

**Submission
No 20**

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

Organisation: Blind Citizens Australia

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Response to the NSW Parliament Joint Standing Committee on Electoral Matters (JSCEM) – Inquiry into the Administration of the 2023 State Election

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1. Introduction

1.1 About Blind Citizens Australia

Blind Citizens Australia (BCA) is the peak national representative organisation of and for the over 500,000 people in Australia who are blind or vision impaired. For nearly 50 years, BCA has built a strong reputation for empowering Australians who are blind or vision impaired to lead full and active lives and to make meaningful contributions to our communities.

BCA provides peer support and individual advocacy to people who are blind or vision impaired across Australia. Through our campaign work, we address systemic barriers by promoting the full and equal participation in society of people who are blind or vision impaired. Through our policy work, we provide advice to community and governments on issues of importance to people who are blind or vision impaired. As a disability-led organisation, our work is directly informed by lived experience. All directors are full members of BCA and the majority of our volunteers and staff are blind or vision impaired. They are of diverse backgrounds and identities.

1.2 About people who are blind or vision impaired

According to the Australian Bureau of Statistics (ABS), over 4.4 million Australians have some form of disability - roughly equating to 1 in every 5 Australians having a disability, and there are currently more than 500,000 people who are blind or vision impaired in Australia; with estimates that this will rise to 564,000 by 2030. According to Vision Initiative, around 80% of vision loss in Australia is caused by conditions that become more common as people age¹.

Australians who are blind or vision impaired can live rich and active lives and make meaningful contributions to their communities: working, volunteering, raising families and engaging in sports and other recreational activities.

The extent to which people can actively and independently participate in community life does, however, rely on facilities, services and systems that are available to the public being designed in a way that makes them inclusive of the needs of all citizens – including those who are blind or vision impaired.

2. Submission context

This submission is based on existing legislation and frameworks, noting gaps in the fulfilment of requirements laid out in existing documentation. The pertinent acts and legislation are:

- United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)
- The Disability Discrimination Act 1992 (Cwth)
- The National Disability Strategy 2021-2031 (this strategy coordinates the implementation of the UNCRPD)
- International Covenant on Civil and Political Rights (ICCPR)
- Electoral Act 2017 (NSW)
- Electoral Regulation 2018 (NSW)

Our response is based on extensive consultations with members and other people who are blind or vision impaired over many years, our membership on the NSW Electoral Commission's Equal Access to Democracy Committee, and our ongoing advocacy work in the sector related to ensuring the democratic participation of all citizens who are blind or vision impaired.

3. Blind Citizens Australia's submission

3.1 A Right to Democratic Participation

The principle of free and equal participation in the political process is a fundamental tenet of democracy which includes the right of citizens to cast a secret vote in government elections. Australia was the first country in the world to allow citizens to cast their vote anonymously, a concept that was quickly adopted in democracies across the world.

Australia's obligations under the International Covenant on Civil and Political Rights (ICCPR) includes Article 25(b) – ensuring the right to vote by secret ballot without distinction or unreasonable restrictions²; similarly, Article 29 of the United Nations Convention on the Rights of Persons with Disabilities (CPRD) requires governments ensure people with disability can enjoy political rights on an equal basis with others, including the right to vote by secret ballot. Article 29 of the CRPD also requires governments to ensure that voting procedures, facilities and materials are “appropriate,

accessible and easy to understand and use” and to facilitate “the use of assistive and new technologies where appropriate”³.

Yet the existing voting processes in NSW (since the suspension of iVote) results in people who are blind or vision impaired being forced to rely on another person to assist them to vote – whether that is a support worker, a spouse or other family member, or Electoral Commission staff – and to trust that the ballot paper has been completed accurately according to their wishes.

Whilst the human-assisted telephone voting systems that have been used at recent elections (including the 2023 NSW State Election) go some way to protecting the anonymity of the voter, they do little to allow a voter who is blind or vision impaired an opportunity to verify their ballot has been entered correctly. In using this system, the voter is still forced to trust that election staff are recording their voting preferences correctly, and will not change anything before the ballot has been submitted.

BCA believes that by refusing to adopt a truly accessible and anonymous voting systems, governments in Australia are failing to meet the commitments to equal political participation made under the ICCPR and CRPD. In addition, failing to have an election process that is accessible to all residents has the potential to result in the formation of a government that does not reflect the needs, interests, and values of the residents it claims to represent.

We note that in 2023 the NSW Electoral Commission conducted a comprehensive review into Technology Assisted Voting (further detail below). BCA broadly supports the recommendations in this report, and urges this Committee to consider it as a starting point for a discussion about re-introducing a modern form of voting, and for NSW to reclaim its title as the nation leader in providing accessible forms of voting.

3.2 Voting Options for People who are Blind or Vision Impaired in NSW

Background

The TAV system known as ‘iVote’ was introduced in 2011 to cater for people who are blind or vision impaired. iVote allowed voters to cast their vote by internet (through a computer, smartphone or tablet) or by telephone. This provided voters who are blind or vision impaired with several options for voting that may suit their particular accessibility needs. At the time of its introduction, it was estimated there were about 70,000 voters in NSW who were blind or vision impaired⁴. iVote was also expected to benefit people with other disabilities (around 330,000 voters) and people in remote locations

(around 6,500 voters) who had difficulty attending a polling station and casting a vote in the same way as other NSW voters⁵.

Since 2011, iVote has enabled thousands of voters who are blind or vision impaired, and many more voters who have other disabilities or circumstances that make it difficult to access a polling station, to cast their votes independently and participate equally in NSW elections. NSWEC analysis since 2011 has shown increasing uptake of iVote and 'a high degree of satisfaction among electors who used iVote' as well as reporting that about 10% of electors who used iVote would not have been able to vote had iVote not been available⁶. In the 2015 election alone, nearly 5000 people who are blind or vision impaired used iVote to cast their ballot.

However, on 15 March 2022, the NSW Electoral Commissioner determined that technology assisted voting (understood by BCA to mean iVote) would not be used for the 2023 general election. Instead, the Commissioner said he would recommend telephone voting be made available for blind and vision impaired voters⁷. We believe the decision to decommission iVote without plans for a replacement infringed on the rights of people who are blind or vision impaired to participate fully in the electoral process, as it removed the only existing accessible voting mechanism to ensure an independent, secret, and verifiable vote for our community.

It is worth noting the Commissioner made this determination two days before the NSW Supreme Court gave its decision in *NSW Electoral Commission v Kempsey Shire Council (No 2) [2022] NSWSC 282*, invalidating the results in three local government elections because of problems with iVote that prevented some voters from casting their votes. However, the Commissioner has stated to BCA, and to NSW Parliament, that the reason for this decision was that he became aware that a new version of the iVote software was being rolled out by the software provider, Scytll, and the old version would no longer be supported – requiring an extensive configuration process which would not be possible to complete prior to the 2023 election. While we can understand the challenge this created, we were disappointed there was no consultation with affected stakeholders, including the blindness community, prior to the Electoral Commissioner making the decision to discontinue iVote.

Voting in the 2023 NSW Election

The NSW Electoral Commissioner instead recommended the use of a human-assisted telephone voting service as an alternative to iVote for blind and vision impaired voters in forthcoming elections. The process for voting under this system was as follows:

- After an election has been called, an eligible voter registers by calling the dedicated telephone service and receiving a unique ID number.
- During the voting period, the voter calls the telephone service again and provides their ID number. The voter casts a vote by disclosing preferences to an election official who manually fills out a paper ballot.
- A second election official observes the first staff member completing the ballot paper and confirms it reflects the voter's instructions.

By contrast, the process for voting using iVote involved the following steps:

- An eligible voter could register online or through the iVote registration call centre, set a PIN and receive a vote ID.
- Once voting starts, the voter could log into iVote online or by telephone, using the PIN and vote ID. The voter casts their vote using that device (which they are likely to already be familiar with and have personalised to their needs) without assistance from another person.
- To ensure their vote has been recorded correctly, the voter could contact the verification server and provide their PIN, vote ID and vote receipt number at any time after a vote is cast and before voting closes. The vote is read aloud by text-to-speech technology.
- At the end of the election, the receipt numbers are uploaded to the iVote website and voters can check that their votes were counted in the total by searching their receipt numbers.

It is clear that human-assisted telephone voting does not enable voters who are blind or vision impaired to cast their vote independently, because human assistance is required: with iVote, voters can vote at their own pace using the option that is most suited to their accessibility requirements. They cannot cast their vote truly in secret, because they must disclose it to another person – while the electoral officer completing the ballot paper cannot personally identify the voter, the experience for the voter is still one of disclosing their vote to another. And there is no way to verify that their vote has been recorded as they intended in the way iVote enabled voters to check this after completing the voting process.

It is important to note that in feedback we received from NSW based members who voted in the 2023 Election that many of them felt the system worked well – in the sense that their calls were answered promptly with very little waiting in a phone queue, and that the election officials taking the calls were professional and polite. However, even those who commended the system for working well were at

pains to point out their frustrations that the previous iVote system had been taken away. One member summed up the feeling of many during our consultations:

“Voting in NSW Elections, unlike at Federal Elections, has always made me feel empowered by giving me the opportunity to complete a truly secret ballot. To have that taken away is just gut-wrenching”

Members we spoke to in consultations were divided in their approach to voting in the election: some members explained that if they had to tell anyone how they were going to vote, they would rather tell a trusted family member and get their help in filling out their ballot, rather than telling an unknown election worker over the phone; while others shared their anxiety that, because of political differences with family members, they did not feel this was an option for them and so would reluctantly use the phone voting service.

A Fit For Purpose System

BCA acknowledges that the implementation of iVote in NSW was not without its challenges; however, iVote has demonstrated the capability and promise of TAV. As noted in Section 3.1, in 2023 the NSW Electoral Commission conducted a review into Technology Assisted Voting (TAV) options.

BCA agreed with the recommendation in the Final Report of the TAV Review for a common national election technology system⁸. We are supportive of intergovernmental efforts to develop a nationally consistent TAV system that provides multiple options for voters who are blind or vision impaired to vote independently, secretly and verifiably. A national approach would allow the states, territories and Commonwealth to pool resources for the purchase, operation and maintenance of expensive equipment like kiosk voting machines. This would foster electoral consistency and inclusivity for all Australian voters, regardless of their location.

State and territory electoral commissions would also benefit from the cyber security expertise and resources at the disposal of Commonwealth agencies. Cyber security considerations are paramount in the development and operational integrity of internet voting, the accessibility and convenience of which makes it the preferred voting solution for many people who are blind or vision impaired. We appreciated the report’s recognition of the ‘material irregularity’ that may arise when even a single eligible voter is denied access to TAV due to technical difficulties. We also recognise the need to balance this against the likely erosion of public trust in democratic processes if such technical difficulties invalidated an election. As we noted in our response to the TAV Review, we would

welcome the opportunity to work with the NSW Parliament in developing a suitable legislative response.

We also appreciated the report's recognition of the need for a multifaceted approach to accessible voting. Operator-assisted telephone voting can remain a useful mechanism for many people who are blind or vision impaired, though many of our concerns about a truly secret ballot would be alleviated with the addition of automated telephone Interactive Voice Response (IVR) solutions using keypad responses. Internet and kiosk voting can also be woven into the tapestry of co-designed solutions. Emerging technologies, such as voice response software, should be considered in the longer term.

However, it is essential to note that any such national approach does not remove the need for the NSW Electoral Commission, and the NSW Government, to continue to provide secret, independent and verifiable voting options for people who are blind or vision impaired. As the largest state by population, BCA believes that NSW should play a key role in the development of a national approach to election technology cooperation. Even as NSW collaborates with other states, territories and the Commonwealth on a new national approach, we urge the NSW Electoral Commission and the NSW Government to continue their nation-leading work in TAV.

In short, the proposed national approach cannot be a smokescreen for excluding people who are blind or vision impaired from NSW elections. We ask the Committee to recommend the NSW Government views the 2027 NSW State Election, and the subsequent 2028 Local Government Elections, serve as a national exemplar of what can be achieved with a co-designed legislative approach to accessible voting.

4. Recommendations

In order to provide equal access to voting to all voters who are blind or vision impaired, and to improve the electoral participation of people with disability in future elections, BCA makes the following recommendations:

1. Adopt the recommendations of the NSW Electoral Commission TAV Review to ensure voters who are blind and vision impaired can engage fully in the democratic process.
2. Commit that any TAV system implemented in the future will provide a voting platform that can accommodate different accessibility requirements at the same time as ensuring security and performance.

3. Ensure the blind and vision impaired community, as well as the broader disability community, is consulted and involved in the development and implementation of any such system to ensure it is fit for purpose.

¹ Vision2020. *Eye health in Australia*. <http://www.visioninitiative.org.au/common-eye-conditions/eye-health-in-australia>

² Australian Human Rights Commission. *International Covenant on Civil and Political Rights – Human Rights at your Fingertips*. <https://humanrights.gov.au/our-work/commission-general/international-covenant-civil-and-political-rights-human-rights-your>

³ United Nations. Convention on the Rights of Persons with Disabilities – Article 29. <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-29-participation-in-political-and-public-life.html>

⁴ NSW Electoral Commission, Feasibility of the iVote Remote Electronic Voting System, July 2010 [https://www.elections.nsw.gov.au/NSWEC/media/NSWEC/Reports/iVote%20reports/Report-on-the-feasibility-of-providing-iVote-remote-electronic-voting-system-\(PDF-1004kB\).pdf](https://www.elections.nsw.gov.au/NSWEC/media/NSWEC/Reports/iVote%20reports/Report-on-the-feasibility-of-providing-iVote-remote-electronic-voting-system-(PDF-1004kB).pdf)

⁵ Ibid.

⁶ NSW Electoral Commission, iVote refresh project for the 2019 NSW State election, <https://www.elections.nsw.gov.au/NSWEC/media/NSWEC/Reports/iVote%20reports/iVote-Refresh.pdf>

⁷ NSW Electoral Commission, 'Electoral Commissioner's determination – iVote will not be used for 2023 NSW State election' (Media release, 16 March 2022) <https://www.elections.nsw.gov.au/About-us/Media-centre/News-media-releases/Electoral-Commissioner-iVote-determination>

⁸ NSW Electoral Commission, 'TAV Review – Final Report'. <https://elections.nsw.gov.au/technology-assisted-voting-review/review-papers>