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Tom Rogers
Australian Electoral Commission
By email only: info@aec.gov.au

Dear Commissioner Rogers

RE: The right for all Australians with disability to vote

Australian Lawyers for Human Rights (**ALHR**) writes to you regarding section 93(8) of the *Commonwealth Electoral Act 1918*. As you are aware, section 93(8) states that 'a person who by reason of unsound mind, is incapable of understanding the nature and significance of enrolment and voting' is not entitled to be placed or retained on the Electoral Roll. This section disproportionately affects people with disability including those living with intellectual disability, cognitive impairment and mental illness.

ALHR notes that this issue was addressed in the Australian Law Reform Commission (**ALRC**) report, *Equality, Capacity and Disability in Commonwealth Laws*, released in 2014. This report found that section 93(8) required amendment to focus on a person's decision making ability with respect to enrolment and voting in the relevant election, but also for there to be consideration for decision making support and assistance when determining if the person meets the threshold. ALHR is concerned that these recommendations have not been acted on to date.

Australia is a signatory to the *Convention on the Rights of Persons with Disabilities (CRPD)* and pursuant to its international legal obligations must take steps to remove laws that are discriminatory against people with disability. Article 29 of the CRPD provides that people with disability must be afforded the right and opportunity to vote on an equal basis with others. Section 93(8) violates this right when a person with disability is excluded from voting or removed from the Electoral Roll on the basis of their disability.

It is our view that to comply with the CRPD and protect the rights of people with disability, section 98(3) must be repealed rather than amended. We respectfully submit that the ALRC's 2014 recommendations do not go far enough as section 93(8) cannot continue to operate with any degree of qualification or imposition of a decision-making capacity threshold. The reality is that people with disability must have the right and opportunity to vote.

In addition to the operation of section 98(3) discriminating against people with disability and constituting a violation of their internationally recognised human rights, the language used in its drafting is highly offensive.

Words like 'unsound mind' call of an era passed where people with disability were not seen as rights holders and had no protection at law. This language reflects the medical model of disability which is inconsistent with international human rights law which adopts the social model of disability. The use of language and the reflection of the social model of disability in Australian laws is fundamental to the protection and promotion of the human rights of people with disabilities.

It must be recognised that disability results from the interactions between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others.

Accordingly, ALHR calls on the Australian Electoral Commission to take responsibility for the protection and promotion of the rights of people with disability and lead a process to repeal section 93(8) of the *Commonwealth Electoral Act 1918*.

We would be pleased to discuss this matter further with you. We look forward to your response and leadership.

About ALHR

ALHR was established in 1993 and is a national association of more than 800 Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and Specialist National Thematic committees. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.

Yours faithfully



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