

**Submission  
No 2**

**ADEQUACY OF THE FUNDING ALLOCATION OF THE NSW ELECTORAL  
COMMISSION FOR THE 2023 STATE GENERAL ELECTION**

**Organisation:** Information and Privacy Commission

**Date Received:** 25 January 2022



25 January 2022

Mr Lee Evans, MP  
Chair  
Joint Standing Committee on Electoral Matters  
NSW Parliament  
Parliament House  
Macquarie Street  
Sydney NSW 2000

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Dear Chair

**INQUIRY INTO THE ADEQUACY OF THE FUNDING ALLOCATION OF THE NSW ELECTORAL COMMISSION FOR THE 2023 STATE GENERAL ELECTION**

The Information and Privacy Commission (IPC) is pleased to provide a submission to the Inquiry into the adequacy of the funding allocation of the NSW Electoral Commission (NSWEC) for the 2023 State general election to assist the Joint Standing Committee on Electoral Matters in reviewing this important matter.

The IPC oversees the operation of privacy and information access laws in New South Wales.

The Information Commissioner has responsibility for overseeing agency compliance with the information access rights enshrined in the *Government Information (Public Access) Act 2009* (NSW) (GIPA Act) and exercises functions prescribed in the GIPA Act and the *Government Information (Information Commissioner) Act 2009* (NSW).

The Privacy Commissioner has responsibility for overseeing and advising NSW public sector agencies on compliance with the *Privacy and Personal Information Protection Act 1998* (NSW) (PPIP Act) and the *Health Records and Information Privacy Act 2002* (NSW) (HRIP Act).

Like the NSWEC, the IPC is an integrity agency with functions that are fundamental to the preservation and advancement of representative democratic Government (e.g. objects of the *GIPA Act*, s. 3). In this context, Commissioners acknowledge and support the findings in the Audit Office's Special Report on *the effectiveness of the financial arrangements and management practices in four integrity agencies*, published on 20 October 2020, including that the current annual funding model for integrity agencies presents a threat to their independence.

In considering the findings of the Audit Office's Report, both Commissioners acknowledge that there is a risk that decisions about the NSWEC's funding could be influenced by the conduct of investigations into electoral integrity on account of decisions about the annual appropriation for the NSWEC being made by Cabinet.

The Commissioners note that the NSWEC has not received the full funding amount it has requested in recent years and that there is inadequate transparency about how funding decisions are made and no formal mechanisms to question or challenge these decisions. In the interests of promoting information access, the Information Commissioner welcomes efforts to create greater transparency about how such decisions are made and supports formal mechanisms to challenge such decisions.

Additionally, serious implications exist for the integrity of conducting elections if this key element of the democratic system is underfunded. At present, the NSWEC's funding requirements may be considered against requests for funding to fulfil government election commitments or other high-profile policies or projects. The role of the NSWEC should transcend the immediate priorities of government and actions should be taken to mitigate the risk that the NSWEC's funding requirements may not be prioritised.

The Commissioners note the Inquiry's Terms of Reference which emphasise the importance of taking into account the latest advice around issues of electoral integrity arising from foreign interference in elections. As a key integrity agency in NSW, the NSWEC is a likely target for cyber-attacks, with many of the current election systems that handle the scanning of paper electoral rolls to analyse elector mark-offs having known cyber security vulnerabilities due to the age of the technology used. The Privacy Commissioner recognises the deleterious impacts to personal privacy that could arise as a result of election inference in which personal information and electoral roll data is compromised.

As the NSWEC moves towards digital solutions to better manage NSW elections, the agency must continue to invest in digital innovation and election systems modernisation, helping to improve NSWEC's cyber security posture, and reduce the likelihood that future elections are compromised due to foreign interference from cyber attacks. The Commissioners note that to invest in systems modernisation and ensure that adequate cyber security safeguards remain in place, it is imperative that the NSWEC receives adequate funding to deliver on its mandate. This will also support NSWEC in fulfilling its obligations under section 12 of the *Privacy and Personal Information Protection Act 1998*, in which public sector agencies that hold personal information must ensure that the information is protected, by taking such security safeguards as are reasonable in the circumstances, against loss, unauthorised access, use, modification or disclosure, and against all other misuse.

The Commissioners welcome the opportunity to make a submission to the Committee.

Please do not hesitate to contact us if you require any further information. Alternatively, your officers can contact Darby Judd, Senior Policy Officer, Legal Counsel and Regulatory Advice email: [REDACTED]

Yours sincerely

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**CEO, Information and Privacy Commission NSW**  
**Information Commissioner**  
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**Privacy Commissioner**