



THE LAW SOCIETY
OF NEW SOUTH WALES

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14 August 2024

The Hon Peter Primrose MLC
Chair, Joint Standing Committee on Electoral Matters
Parliament of NSW
Parliament House
Macquarie Street
Sydney NSW 2000

By email: electoralmatters@parliament.nsw.gov.au

Dear Mr Primrose,

Proposals to increase voter engagement, participation and confidence

The Law Society is grateful for the opportunity to provide a submission to the NSW Joint Standing Committee on Electoral Matters (**JSCEM**) in relation to its inquiry into proposals to increase voter engagement, participation and confidence. The Law Society's Public Law and Indigenous Issues Committees contributed to this submission.

Voter Participation

The Law Society commends the work of the NSW Electoral Commission in ensuring high enrolment and turnout rates in NSW elections. The *Report on the Administration of the 2023 Election (2023 Election Report)* showed that, on 31 March 2023, the enrolment rate was 98.7%¹ and the turnout rate at the 2023 election was 90%.² These figures point to a robust culture of voter participation in NSW and it is a positive development that the 2023 election saw increased voter turnout in certain demographics where barriers to participation have previously been identified, including people with disability, Aboriginal and Torres Strait Islander people, culturally and linguistically diverse communities and younger people.³

We consider that any analysis of voter participation should draw a clear distinction between those who do not vote and those who vote informally, given that there are distinct reasons which can guide the actions of these two cohorts on election day.

With respect to the first cohort, it is recognised that many people will have a valid reason for not voting. Both the *Electoral Act 2017* (NSW) and the *Local Government Act 1993* (NSW) contain provisions whereby persons can provide a 'sufficient reason' for their failure to vote to the Electoral Commissioner.⁴

¹ NSW Electoral Commission, [Report on the administration of the 2023 NSW State election](#), 65 (**2023 Election Report**).

² *Ibid.*, 4.

³ *Ibid.*, 75.

⁴ See *Electoral Act 2017* (NSW), s 259(9) and *Local Government Act 1993* (NSW), s 314(6).

In terms of the second cohort, the 2023 NSW election saw improvements in informality rates compared with the 2019 State election, which were down to 3.28% from 3.46% for the Legislative Assembly, and 5.69% from 6.35% for the Legislative Council.⁵ Informal voting may occur due to a failure to understand how to cast a valid vote. Others may intentionally cast an informal vote to signal their cynicism around the choice of candidates or their disinterest in the electoral process in general. This form of political expression at the ballot box has been recognised in various iterations of technology assisted voting in Australian states and territories where voters have been permitted to cast a blank vote, if they confirm that this is their intention.

Education and electoral literacy

While NSW currently enjoys high enrolment and turn-out rates, the Government should not become complacent when it comes to educating the community about the electoral process, voting practices, and deliberative, informed decision-making. The NSW Electoral Commission must be adequately funded so it can undertake the educational activities that help to raise the electoral literacy of the NSW community, thus strengthening our democratic institutions, and indeed the rule of law.

We note that the NSW Electoral Commission appears to recognise that education efforts for the voting public need to be nuanced and tailored to ensure the enfranchisement of the diverse groups that make up NSW. As such, the Law Society supports the expansion of programs such as the Vote Talk initiative, which saw the NSW Electoral Commission partner with the Ethnic Communities Council to deliver podcasts, engagement sessions and radio announcements in community languages for high priority groups.⁶ The positive evaluation following Vote Talk demonstrates that targeted initiatives that take into account relevant demographic factors are valuable in enhancing engagement.⁷

We understand that, in the lead-up to the 2023 State Election, the NSW Electoral Commission shared targeted factsheets with Aboriginal community organisations, and held an information session with Dharriwaa Elders Group in Walgett.⁸ We encourage evaluation of and public reporting on these types of initiatives, to assess their impact on increasing voter turnout. It would be beneficial for programs directed to improving Aboriginal and Torres Strait Islander participation to draw on relevant work at the federal level, including the Australian Electoral Commission's (AEC) Indigenous Electoral Participation Program, and the cultural and regional insights gained from such work. Aboriginal and Torres Strait Islander community and community leaders should be partners in the design and delivery of such electoral education.

In addition to the work of the NSW Electoral Commission, it is important that civics and citizenship education continues to be prioritised in all schools, including to increase understanding of parliamentary democracy and electoral law, as well as to develop the critical thinking and digital and media literacy skills that are essential to informed voting. In this context, we are encouraged by the announcement in July 2024 that the new NSW primary school curriculum will incorporate 'compulsory civics and citizenship content, including lessons on democratic roles and responsibilities, including the role and history of voting in a democracy'.⁹ We consider this to be a positive step, which will extend and systematise existing curriculum resources, such as those offered through parliamentary education offices.¹⁰

⁵ 2023 Election Report (above n 1), 6.

⁶ NSW Electoral Commission, [NSW Electoral Commission Annual Report 2022-23](#), 33 (2022-23 Annual Report).

⁷ Ibid.

⁸ 2023 Election Report (above n 1), 90.

⁹ NSW Government, [Landmark new primary school curriculum to drive better education outcomes](#), Media Release, 24 July 2024.

¹⁰ See, for example, Parliament of NSW, [Parliamentary Education and Engagement](#) (Webpage).

A more informed electorate is more likely to support democratic institutions when they are performing well and to call them to account when they fall short. For this reason, learning about Australia's democratic system and its institutions, as well as awareness of contemporary challenges to the rule of law in overseas jurisdictions, should be a high priority, and continue to be developed further in the high school curriculum. Further, education on how to conduct research on political issues, including the identification of disinformation or misinformation, should be taught to students so that, in the future, they are more likely to cast a deliberative vote without indirect interference.

Penalty notices for offence of failing to vote

We note that unpaid fines can have flow-on consequences that may be unduly punitive, and exert a disproportionate impact on Indigenous communities in regional, rural and remote locations. One example is the data collected as part of the Northern Rivers CLSD Partnership, which showed that, in 2022-23, fines for failing to vote in local government elections were the top fine type issued in Ballina (1337 fines issued), Lismore (1939), and Kyogle (234).¹¹ Significant hardship can result from unpaid fines, including licence disqualification and imprisonment. It may therefore be appropriate to review penalties for failing to vote in order to consider whether any modifications could be made to reduce the hardship experienced by those who receive a fine, without undermining the general effectiveness of the current system in terms of voter turn-out.¹² While outside the scope of this review, we note the Law Society's support for consideration of ways to decrease this hardship, for example delinking unpaid fines with driver suspension and imprisonment. Culturally-informed engagement with communities to better address instances of non-voting is also central, including addressing barriers such as uncertainty around how to vote, and problems related to literacy.

Digital modernisation and funding

The Law Society acknowledges the need for the NSW Electoral Commission to address issues of digital modernisation, including implementation of time-critical updates ahead of the 2027 NSW election. The 2022-23 Annual Report of the NSW Electoral Commission referenced 'a strategic funding proposal made to NSW Treasury seeking initial funding of \$12.32 million in financial year 2024...to ensure the 2027 NSW State general election can be delivered with confidence and to set a clear direction with coordinated activities to modernise electoral and regulatory services across New South Wales over the coming decade.'¹³

We note that there was no provision in the most recent State Budget for this digital modernisation process, which was set to enhance the digital, data, cybersecurity and analytical capabilities of the NSW Electoral Commission. The Law Society supports funding for this important work to ensure the effective administration, digital resilience and integrity of NSW elections.

Technology Assisted Voting

While we note the conclusion reached in the final review report on Technology Assisted Voting was that '(p)aper-based voting continues to provide the strongest foundation for secure and accurate elections in NSW', particularly in the current cyber threat environment, the Law Society encourages further consideration of the recommendation around making online voting available for blind and low-vision electors.¹⁴ We note the invitation issued by the NSW Electoral Commission earlier this year to engage in a 'strategic dialogue with the market to ascertain

¹¹ Northern Rivers CLSD Partnership, [Regional Profile – October 2023](#), pp 18, 21 and 20.

¹² See, for example, Centre for Economic Policy Research, [Voters' sophisticated response to abstention fines](#) (Blog Post) 23 September 2019 and Pascal Horni, [Voter turnout and abstention pricing: quasi-experimental evidence on the effects of a marginal increase in the monetary enforcement of compulsory voting](#), *Journal of Elections, Public Opinion and Parties*, 2021, 33(1), 118–136.

¹³ 2022-23 Annual Report (above n 6) 47.

¹⁴ NSW Electoral Commission, [Technology Assisted Voting – Final Review Report](#), November 2023, 46.

the availability, suitability and viability of a potential voting solution' for this cohort of electors, and we look forward to learning of the outcomes of this exercise.¹⁵

Disinformation and misinformation

Disinformation and misinformation in the context of elections undermines the integrity of the democratic process and risks distorting election outcomes. We note developments internationally that have highlighted the pervasiveness, sophistication and effectiveness of campaigns that can spread disinformation and misinformation at an increasingly rapid rate, particularly on social media platforms.

In line with our previous submission to the JSCEM, the Law Society supports the enactment of legislation to regulate truth in political communications in NSW.¹⁶ In addition, we acknowledge the NSW Electoral Commission's role in addressing these issues including, for example, through its 'Stop and Consider' initiative and the Disinformation Register. The Disinformation Register was first published during the 2023 NSW election to counter false and misleading statements about the electoral process, and was able to provide up-to-date and accurate explanations on issues such as the independence of the NSW Electoral Commission, the process of boundary redistribution and security measures that apply to ballot papers.¹⁷

Thank you for the opportunity to comment. Questions at first instance may be directed to Sophie Bathurst, Senior Policy Lawyer, at (02) 9926 0285 or Sophie.Bathurst@lawsociety.com.au.

Yours sincerely



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Brett McGrath
President

¹⁵ NSW Government, eTendering, [Technology Assisted Voting 2027 - RFI-NSWEC202401-1](#) (Webpage).

¹⁶ Law Society of NSW, [Submission to the JSCEM - Inquiry into the administration of the 2023 NSW state election: truth in political advertising](#), 1 March 2024.

¹⁷ NSW Electoral Commission, [Disinformation Register](#) (Webpage).