

Our reference: PF:FG:712

17 February 2012

The Honourable Mr Trevor Khan MLC  
Chair  
Committee on Electoral Matters  
Parliament of New South Wales  
Parliament House  
Macquarie Street  
**SYDNEY NSW 2000**

Dear Sir:

### **Inquiry into the conduct of the 2011 NSW State Election**

1. Thank you for the opportunity to contribute a submission to the Committee on Electoral Matters Inquiry into the conduct of the 2011 NSW State Election.
2. The Australian Centre for Disability Law (ACDL) advises and represents clients within New South Wales on matters concerning disability discrimination. We also provide advice and representation to clients with disability across Australia on broader human rights matters. In addition, ACDL engages in various law reform, continuing legal education, and community legal education activities.
3. It is our position that New South Wales has a legal duty to provide accessible voting for people with disability under the *Disability Discrimination Act 1992 (Cth)* (DDA) and the United Nations Convention on the Rights of Persons with Disabilities (CRPD). Article 29 of CRPD requires State Parties to guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others. This encompasses the right to vote.

### **Technology assisted voting**

4. ACDL would like to acknowledge the introduction of technology assisted voting, which enabled people to cast their vote via the phone or internet, in the 2011 NSW State Election as this enabled many people with disability, in particular people with vision impairments and people with dexterity impairments, to vote in secret for the first time. Section 120AB of the *Parliamentary Electorates and Elections Act 1912* (the Act) outlines who is able to vote electronically. This now fulfils s. 103 of the Act as it enables people with disability to have a secret ballot. This also resolves the problems previously encountered by postal voting as people can apply online.

5. Although, this was a positive step, it is arguable that it continues to breach of s. 24 (b) of the DDA, given the fact that although people with disability are able to cast a secret vote through technology assisted voting, this is still on different grounds to everybody else. People using technology assisted voting were required to vote prior to polling day and the system was not available at polling booths.
6. People with disability feel that it is important that they are visible at polling booths on polling day so that political parties and other candidates are aware that they are an important part of their constituency and that their issues are brought to the political forefront.

### **Accessibility**

7. It is our position that all polling booths ought to be fully accessible in accordance with the *Disability (Access to Premises – Buildings) Standards 2010*. This encompasses hearing augmentation.
8. It is also imperative that polling venues be close to accessible transport nodes. An accessible building may be of no use if the cost of getting there is prohibitively expensive, such as having to get an accessible taxi because of the unavailability of accessible public transport.

### **Information**

9. Voting information in easy English should be available to people with cognitive impairment.
10. AUSLAN interpreters should be available to people with hearing impairment and Deaf people, on request, at specified times and booths.

### **Capacity**

11. Section 25 of the Act disqualifies a person from voting if they are found to be incapable of understanding the nature and significance of enrolling and voting, due to 'being of unsound mind'.

12. ACDL is greatly concerned about this section for the following reasons:

The section allows a person to be disqualified from voting on the grounds of their disability.

- a) The Act fails to state who can make this disqualification decision. This judgement could be made by someone who is not engaged with the person

regularly, someone who does not understand the complex nature of capacity, or someone who has a desire to exert control over the person. This means the section is open to being used as a form of abuse towards people with disability.

- b) People with an intellectual impairment or psychiatric impairment who **are** able to understand the ramifications of enrolment and voting, could be judged to fall into this definition inappropriately.
  - c) The section's test as to whether the person in question understands "the nature and significance of enrolment and voting" is unsuitable. 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.
14. An incorrect assessment of a person's capacity can result in the denial of a fundamental human right to make autonomous decisions, thereby depriving people with disability the opportunity for self-determination.
15. Furthermore, in accordance with Article 12 of CRPD, legal capacity ought to be recognised and people ought to be provided with support to exercise their capacity

### **Penalty Notices**

16. Section 120C of the Act provides for penalty notices for those who fail to vote at an election.
17. People with disability may inadvertently suffer under this section. For example, a person with an intellectual disability may be unable to understand when booths are open and their location, and a person with a psychiatric disability may be unwell during an election. ACDL recommend that such a reason would be sufficient for the failure of an elector with disability to vote at an election, and thereby not receive a penalty notice.
18. This section should be amended to include people with disability who are unwell at election time preventing them from voting, as a sufficient reason under section 120C(6) for the failure to vote.

Please contact me if you would like to discuss any aspect of this submission further.

Yours sincerely

Handwritten initials 'FG' in black ink on a light grey background.

**FIONA GIVEN**  
Policy Officer