



Inclusion Australia

Inquiry into the 2022 election

Submission

To the Joint Standing Committee on Electoral Matters

Thank you for the opportunity to make a short submission to the Inquiry into the 2022 Election.

We will be covering point (f) - *encouraging increased electoral participation and supporting enfranchisement generally, and specifically in relation to:*

- i. *accessibility of enrolment and voting for persons with a disability.*

People with an intellectual disability have the right to have a say about the government of Australia, yet are often denied that basic democratic right.

Article 29 of the United Nations Convention on the Rights of Persons with Disabilities, which Australia is a signatory to, says that:

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake:

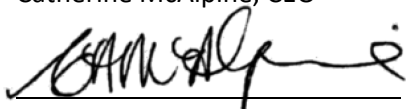
- a) To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:
 - 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.¹

Australia is in breach of this part of the CRPD because we continue to deny many people with an intellectual disability the right to vote.

Please don't hesitate to contact me if I can provide further information to the Committee, and we urge you to act on our recommendations for change.

Kind regards

Catherine McAlpine, CEO



¹ <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-29-participation-in-political-and-public-life.html>

About us

Inclusion Australia is the national Disability Representative Organisation representing the rights and interests of Australians with an intellectual disability and their families.

We have state members in New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia:

- Council for Intellectual Disability (CID)
- Parent to Parent (P2P)
- South Australian Council on Intellectual Disability (SACID)
- Speak Out Association of Tasmania (Speak Out)
- Victorian Advocacy League for Individuals with Disability (VALID), and
- Developmental Disability WA (DDWA)

Inclusion Australia was founded in 1954 and was previously known as the National Council on Intellectual Disability (NCID). Our mission is to work to make sure people with intellectual disability have the same opportunities as people without disability.

Inclusion Australia works in systemic advocacy, projects, information and communication activities that advance the rights and interests of people with intellectual disability.

The right to vote

Too many people with an intellectual disability are denied the right to vote due to outdated and archaic provisions in the Commonwealth Electoral Act 1918 about people with an ‘unsound mind’.

During the 2022 Federal Election, Inclusion Australia joined with over sixty other organisations to release an open letter² calling for significant change to ensure that people with an intellectual disability could exercise their right to vote.

The open letter, coordinated by Australian Lawyers for Human Rights, said:

Australia’s laws must recognise and protect the right of people with disability to vote in Australian elections. But archaic and offensive provisions in section 93(8)(a) of the Commonwealth Electoral Act 1918 are being used to prevent some Australians from exercising this most fundamental democratic freedom because they can be deemed to be of ‘unsound mind’.

Section 93(8) applies disproportionately to people with intellectual disabilities and cognitive impairments, leaving them subject to a violation of their right to vote. Between 2008-2012, more than 28,000 people were removed from the electoral roll due to the “unsound mind” provisions.

Section 93(8) must be repealed because it is inconsistent with Australia’s international legal obligations under article 29 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) which states that people with disability must be afforded the right and opportunity to vote on an equal basis with others.

This reform has been needed for many years. In 2014, the Australian Law Reform Commission said, in their report into legal barriers for people with disability *Equality, Capacity and Disability in Commonwealth Laws*, that reform was long overdue. They set out a number of options for reform of the legislation, including repealing the provision entirely³.

The Australian Electoral Commission themselves recommended reform to the ‘unsound mind’ provision in the previous Inquiry into the 2019 Federal Election⁴.

The open letter calls for changes as recommended by the Australian Law Reform Commission, and we endorse this call.

Change is long overdue. People with an intellectual disability have the right to have their say about who governs them, as do all other Australians.

² <https://alhr.org.au/righttovote/>

³ <https://www.alrc.gov.au/publication/equality-capacity-and-disability-in-commonwealth-laws-dp-81/9-electoral-matters/entitlement-to-enrolment-and-to-vote/>

⁴

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2019Federalection/Report/section?id=committees%2freportjnt%2f024439%2f73872