, and compliance with the CRPD, the ALRC recommends that the provision be amended. Specifically, the section should adopt more appropriate language and be broadened to offer assistance to more people who may require support in exercising their right to vote.⁵⁰ Australia needs to 'adopt concrete measures to support people with disabilities to exercise their right to vote on an equal basis with others'.⁵¹

9.40 Advocacy for Inclusion argued that a person should be entitled to vote if they can make their views known via any means of communication, and that they should be provided with 'appropriate social and technological supports'.⁵² It was suggested that, where there is an objection to a person voting, an independent body should verify whether or not the person's voting preference can be ascertained.⁵³ Advocacy for Inclusion suggested people with disability should have the option of accessing support from an electoral officer to cast their vote, subject to safeguards and monitoring.⁵⁴

9.41 NACLIC stated that AEC officers should be provided with 'appropriate education, training and guidance material' to assist them to decide whether a person requires assistance.⁵⁵

9.42 Guidance material could cover assistance in marking and depositing the ballot paper at the polling booth, but also support in relation to enrolment and declaration votes.⁵⁶ For example, a person may require support to complete enrolment forms, update their address, or to obtain and understand information about candidates or voting procedures.

9.43 The AEC and various state and territory electoral commissions have introduced a range of measures to increase electoral accessibility.⁵⁷ A self-advocacy group in South Australia reported positive experiences of assistance at the 2013 federal election:

Most of us had a very good experience voting. Our support workers helped us to get to a polling booth and ask the volunteers working at the booth to help us make our vote so our support workers didn't influence our vote.⁵⁸

50 See *Electoral Act 1992* (Qld) ss 108–109 for the provision of help to enable electors to vote at polling booths and hospitals.

51 Human Rights Law Centre, *Submission 139*.

52 Advocacy for Inclusion, *Submission 126*.

53 Ibid.

54 Ibid.

55 National Association of Community Legal Centres, *Submission 127*.

56 Declaration votes allow an elector to fulfil their obligations by voting before election day or in a different division from the division in which they are enrolled on election day: Australian Electoral Commission, *Electoral Backgrounder: Compulsory Voting* (April 2010).

57 See, eg Australian Electoral Commission, *Submission 10*.

58 Minda Inc Self Advocacy Group-Express Yourself, *Submission 93*.

9.44 One critical issue with respect to voting is the right to a secret ballot. PIAC submitted that ‘ensuring a secret ballot is an essential element of Australia’s democracy, yet this is not readily available to people with disability’.⁵⁹ Case studies submitted on the Electoral Reform Green Paper illustrated the limitations of the current system:

One of our (DDLC) clients stated that her closest accessible polling booth was 45 minutes away by electric wheelchair and would cost around \$20 to \$50 if she caught a taxi. Consequently, our client decided to vote at her closest polling booth, which was ten minutes away by electric wheelchair. However, as the polling booth was not accessible, she was forced to vote outside. She did not have sufficient privacy and felt very undignified. Furthermore, our client was unable to place the ballot in the ballot box herself as the ballot box was outside the building and therefore had to rely on electoral officials to do it for her.

One of our (PWDA) clients stated that at his local polling booth there was no easy English information available. The polling booth official was unable to communicate the steps required to fill out the ballot paper. Fortunately he had visited the booth with his father, and his father provided instructions. Our client did feel pressured to vote for a particular candidate, as he was aware that his father had voted for that party all of his life.⁶⁰

9.45 A number of stakeholders suggested support mechanisms that would allow persons with disability to vote independently and in secret. Mechanisms might include the use of logos or symbols; templates; assisted voting; electronically assisted voting (EAV); and outreach models.⁶¹ One man who used EAV during 2007 federal election described it as an ‘empowering experience’—being the first time in his life that he was able to vote independently.⁶²

9.46 The AEC is well-placed to examine options for secret voting for persons with disability, including by reviewing national and international best practice in technological advances.⁶³ The ALRC recommends that the AEC should investigate methods of maintaining the secrecy of votes for people who require support in voting.

59 Public Interest Advocacy Centre, *Submission 41*.

60 People with Disability Australia and the NSW Disability Discrimination Law Centre, Submission No 90 to the Minister of State, *Electoral Reform Green Paper: Strengthening Australia’s Democracy*, 2009.

61 Public Interest Advocacy Centre, *Submission 41*.

62 People with Disability Australia and the NSW Disability Discrimination Law Centre, Submission No 90 to the Minister of State, *Electoral Reform Green Paper: Strengthening Australia’s Democracy*, 2009 90.

63 The AEC’s roles include research and analysis to improve electoral participation, support the delivery of electoral services and contribute to electoral policy reform in Australia: Australian Electoral Commission, *Research* <www.aec.gov.au>. The Commissioner’s Advisory Board for Electoral Research includes experts in the Australian electoral system. The AEC is a member of the Electoral Council of Australia, the Electoral Education Network, the Commonwealth Network of National Election Management Bodies and other international networks.