

**Submission  
No 16**

**ADMINISTRATION OF THE 2023 NSW STATE ELECTION AND OTHER  
MATTERS**



**Organisation:** NSW Council for Civil Liberties

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## **NSWCCL SUBMISSION**

### **Joint Standing Committee on Electoral Matters**

### **Inquiry into the administration of the 2023 NSW state election and other matters**

**16 February 2023**

**NSWCCL**

## **Acknowledgement of Country**

In the spirit of reconciliation, the NSW Council for Civil Liberties acknowledges the Traditional Custodians of Country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all First Nations peoples across Australia. We recognise that sovereignty was never ceded.

## **About NSW Council for Civil Liberties**

NSWCCL is one of Australia's leading human rights and civil liberties organisations, founded in 1963. We are a non-political, non-religious and non-sectarian organisation that champions the rights of all to express their views and beliefs without suppression. We also listen to individual complaints and, through volunteer efforts, attempt to help members of the public with civil liberties problems. We prepare submissions to government, conduct court cases defending infringements of civil liberties, engage regularly in public debates, produce publications, and conduct many other activities.

CCL is a Non-Government Organisation in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

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## 1 Introduction

- 1.1 The New South Wales Council for Civil Liberties (NSWCCL) welcomes the opportunity to provide submissions to the Joint Standing Committee on Electoral Matters (Committee) regarding the administration of the 2023 NSW state election and other matters.
- 1.2 The NSWCCL wishes to express views in respect of:
- (a) political donations from property developers, including through shell companies and charities;
  - (b) truth in political advertising;
  - (c) the timeliness of political donation disclosures; and
  - (d) electoral participation and enfranchisement, particularly regarding imprisoned persons and people living with disability.

## 2 Political donations from property developers

- 2.1 The NSWCCL recognises that New South Wales (NSW) already has strong regulation of political financing, which reflects the importance to our community and our parliament of protecting democracy from corruption. Political integrity is crucial to responsible government. The perception that political favour can be bought through party donations undermines public confidence in our democratic institutions.
- 2.2 It is unlawful under section 52 of the Election Funding Act 2018 (NSW) (Election Funding Act) for a prohibited donor (which includes property developers and their close associates) to make, or to solicit another person to make, a political donation. It is also unlawful for a person to make a political donation on behalf of a prohibited donor, or accept a political donation made by a prohibited donor or a person on behalf of a prohibited donor.<sup>1</sup>
- 2.3 A prohibited donor under the Election Funding Act also includes tobacco and liquor or gambling industry business entities and their close associates. While these submissions are directed towards property developers (as this was highlighted in the inquiry's terms of reference), our concerns are applicable to all entities or individuals considered a prohibited donor under the Election Funding Act.
- 2.4 The rationale for the prohibition is that the commercial interests of property developers are directly affected by the exercise of public power through land development applications, and allowing property developers to make political donations may jeopardise the integrity of land development decisions. In *McCloy v The State of New South Wales*,<sup>2</sup> the constitutional validity of provisions that limit or prohibit property developers from making political donations was affirmed. It was submitted by the State of New South Wales and accepted by the Court, that:

[T]he degree of dependence of property developers on decisions of government about matters such as the zoning of land and development approvals distinguishes them from actors in other sectors of the economy. Property developers are sufficiently distinct to warrant specific regulation in light of the nature of their business activities and the nature of the public powers which they might seek to influence in their self-interest, as history in New South Wales shows.<sup>3</sup>

It was further identified by the Court that in NSW, corruption involving property developers has been the subject of eight adverse reports from ICAC and other bodies between 1990 and 2015.<sup>4</sup>

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<sup>1</sup> *Election Funding Act 2018* (NSW) s 52(2)-(3).

<sup>2</sup> (2015) 257 CLR 178.

<sup>3</sup> *Ibid.*, [49].

<sup>4</sup> *Ibid.*, [51].

2.5 This context informs our strong support of the existing prohibition on political donations. In addition, the NSWCCCL wishes to express concerns regarding methods of donations that are not captured by the prohibitions, but which raise similar risks.

### 3 Use of shell companies to make political donations

3.1 Evidence was provided to the Standing Committee on State Development during its 2023 inquiry into allegations of impropriety against agents of the City of Canterbury Bankstown Council that property developers were using shell companies to obfuscate political donations in contravention of the Election Funding Act.<sup>5</sup> The NSW Government responded to the inquiry's final report stating that the Election Funding Act remains appropriate, citing the sections of the legislation that make the evidenced acts unlawful.<sup>6</sup> However, given such unlawful donations were able to be made undetected, the legislation (or the administration of this legislation) is not sufficient to deter or catch such behaviour.

3.2 The NSWCCCL acknowledges there are legitimate business reasons for establishing a shell company; however, shell companies are also regularly used to disguise ownership. The Election Funding Act was enacted to 'increase the integrity, transparency and accountability of political donations in New South Wales'.<sup>7</sup> The use of a shell company as a vehicle to make anonymous political donations is antithetical to the objects of the Election Funding Act, that explicitly include establishing a 'transparent electoral funding, expenditure and disclosure scheme'.<sup>8</sup>

3.3 The NSWCCCL submits that the Committee should consider whether the ultimate beneficial owner of a shell company should also be disclosed when a political donation is made by such an entity. The beneficial owner is the person(s) who ultimately owns or controls a company, who may not necessarily be the legal owner(s). This type of disclosure regime was adopted in the United Kingdom to enhance transparency with respect to overseas entities (including shell companies) who purchase property in the UK.<sup>9</sup> Under the UK regime, the beneficial owner of a company is a person who:

- (a) holds (directly or indirectly) more than 25% of shares or voting rights in a company;
- (b) holds (directly or indirectly) the right to appoint or remove the majority of the board of directors; or
- (c) has the right to exercise, or actually exercises, significant influence or control over the company.<sup>10</sup>

The Committee may consider the definition of 'control' under the Corporations Act 2001 (Cth) (**Corporations Act**) when considering how to define the beneficial owner (as the ultimate owner or controller of a company). Under section 50AA of the Corporations Act, an entity controls a second entity if it has the capacity to determine the outcome of decisions about the second entity's financial and operating policies, which includes consideration of the practical influence (beyond the rights that can be enforced) and any practice or pattern of behaviour.<sup>11</sup> The Committee should also consider whether disclosures of political donations from other legal entities, such as trusts and partnerships, should also include a disclosure of the entity's beneficial

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<sup>5</sup> Standing Committee on State Development (NSW) *Allegations of impropriety against agents of the City of Canterbury Bankstown Council*, Report 49 (2023), 10.

<sup>6</sup> New South Wales Government, *Government response - Report No 49 - Allegations of impropriety against agents of the City of Canterbury Bankstown Council*, Report (2023).

<sup>7</sup> New South Wales, *Parliamentary Debates*, Legislative Assembly, 17 May 2018, 593 (Mr Anthony Roberts) <<https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-101944>>.

<sup>8</sup> *Electoral Funding Act 2018* (NSW) s 3.

<sup>9</sup> United Kingdom Government Companies House, 'The Register of Overseas Entities: a step forward for corporate transparency' (Blog Post 26 September 2023) <<https://companieshouse.blog.gov.uk/2023/09/26/the-register-of-overseas-entities-a-step-forward-for-corporate-transparency/>>.

<sup>10</sup> *Economic Crime (Transparency and Enforcement) Act 2022* (UK) para 6, sch 2.

<sup>11</sup> *Corporations Act 2001* (Cth) s 50AA.

owner(s). Allowing the public to know the beneficial owner of a shell company making a political donation will enhance transparency and discourage the use of shell companies to obscure donors' identities.

- 3.4 The NSWCCCL further submits that any political donations made by a shell company whose beneficial owner is a prohibited donor should be unlawful. The NSWCCCL acknowledges that the definition of a 'close associate' to a prohibited donor (who is also prohibited from making political donations) includes 'a person whose voting power in the corporation or a related body corporate of the corporation is greater than 20% or the spouse of such a person'.<sup>12</sup> However, we submit that this does not go far enough to capture the full breadth of persons who may benefit from or control a company.

## 4 The charitable loophole

- 4.1 The NSWCCCL is concerned that property developers can circumvent the prohibition on political donations by making donations to public projects through associated charitable organisations. The use of charities associated with property developers being used to fund Government projects has been reported in the media, with speculation that this may be linked to favourable treatment with respect to development approvals.<sup>13</sup> Such donations fall outside the existing legislation because they are provided for politically significant public projects or initiatives rather than directly to a political party.
- 4.2 Financial support from charities linked to property developers may create the impression of political interference in circumstances where the property developer may be perceived as receiving favourable treatment. This could be viewed as 'clientelism', a type of corruption discussed in the judgement of French CJ, Kiefel, Bell and Keane JJ in *McCloy at [36]*:

There are different kinds of corruption. A candidate for office may be tempted to bargain with a wealthy donor to exercise his or her power in office for the benefit of the donor in return for financial assistance with the election campaign. This kind of corruption has been described as "quid pro quo" corruption. Another, more subtle, kind of corruption concerns "the danger that officeholders will decide issues not on the merits or the desires of their constituencies, but according to the wishes of those who have made large financial contributions valued by the officeholder." This kind of corruption is described as "clientelism". It arises from an office-holder's dependence on the financial support of a wealthy patron to a degree that is apt to compromise the expectation, fundamental to representative democracy, that public power will be exercised in the public interest. The particular concern is that reliance by political candidates on private patronage may, over time, become so necessary as to sap the vitality, as well as the integrity, of the political branches of government.

- 4.3 The NSWCCCL acknowledges the importance and desirability of charities supporting the community and enhancing public life by contributing to public institutions. However, the NSWCCCL submits that the Committee should consider measures to avoid donations from charities associated with prohibited donors to Government projects in circumstances where there is a perceived benefit to the prohibited donor. Regardless of the intent of such donations, the perception of corrupt behaviour can undermine public faith in our democratic institutions.

## 5 Truth in political advertising laws

- 5.1 Misinformation and disinformation in political advertising is a widespread problem in Australia, with 73% of respondents stating that they came across political advertisements they knew to be

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<sup>12</sup> *Electoral Funding Act 2018* (NSW) s 53(5)(c).

<sup>13</sup> Yee-Fui Ng, 'A loophole NSW property developers can legally use to bypass political donations ban must be closed', *The Guardian* (online at 23 Feb 2023) <<https://www.theguardian.com/commentisfree/2023/feb/23/a-loophole-nsw-property-developers-can-legally-use-to-bypass-political-donations-ban-must-be-closed>>; Anne Davis, 'How the NSW government can still benefit from developer money despite political donations ban', *The Guardian* (online at 23 February 2023) <<https://www.theguardian.com/australia-news/2023/feb/23/how-the-nsw-government-can-still-benefit-from-developer-money-despite-political-donations-ban>>.

misleading in a survey conducted by the Australia Institute in June 2022.<sup>14</sup> Misleading political advertising can cause serious societal harms including:

- the erosion of trust in democratic processes;
- the weakening of trust between and among public and private entities;
- the weakening legitimacy of the social contract between voters and elected representatives; and
- the undermining of an informed populace.

The NSWCCCL strongly supports truth in political advertising laws for NSW state elections and believe that such laws would enhance the integrity and transparency of the electoral system.

5.2 While the NSWCCCL acknowledges the difficulty in assessing 'truth', precedent for such assessments can be found under various existing Australian laws, as highlighted by Zali Steggall OAM MP in her second reading speech of the Commonwealth Electoral Amendment (Stop the Lies) Bill 2021.

Australian consumer laws do not permit businesses to make incorrect statements or those likely to create a false impression, even if the business's intention is not to mislead. There are strict laws governing financial advice. Pharmaceutical manufacturers cannot, for example, say their product cures something that it does not. Food companies cannot claim that sugary foods are good for children or other things. Lawyers can't guarantee outcomes or that they will win every personal injury case. The same standards should be applied in [Federal Parliament].<sup>15</sup>

5.3 Truth in political advertising laws have already been enacted in South Australia and the Australian Capital Territory, and the NSWCCCL supports the enactment of such laws in NSW.<sup>16</sup>

5.4 There is strong support for truth in political advertising laws in the Australian community. A survey conducted by the Australia Institute in October 2023 following the referendum on an Aboriginal and Torres Strait Islander Voice to Parliament found that:

- nine in 10 Australians agree that truth in political advertising laws should be in place in time for the next federal election campaign; only 4% disagree;
- both those who voted 'yes' and those who voted 'no' in the referendum overwhelmingly agree that truth in political advertising laws should be in place in time for the next federal election campaign at 92% and 83% respectively; and
- 72% of those surveyed agreed that they are concerned about lies and misinformation that circulated on social media during the referendum campaign.<sup>17</sup>

5.5 As a participant in the #OurDemocracy campaign, the NSWCCCL supports its policy vision on electoral disinformation, including reforms such as:

- (a) penalties for candidates, political parties and other campaigners who intentionally and repeatedly mislead voters;
- (b) laws that require digital platforms to be transparent about how disinformation is spreading, including audits of their algorithms which push extreme and sensationist content to users;

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<sup>14</sup> Australia Institute, 'Polling Misinformation' (Report) <<https://australiainstitute.org.au/wp-content/uploads/2022/06/Polling-Misinformation-WEB.pdf>>.

<sup>15</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 25 October 2021 (Ms Zali Steggall) <<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=CHAMBER;id=chamber%2Fhansard%2F25166%2F0068;query=Id%3A%22chamber%2Fhansard%2F25166%2F0015%22>>.

<sup>16</sup> *Electoral Act 1985* (SA s 113); *Electoral Act 1992* (ACT) s 108.

<sup>17</sup> Australia Institute, *Polling Misinformation and the Referendum* (Report) <<https://australiainstitute.org.au/wp-content/uploads/2023/10/Polling-Misinformation-and-the-referendum-Web.pdf>>.

- (c) laws that prohibit predatory micro-targeting advertising techniques based on sensitive data (such as religious beliefs, sexual orientation and race or ethnicity); and
- (d) laws that hold traditional media companies to account for providing a platform for disinformation.<sup>18</sup>

5.6 We agree with #OurDemocracy that any laws developed should adhere to the following principles.

- Laws should be carefully drafted so that they do not unduly restrict free speech and a free press, but are targeted to ensure serious harm from the spread of disinformation is avoided.
- Laws should focus on community and societal harms, not just individual level harms.
- Wherever possible truth should be determined by qualified bodies independent of both the executive government and industry.
- Laws should be proportionate, imposing regulation on those with the greatest influence and with the most to gain from disinformation.
- Laws should be focused on addressing the risks from systems and processes, expanding upon the current focus on content take-down.
- Laws should be guided by the best global practice and research.
- Laws should be strong and enforced by well-resourced, independent and integrated regulators.<sup>19</sup>

## **6 Interaction with the Commonwealth's Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023**

6.1 The NSWCCCL commends the Commonwealth for taking steps to tackle misinformation and disinformation through the exposure draft Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023 (Draft Misinformation Bill).<sup>20</sup> The NSWCCCL has provided a submission to the Commonwealth's consultation setting out our concerns with the Draft Misinformation Bill, which is available on our website.<sup>21</sup> Our submissions to this inquiry only consider the interaction of the Draft Misinformation Bill and potential truth in political advertising laws at a state level in NSW.

6.2 The Draft Misinformation Bill empowers the ACMA to register industry developed codes of conduct for sections of the digital platform industry that dictate how digital service providers will deal with misinformation and disinformation on their platforms. Once registered, a code is enforceable against the digital service provider. If an industry developed code is deemed insufficient to deal with misinformation and disinformation (or under exceptional and urgent circumstances) the ACMA can develop enforceable standards that will apply to relevant digital service providers. The ACMA would also gain powers to: require digital platforms to keep records and report to the ACMA on matters relating to misinformation and disinformation; obtain

<sup>18</sup> #OurDemocracy, 'Our Policy Vision on Electoral Disinformation' (Report) <<https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/62572161a0ffd957b2fe6fcf/1649877347376/Policy+Vision+Electoral+Disinfo+20221204.pdf>> p 2.

<sup>19</sup> #OurDemocracy, 'Our Policy Vision on Electoral Disinformation' (Report) <<https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/62572161a0ffd957b2fe6fcf/1649877347376/Policy+Vision+Electoral+Disinfo+20221204.pdf>> p 3.

<sup>20</sup> Commonwealth Department of Infrastructure, Transport, Regional Development, Communications and the Arts, 'Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023' (24 June 2023, Web Page) <<https://www.infrastructure.gov.au/department/media/publications/communications-legislation-amendment-combatting-misinformation-and-disinformation-bill-2023>>.

<sup>21</sup> NSWCCCL, *Submission: Consultation regarding the exposure draft of the Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023* NSW Council for Civil Liberties (online at 22 August 2023) <[https://www.nswcccl.org.au/submission\\_combatting\\_misinformation\\_and\\_disinformation\\_bill\\_2023](https://www.nswcccl.org.au/submission_combatting_misinformation_and_disinformation_bill_2023)>.



information, documents and evidence from digital platforms providers on matters relating to misinformation and disinformation; and publish information on matters relating to misinformation and disinformation on its website.

- 6.3 While the Draft Misinformation Bill takes steps to deal with harmful misinformation and disinformation online, the NSWCCCL submits that it is insufficient to deal with truth in political advertising for reasons set out below.
- (a) The Draft Misinformation Bill only concerns certain kinds of digital platform services, meaning that advertisements disseminated by radio, television, print media and other means would not be captured.
  - (b) The Draft Misinformation Bill does not penalise politicians, candidates or publishers (other than digital service providers in circumstances where they would be considered a publisher) for disseminating misinformation or disinformation.
  - (c) For content to be considered 'misinformation' or 'disinformation' under the Draft Misinformation Bill (and therefore be regulated), it must be reasonably likely to cause or contribute to serious 'harm'.<sup>22</sup> Untruthful political advertising would arguably be captured within the definition of 'harm' as it includes 'harm to the integrity of Australian democratic processes or of Commonwealth, State, Territory or local government institutions'.<sup>23</sup> Digital platform providers will be required to put in place systems to manage misinformation and disinformation, effectively requiring these organisations to assess the likelihood of potential harm. Digital platform providers are generally companies concerned with profits over protecting democratic integrity and may not be the best body to be making such an assessment.
  - (d) The definition of harm includes 'disruption of public order or society in Australia' and 'economic or financial harms to ... a sector of the Australian economy'. This may have a chilling effect on the right to protest, stifling debate and democratic freedoms of assembly and association.<sup>24</sup>
  - (e) It is unclear under the Draft Misinformation Bill how misinformation and disinformation will be dealt with (ie, whether it would be removed or merely deprioritised in an algorithm, and whether the person posting the content will be penalised).
  - (f) There is no means to appeal a determination that content is misinformation and disinformation if the person posting the content disagrees with the digital platform providers actions.

## 7 Timely disclosure of political donations

- 7.1 The Electoral Funding Act provides that political donations must be disclosed within six weeks of the end of a half year period (which may be up to seven and a half months after the donation), or within 21 days of the political donation being received or made during the pre-elections period for a general election.<sup>25</sup>
- 7.2 In our view, there is no reason why the disclosure of such political donation should be made up to over half a year later. More timely disclosure of political donation would allow constituents, journalists and community organisations to better understand the potential influence of wealthy

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<sup>22</sup> Exposure Draft of the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023 s 7.

<sup>23</sup> Ibid s 2 (definition of 'harm').

<sup>24</sup> For more detail on this point, refer to our submission to the Draft Misinformation Bill consultation: NSWCCCL, *Submission: Consultation regarding the exposure draft of the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023* NSW Council for Civil Liberties (online at 22 August 2023)

<[https://www.nswccl.org.au/submission\\_combatting\\_misinformation\\_and\\_disinformation\\_bill\\_2023](https://www.nswccl.org.au/submission_combatting_misinformation_and_disinformation_bill_2023)>.

<sup>25</sup> *Electoral Funding Act 2018* (NSW) s 15.

donors on our politicians and candidates. In addition, more timely disclosures would more fully support the objects of the Electoral Funding Act, including:

- (a) 'to establish a fair and transparent ... disclosure scheme,
- (b) to facilitate public awareness of political donations, and
- (c) to help prevent corruption and undue influence in government'.<sup>26</sup>

The NSWCCCL acknowledges the administrative burden on a disclosing person. However, we submit that disclosures should be made within a time period that more closely aligns with the transparency objectives of the legislation.

## 8 Rights to electoral participation and enfranchisement

8.1 The NSWCCCL considers that all Australian citizens should be afforded the right to vote in all elections. As a democracy, it is pertinent that Australia upholds the principle of free and equal participation in the political process. The NSW Parliament has both legal and moral obligations to protect the right to vote as one of the most fundamental human rights and civil liberties.<sup>27</sup>

8.2 The right to vote without discrimination is provided for in human rights treaties that are binding on the NSW Parliament (as an organ of the Australian nation state), namely:

- (a) article 25 of the International Covenant on Civil and Political Rights; and
- (b) article 5(c) of the International Covenant on the Elimination of Racial Discrimination.

8.3 Article 21 of the Universal Declaration of Human Rights also outlines the importance of protecting core elements of democracy, including the 'right to take part in the government of [one's] country' and that 'the will of the people shall be the basis of the authority of government'.

8.4 There are, however, a number of factors that currently contribute to the disenfranchisement, particularly of imprisoned persons and people living with disability.

### 8.5 Disenfranchisement of people in prison

- (a) The *Electoral Act 2017* (NSW) (***Electoral Act***) provides that a person is not entitled to be enrolled, and therefore not entitled to vote, if the person has been convicted of an offence and is serving a sentence of 12 months' imprisonment or more in respect of that offence.<sup>28</sup>
- (b) While the NSWCCCL believe that no imprisoned person should be excluded from participating in our democracy, the Electoral Act's restriction disproportionality affects Aboriginal and Torres Strait Islander people.
- (c) The issue of the over-incarceration of First Nations people in Australia is well documented. The Final Report of the Royal Commission into Aboriginal Deaths in Custody found that the rate at which First Nations people are taken into custody is 'overwhelmingly different' to non-Indigenous people.<sup>29</sup> At the time of the Royal Commission's Final Report in 1991, First Nations people were 8 times more likely to be imprisoned than non-First Nations people. The Final Report of the 2021 NSW Select Committee on the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody was tabled in the New South Wales Parliament 30 years after the Royal Commission's Final Report was published, yet we are no closer to addressing the gross over-representation of First Nations people in the criminal justice

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<sup>26</sup> Ibid s 3 (a)-(c).

<sup>27</sup> 'Right to vote', *Australian Human Rights Commission* (Web Page) <<https://humanrights.gov.au/our-work/projects/right-vote>>.

<sup>28</sup> Electoral Act 2017 (NSW) ss 30(4), 31(1).

<sup>29</sup> Royal Commission into Aboriginal Deaths in Custody (Final Report, April 1991) vol 1 1.3.

system.<sup>30</sup> Many of the recommendations made in the Royal Commission's 1991 Final Report have still not been implemented, and the results of that are telling. In September 2023, the Aboriginal and Torres Strait Islander imprisonment rate was 2,500 persons per 100,000 adult Aboriginal and Torres Strait Islander persons.<sup>31</sup> The imprisonment rate of the general population was 204 persons per 100,000.<sup>32</sup> The NSWCCCL urges the Committee to consider the consequences of the over-incarceration of First Nations people, including that laws prohibiting people in prison from voting.

- (d) Article 25 of the International Covenant on Civil and Political Rights (*ICCPR*) protects the right to vote without 'unreasonable restriction'. When this right is read in conjunction with rights to be treated with humanity, dignity and respect in detention (matters protected by articles 7 and 10 of the ICCPR and the Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment) the importance of respecting the voting rights of prisoners is clear. Relevantly, article 10(3) of the ICCPR emphasises the importance of the rehabilitative and reintegrative function of incarceration: it is important for prisoners' rehabilitation to be integrated within the community outside of prison, and allowing them to vote affords them respect and dignity as democratic rights holders.
- (e) To ensure all members of our democracy are afforded the right to vote in NSW, the NSWCCCL urges the Committee to remove restrictions on prisoners' voting rights in the Electoral Act. This will support enfranchisement generally, and specifically in relation to Aboriginal and Torres Strait Islander people. The Committee should also ensure that the prison mobile polling booth program is properly funded so that people in custody who can vote have the opportunity to exercise their rights, including those on remand.

## 8.6 Access to voting for people living with disability

- (a) Article 29(a) of the United Nations Convention on the Rights of Persons with Disabilities provides that people living with disability must be provided the opportunity to vote on an equal basis to others. People living with disability should be provided with access to voting that suits their needs, including pre-polling, online and in person voting on the day.
- (b) For example, people with vision impairment do not enjoy the right to a secret ballot like other Australian citizens. Currently, people with vision impairment must rely on another person to cast their vote. Blind Citizen Australia identified that the electronic voting option, iVote, was extremely popular and selected by 94% of people with vision impairment in the 2019 NSW State election.<sup>33</sup> However, iVote was decommissioned in 2022 and no longer provides an accessible internet voting option for people with vision impairment.
- (c) Sally Aurisch, the Chief Executive Officer of Blind Citizens Australia highlights the importance of an internet voting system: 'Other forms of voting – such as telephone voting – still require us to rely on other people to cast our votes, denying us our right to a secret vote... After the recent Federal Election, we heard from members who were uncomfortable using telephone voting. Not only do they have to declare their voting intentions to a stranger, but there is no way of confirming that their votes are being accurately represented'.

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<sup>30</sup> Select Committee on the high level of First Nations people in custody and oversight and review of deaths in custody, Parliament of NSW, Inquiry into the high level of First Nations people in custody and oversight and review of deaths in custody (Final Report, April 2021) ix.

<sup>31</sup> 'Corrective Services, Australia', *Australian Bureau of Statistics* (Web Page, 23 November 2023) <<https://www.abs.gov.au/statistics/people/crime-and-justice/corrective-services-australia/latest-release>>.

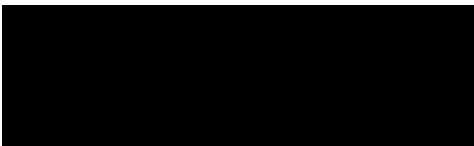
<sup>32</sup> *Ibid.*

<sup>33</sup> 'National Organisation for People who are Blind or Vision Impaired Files Complaint Against NSW Electoral Commission', Blind Citizens Australia (Web Page) <[https://www.bca.org.au/2022/08/30/national-organisation-for-people-who-are-blind-or-vision-impaired-files-complaint-against-nsw-electoral-commission/?utm\\_source=rss&utm\\_medium=rss&utm\\_campaign=national-organisation-for-people-who-are-blind-or-vision-impaired-files-complaint-against-nsw-electoral-commission](https://www.bca.org.au/2022/08/30/national-organisation-for-people-who-are-blind-or-vision-impaired-files-complaint-against-nsw-electoral-commission/?utm_source=rss&utm_medium=rss&utm_campaign=national-organisation-for-people-who-are-blind-or-vision-impaired-files-complaint-against-nsw-electoral-commission)>.

- (d) Whilst recognising the importance of data security in elections, the NSWCCCL submits that the use of an electronic voting option by a small group of the voting population, namely vision impaired people, would constitute a limited and acceptable risk given its promotion of electoral participation and the protection of the secret ballot.
- (e) The NSWCCCL acknowledge the NSW Electoral Commission report on Technology Assisted Voting and support the Electoral Commissioner's proposal to use internet voting for electors who are blind or have low vision in the 2027 NSW State Election.<sup>34</sup>
- (f) Further consultation with disabled people is required to support their ability to vote confidently and independently.

We trust that this submission assists the Committee in its work and would be pleased to offer further assistance if it would be of use.

Yours sincerely,



**Timothy Roberts**  
**Secretary**  
**NSW Council for Civil Liberties**

Contact in relation to this submission: [Redacted]

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<sup>34</sup> NSW Electoral Commission, 'Technology assisted voting' (Final Report, November 2023)  
<<https://elections.nsw.gov.au/getmedia/32e75622-e0d2-49df-9ffa-751fef5fedda/tav-review-final-report.pdf>> p 2.