

**Submission
No 21**

INQUIRY INTO CONDUCT OF ELECTIONS IN NEW SOUTH WALES

Organisation: Blind Citizens Australia

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Response to Inquiry into the Conduct of Elections in New South Wales

NSW Legislative Council Select Committee on the Conduct of Elections in NSW

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1. Introduction

1.1 About Blind Citizens Australia (BCA)

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

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 age.¹

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. Blind Citizens Australia's submission

BCA welcomes the opportunity to make a submission to the Committee concerning the conduct of elections in NSW under COVID-19 conditions, including the local government elections held on 4th

December 2021 and NSW by-elections held on 12th February 2022, and the appropriateness of similar settings for general elections. Our response is based on consultations with our members, previous and current submissions, and advocacy work in the sector.

In particular, BCA is concerned about future arrangements for use of the iVote system, including the possibility of a replacement software system, as raised in the terms of reference for the inquiry. We urge the Committee to recommend the reinstatement of the iVote system for the 2023 general election, or its replacement with an equivalent system that allows voters who are blind and vision impaired to cast their votes independently, secretly and verifiably.

BCA has advocated for the adoption and continued use of iVote over many years. BCA participates in the NSW Electoral Commission's Disability Reference Group, advocating for the needs of people who are blind or vision impaired. In the past, BCA – together with others in the blindness sector – has applauded the iVote system, recognising the opportunity and facility it provides to enable independent, secret and verifiable voting. BCA and the blindness sector have continued to provide feedback to the NSW Electoral Commission (NSWEC) on the use of iVote in NSW elections.

In this submission, we outline the impact that the withdrawal of iVote is likely to have on voters who are blind and vision impaired, and their ability to exercise their fundamental democratic rights. In considering any implications of the performance of iVote at the 2021 local government elections, and the future arrangements for the iVote system, we ask the Committee to consider accessibility of the electoral process for all voters as critical to a well-functioning electoral system.

3. 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:

1. The Disability Discrimination Act 1992 (Cth)
2. United Nations Convention on the Rights of Persons with Disabilities (CRPD) – Particularly Article 29 – Participation in Public and Political Life
3. International Covenant on Civil and Political Rights (ICCPR)
4. The Australian Disability Strategy 2021 – 2031 (this strategy coordinates the implementation of the UNCRPD)

4. Submission

Impact Of Withdrawal Of iVote On Voters Who Are Blind or Vision Impaired

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 voters². We were very disappointed by this decision, and wrote an open letter to the NSW Electoral Commissioner and to the Premier expressing its concerns. Our letter is attached to this submission, and we repeat those concerns to the Committee.

BCA considers that the decision to decommission iVote without plans for a replacement infringes on the rights of people who are blind or vision impaired to participate fully in the electoral process. It removes the only existing accessible voting mechanism to ensure an independent, secret, and verifiable vote for our community.

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, ScytI, 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. 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.

iVote was introduced in 2011 to cater for people who are blind or vision impaired. The iVote system allows voters to cast their vote by internet (through a computer, smartphone or tablet) or by telephone. This provides voters who are blind or vision impaired with a number of 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 impaired³. 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 voters⁴.

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 available⁵. In the 2015 election alone, nearly 5000 people who are blind or vision impaired used iVote to cast their ballot.

The NSW Electoral Commissioner has recommended the use of an ordinary telephone voting service as an alternative to iVote for blind and vision impaired voters in forthcoming elections. We understand differences between iVote telephone voting and the proposed telephone voting service include:

	iVote	Telephone voting
Registration	Register online or through the iVote registration call centre, set a PIN and receive a vote ID.	Register by calling the telephone service and receive an ID number.
Voting	Log into iVote online or by telephone, using PIN and vote ID. Cast a vote using the computer, smartphone, tablet, or telephone keypad, without assistance from another person.	Call the telephone service and provide ID number. Cast a vote by disclosing preferences to electoral staff who manually fills out a paper ballot.
Verification	Call the verification server and provide 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.	A second electoral staff member observes the first staff member completing the ballot paper and confirms it

	At the end of the election, the receipt numbers are uploaded to the iVote website and voters can check that their votes were counted by searching their receipt numbers.	reflects the voter's instructions.
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Ultimately, the form of telephone voting that has been proposed for voters who are blind and vision impaired for forthcoming elections does not enable those voters 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.
- 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.
- verify that their vote has been recorded as they intended. iVote enables voters to check this after completing the process.

Rights 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. For that right to be exercised on equal terms by voters who are blind or vision impaired, there must be mechanisms available to enable people to vote as independently as possible in a way that is secret and verifiable. This forms part of Australia's commitment to the International Covenant on Civil and Political Rights (ICCPR) in Article 25(b), to have the right to vote by secret ballot without distinction or unreasonable restrictions, and to the United Nations Convention on the Rights of Persons with Disabilities (CPRD) in Article 29, to enjoy political rights on an equal basis with others, including the right to vote by secret ballot.

By removing the access provided through iVote and failing to replace it with an equivalent alternative, there will no longer be a platform for people who are blind or vision impaired to independently cast a secret and verifiable vote. This effectively reintroduces discrimination in access to elections for voters who are blind and vision impaired, and fails to meet the commitments to equal political participation made in the ICCPR and CPRD. 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 represents.

A Fit for Purpose System

BCA understands that at the local government elections in December 2021, iVote was made available to anyone who was not in their council area on election day, and significantly more voters than expected registered to use iVote. On election day, several voters were unable to access the iVote system to cast their vote. Although a relatively small number of voters were affected, the NSWEC concluded that results at three councils were affected and applied to the NSW Supreme Court for a declaration that those elections were void. We do acknowledge that any technology assisted voting service like iVote needs to perform as intended and outcomes like these must be avoided. However, we note that iVote was used successfully in three NSW general elections in 2011, 2015 and 2019. With appropriate resourcing and planning and, if necessary, appropriate limits on use of the system, it seems the risk of this happening again could be avoided.

We ask the Committee to consider the need for equal access for all voters as fundamental to electoral system integrity, alongside the need for secure and reliable voting processes, and to recommend a technology assisted voting system be adopted or developed that properly balances accessibility and security.

5. Recommendations

In order to provide equal access to voting to all BCA members and any NSW voters who are blind or vision impaired, we firmly believe the iVote system - or another technology assisted voting system that provides multiple options for voters who are blind or vision impaired to vote independently, secretly and verifiably – must be made available for future NSW elections.

We ask the Committee to consider recommending:

- That iVote be made available for use by voters who are blind or vision impaired at the 2023 general election and any elections before then;
- if iVote cannot be made available, that it be replaced with an equivalent system that enables voters who are blind or vision impaired to vote independently, secretly and verifiably;
- that any replacement system for iVote should provide a voting platform that can accommodate different accessibility requirements at the same time as ensuring security and performance;

- that the blindness community is consulted and involved in the development of any replacement system for iVote to ensure it is fit for purpose.

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

² 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>

³ 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)

⁴ Ibid.

⁵ 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>