

**Submission  
No 25**

**PROPOSALS TO INCREASE VOTER ENGAGEMENT, PARTICIPATION AND  
CONFIDENCE**

**Organisation:** Information and Privacy Commission

**Date Received:** 16 August 2024



information  
and privacy  
commission  
new south wales

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Our reference: **IPC24/A000394**

16 August 2024

Mr Peter Primrose MLC  
Chair  
Joint Standing Committee on Electoral Matters  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

By email: [electoralmatters@parliament.nsw.gov.au](mailto:electoralmatters@parliament.nsw.gov.au)

Dear Chair

**SUBMISSION BY THE INFORMATION AND PRIVACY COMMISSION NSW**

Thank you for the opportunity to make a submission to the Joint Standing Committee on Electoral Matters on the Inquiry into proposals to increase voter engagement, participation and confidence.

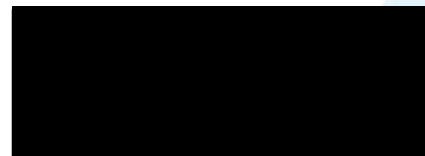
Attached is a submission from the Information and Privacy Commission NSW (IPC). The IPC is content for this submission to be published in full on your website.

Please do not hesitate to contact the IPC if you require any further information.

Yours sincerely



Rachel McCallum  
**Information Commissioner and CEO  
Information and Privacy Commission NSW**



Sonia Minutillo  
**A/Privacy Commissioner**

Encl.

## **Inquiry into proposals to increase voter engagement, participation and confidence**

Submission by the Information and Privacy Commission NSW

16 August 2024

Rachel McCallum  
**Information Commissioner and CEO  
Information and Privacy Commission NSW**

Sonia Minutillo  
**A/Privacy Commissioner**

Commissioners' signatures have not been included in this submission to facilitate public access to the submission, manage security risks and promote availability in accordance with the *Redacting signatures on public facing documents Practice Guide* published on the IPC website.

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The Information and Privacy Commission NSW welcomes the opportunity to provide a submission to the Joint Standing Committee on Electoral Matters (the Committee).

### **About the IPC**

The Information and Privacy Commission NSW (IPC) oversees the operation of privacy and information access laws in New South Wales.

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

The Information Commissioner has responsibility for overseeing the information access rights enshrined in the *Government Information (Public Access) Act 2009* and exercises functions under the *Government Information (Information Commissioner) Act 2009*.

For further information about the IPC visit [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au).

### **Voter engagement, participation and confidence**

This inquiry's broad Terms of Reference (ToRs) reflect the many aspects of voter engagement, participation and confidence. The following submissions by the IPC are focused on items 1(a), (c) and (d) of the ToRs. We have confined our submission to raising matters within our jurisdictional remit and professional expertise.

## Privacy of voters' information

The intersection between voters' expectations around their privacy and provisions in the *Electoral Act 2017* (Electoral Act) that provide for mandatory and discretionary disclosure of voters' information is a matter of interest to the IPC. These arrangements are longstanding, despite the evolving technology environment and high levels of general public concern about privacy. It may be appropriate, therefore, to reconsider the way personal information of voters is treated under the current legislative framework, to ensure that any use and disclosure of voters' personal information, including by recipients of voters' information, is understood and managed appropriately.

The Commissioners are aware of two main examples of a potential disparity between voters' expectations and the current legislative framework.

### *Electoral Commissioner's obligation to disclose personal information to election participants*

The Electoral Commissioner must share certain enrolment information with election participants, such as political parties and candidates under section 49. These types of provisions are likely intended to support election integrity, including by allowing other electors and election participants to query claims of enrolment and for candidates to communicate with voters. There are also additional requirements imposed on the Electoral Commissioner to share voters' information with registered parties and elected members, upon request, after an election, under section 222.

The Commissioners consider it would be beneficial to explore if this legislative framework for sharing voters' information with election participants remains fit for purpose, particularly given new requirements for data breach notifications, as well as the changing impact of technologies on risks to individual privacy.

### *Electoral Commissioner's power to authorise disclosure of personal information to others*

The Electoral Act also confers a broad discretion on the Electoral Commissioner to authorise the disclosure of personal information of enrolled persons to entities outside of the political process. Specifically, section 50 of the Act allows the Electoral Commissioner to disclose enrolment information where the Commissioner determines, in his or her sole discretion, that in the circumstances of the request for the information, the public interest in providing the information outweighs the public interest in protecting the privacy of the personal information.

The Commissioners acknowledge there may be cases in which such disclosure is warranted in the public interest, and note that similar discretions exist in other Australian jurisdictions. It is not clear, however, whether it remains appropriate for an election administrator to have sole responsibility for making such a public interest determination. While the Electoral Act does not expressly preclude consultation to inform that public interest assessment, such as with other stakeholders and experts, an express power to do so may improve the process and also assist the Electoral Commissioner. NSW government agencies with relevant subject matter expertise might also be authorised and/or required to assist the Electoral Commissioner in undertaking such a public interest assessment. The NSW Privacy Commissioner's view might also be a mandatory input in cases where access may be approved, noting that this would be a new function for the IPC and may have resource impacts if implemented.

## **Participation of voters with disabilities**

In assessing appropriate accommodations to reduce barriers to participation for voters with disabilities, as specifically discussed in part 1(c) of the ToRs, the Commissioners submit that the privacy impact of any requirement that voters provide medical evidence to prove their eligibility for accommodation needs to be taken into account.

If proof of disability is required to access appropriate accommodations, voters who either do not wish to share sensitive personal and health information confirming their disability or do not want to identify as having a disability may not vote. Any additional obligation to demonstrate evidence of disability would also require consideration of whether additional safeguards will be necessary to protect what may be very personal or sensitive information to the individual concerned. In particular, the collection of sensitive personal information in the form of medical evidence raises issues around appropriate storage and safekeeping of that information once collected and the access to that information. The Privacy Commissioner would welcome being consulted further in connection with any further consideration of this issue.

## **Technology assisted voting (TAV)**

### *Privacy by design*

The principles of “privacy by design” should be engaged in all stages of implementation of any new TAV system in NSW – from conception through to development and implementation. “Privacy by design” requires a proactive approach to managing privacy issues, including conducting a privacy impact assessment to identify and minimise the privacy risks associated with the implementation of any new TAV system. If the Electoral Commission is provided with funding to develop a new TAV system, the costs of taking a privacy by design approach, and ensuring compliance with privacy obligations on an ongoing basis, should be taken into account.

We hope these comments are of assistance to the Committee. Please do not hesitate to contact us if you have any questions.

Yours sincerely

Rachel McCallum  
**Information Commissioner and CEO  
Information and Privacy Commission NSW**

Sonia Minutillo  
**A/Privacy Commissioner**