

Joint Standing Committee
on Electoral Matters



PARLIAMENT OF
NEW SOUTH WALES

Administration of the 2023 NSW state election and other matters



Report 1/58 – October 2024

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The motto of the coat of arms for the state of New South Wales is "Orta recens quam pura nites". It is written in Latin and means "newly risen, how brightly you shine".

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Membership

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|------------------------|--|
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Chair's foreword

It has been my pleasure to chair the inquiry of the Joint Standing Committee on Electoral Matters into the Administration of the 2023 NSW state election.

The people of NSW rightly expect that the administration of elections in our democracy will be free of favouritism and fair, and I commend the former NSW Electoral Commissioner and his staff for their professionalism in delivering the election in March 2023.

The inquiry heard from a range of stakeholders about the conduct of the election regarding what worked well, and where improvements could be made for future elections. The Committee's recommendations are wide-ranging covering matters as diverse as party registration and access to enrolment information, early voting centres, vote counting, and expanding education programmes and resources for culturally and linguistically diverse voters and voters with disability.

An issue of particular note for the Committee was the proposal by the NSW Electoral Commission to end the practice of political parties and candidates from handling and distributing postal vote applications. The Committee endorses the proposal for the NSW Electoral Commission alone to distribute and collect postal vote applications, to help protect voters' privacy and to prevent them from being disenfranchised when parties fail to return applications by the cut-off date.

Other important issues covered in the Committee's report include registering electoral material distributed during the early voting period; clarifying funding and disclosure issues, not requiring voters to prove their identity, and prioritising the counting of early votes in the Legislative Assembly.

In considering the issue of truth in political advertising, the Committee considered the aspiration of many witnesses for an effective mechanism to regulate in this area as against the weight of legal and practical evidence of the difficulties of achieving this. At the time of the inquiry, there was also a Commonwealth bill looking at combatting misinformation and disinformation, and on balance the committee considered that it was not possible to make clear recommendations until this legislation had been finalised.

The Committee has already commenced hearings into its next inquiry, which has terms of reference that explore opportunities to increase voter engagement, participation and confidence.

On behalf of the Committee, I would like to thank all stakeholders who took the time to provide written submissions, and to give evidence at the Committee's hearings for the inquiry. Your insight has been vital to the Committee in forming the findings and recommendations contained in this report.

I would also like to take this opportunity to thank my fellow Committee members for their valuable contributions to the inquiry, and the Committee staff for their professionalism and support throughout the inquiry process.

I commend the report.

The Hon Peter Primrose MLC
Chair

Summary

The Legislative Assembly and Legislative Council referred an inquiry into the administration of the 2023 NSW state election to the Committee in June 2023. In November 2023, the Houses amended the terms of reference to include consideration of issues related to political donations and truth in political advertising laws. The Committee resolved to conduct the inquiry in December 2023.

This report makes recommendations and findings to improve the administration of future state elections. The report also outlines why it would not be effective to introduce truth in political advertising laws, and that extending the prohibited donor provisions is not needed at this time.

Conduct of the 2023 NSW state election

The report contains findings and recommendations relating to the conduct of NSW state elections. Many of these recommendations support the NSW Electoral Commission's (NSWEC) proposals for change, detailed in the Commission's report on the conduct of the 2023 state election.

The Committee makes recommendations relating to party name registration and candidates' access to enrolment information. In terms of election funding and disclosure, the Committee's recommendations focus on clarifying the consequences of late dis-endorsements of candidates and the rules for advance payment of public funding, in addition to improving compliance with groups' disclosure obligations.

To improve the conduct of early voting, we have made recommendations around publishing early voting locations, and requirements for electoral material distributed during the early voting period.

The Committee has made a number of recommendations to improve postal, overseas and interstate voting. The recommendations relate to the delivery of postal vote applications, returning overseas postal votes to the NSWEC, and printing requirements for postal voting. We have also recommended measures to improve the process for overseas voting, and simplify interstate voting.

In terms of improving election operations, the Committee has recommended the NSWEC be given powers to respond to major disruptions. We also found that it is unnecessary to require voters to produce proof of their identity to vote.

We have recommended measures to speed up the counting of votes, including by sorting early votes from 4pm on election day and prioritising the counting of early votes for the Legislative Assembly.

The Committee has also recommended that the offence of failing to vote be clarified, and the *Electoral Act 2017* be changed to improve the security of election information that is provided to parties and members of Parliament.

Inquiry participants raised barriers to voting experienced by culturally and linguistically diverse (CALD) voters and voters with a disability at the 2023 state election. We have recommended

that education programs and pre-election resources for CALD voter be expanded, and more resources be made available to CALD voters at polling places.

We found that technology assisted voting (TAV) options at the 2023 state election were not adequate to meet the needs of voters with vision impairment. We recommend that the voting experience of people with disability be improved through better promotion of resources for people with disability, and improved training for election staff.

Truth in political advertising laws would not be effective

Inquiry stakeholders told us that misinformation and disinformation is increasing, and it has the potential to impact election outcomes, reduce confidence in our electoral system and undermine democracy. While we agree that misinformation and disinformation about elections is concerning, truth in political advertising laws are not a workable solution to this issue.

Some stakeholders viewed truth in political advertising laws as an effective way to respond to the rise in misinformation and disinformation in relation to elections. Some of these stakeholders told us that laws operating in South Australia and the Australian Capital Territory provide an effective model for regulating truth in political advertising and should be adopted in New South Wales.

However, we also heard that South Australia's truth in political advertising laws are not effective. Stakeholders told us that parties and candidates can avoid the laws by reframing their comments as predictions or opinions, rather than as statements of fact, and statements must be made in paid advertisements to be captured by the law. The Electoral Commission of South Australia has raised issues with what constitutes an advertisement, and other challenges with implementing the laws. We also heard of unintended consequences with enforcing the law and that penalties under the South Australian model are low.

We heard that effective penalties for breaches of truth in political advertising laws are a significant challenge. Strong penalties including a criminal offence may breach the implied freedom of political communication under the Commonwealth Constitution. On the other hand, weaker penalties would mean the laws would likely be ineffective.

The question of who would determine the truth of statements made in political advertisements was also raised by stakeholders. We heard arguments that electoral commissions are best placed to enforce the laws, but we also heard that there are problems with this approach. Giving the NSWEC an additional role during election campaigns would divert its resources from managing the election and leave it open to claims of bias. This could affect its status as an independent and trustworthy body and undermine public confidence.

Given the evidence the Committee heard about the practical difficulties with implementing truth in political advertising laws, we found that these laws would not be an effective way to respond to misinformation and disinformation about elections in New South Wales.

The Committee notes that the NSWEC sought to address misinformation and disinformation before the 2023 state election, through measures such as a public misinformation register and an awareness campaign. We support these strategies and recommend that the Commission's ability to respond to misinformation be strengthened. We also recommend increasing the penalties for offences relating to non-complying electoral material under the *Electoral Act 2017*.

Extending prohibitions on political donations is not needed

As part of the inquiry the Committee considered whether existing prohibited donor provisions should be extended to cover individuals and entities whose business relates to property development, and whether it is necessary to address the risk of property developers making donations through shell companies. The rationale for limiting donations from property developers is to address corruption risks that can arise when developers make political donations. Several ICAC investigations have dealt with instances of corruption involving property developers.

The *Electoral Funding Act 2018* prohibits political donations from property developers, and the tobacco, liquor and gambling industries. This Act also seeks to prevent people from circumventing this prohibition.

The Committee found that extending the prohibited donor provisions is not needed at this time. The NSWEC highlighted that it considered only three instances of alleged unlawful donations for the 2023 state election. Other stakeholders noted that the Electoral Funding Act already contains provisions that prevent prohibited donors making donations through third parties. In terms of shell companies, we heard that it is difficult to determine if prohibited donors would go to the trouble of using shell companies to make donations.

Inquiry participants told us that adding further categories to the prohibited donor provisions would increase the already significant compliance burden for political parties and candidates. The NSWEC also told us that detecting and investigating the source of donations requires significant resources, and more funding would be needed if the provisions were extended.

Stakeholders observed that it may be more effective to close loopholes created by inconsistent political donation laws across different Australian jurisdictions. There was evidence that moving money between federal and state campaign funds to avoid donation caps and donor prohibitions in some jurisdictions is a known practice.

We also heard that members of Parliament should be required to disclose conflicts of interest, and there should be better guidance for members on the risks associated with conflicts of interest. The Committee heard that the ICAC has made a number of recommendations to improve the management of conflicts of interest by politicians.

The need to provide additional funding to both the NSWEC and political parties to meet their obligations will be examined further in the Committee's inquiry into proposals to increase voter engagement, participation and confidence.

Findings and recommendations

| | |
|--|----|
| Recommendation 1 | 1 |
| That the NSW Government considers amending the <i>Electoral Act 2017</i> to clarify that a party name cannot be registered or remain registered if it includes the word 'independent'. | |
| Recommendation 2 | 2 |
| That the NSW Government limits candidates' ability under section 49 of the <i>Electoral Act 2017</i> to request a list of electors to no later than 48 hours before the close of voting, to ensure that this information is only used for election-related purposes. | |
| Recommendation 3 | 3 |
| That the NSW Government clarifies the funding consequences of late dis-endorsement of a candidate by a party. | |
| Recommendation 4 | 4 |
| That the NSW Government clarifies the provisions for advance payments in relation to elections, to make clear whether candidates and parties who fail to lodge declarations or annual financial statements under the <i>Electoral Funding Act 2018</i> are eligible to receive advance payments. | |
| Recommendation 5 | 4 |
| That the NSW Government amends the <i>Electoral Funding Act 2018</i> to provide that the lead candidate of a group of independent candidates is responsible for the disclosures of all candidates in the group. | |
| Recommendation 6 | 5 |
| That the NSW Electoral Commission publishes the locations of early voting centres and voting places well before the 2027 state election, where possible. | |
| Recommendation 7 | 6 |
| That the NSW Government amends the <i>Electoral Act 2017</i> to require electoral material distributed during the early voting period to be registered by the Electoral Commissioner, consistent with the requirements for electoral material distributed on election day. | |
| Recommendation 8 | 7 |
| That the NSW Government prohibits political participants from distributing and collecting postal vote applications. | |
| Recommendation 9 | 9 |
| That the NSW Government enables postal votes to be received by an election official located overseas by a prescribed date and time, and for these votes to be forwarded to the NSW Electoral Commission by courier. | |
| Recommendation 10 | 10 |

That the NSW Government ensures that changes to postal voting for the 2023 state election in relation to specific printing requirements are made permanent.

Recommendation 11 _____ 12

That the NSW Government permits absent declaration voting for all electoral districts, at all voting centres that are appointed outside Australia by the NSW Electoral Commissioner.

Recommendation 12 _____ 13

That the NSW Government provides the NSW Electoral Commissioner with the authority to appoint election officials for overseas voting centres based on their skills and experience.

Recommendation 13 _____ 13

That the NSW Government considers amending the eligibility requirements for election officials at section 81 of the *Electoral Act 2017* to better facilitate overseas voting.

Recommendation 14 _____ 14

That the NSW Government adopts provisions similar to those for overseas voting, for interstate voting.

Recommendation 15 _____ 15

That the NSW Government amends the *Electoral Act 2017* to clarify how the NSW Electoral Commission is to conduct an election in the case of a major disruption such as a pandemic or natural disaster that may lead to a failure of the election. This amendment should state that the Commission is to consult with candidates prior to any significant decision being made.

Recommendation 16 _____ 16

That the NSW Government amends the *Electoral Act 2017* to clarify the power of an election official to make a direction to maintain safety at a polling place in circumstances that are not caused by a person, such as fire, flash flooding or COVID-19.

Finding 1 _____ 16

There should be no change to New South Wales laws to require voters to produce proof of identity to vote at state elections.

Recommendation 17 _____ 19

That the NSW Government amends the *Electoral Act 2017* to permit the opening of ballot boxes from early voting centres from 4pm on election day to process ballot papers only, with counting to start from 6pm.

Recommendation 18 _____ 20

That the NSW Electoral Commission prioritises counting Legislative Assembly ballot papers from early voting centres, and considers not counting Legislative Council ballot papers from early voting centres on election night.

Recommendation 19 _____ 22

That the NSW Government amends section 207 of the *Electoral Act 2017* to put beyond doubt that not knowing that an election was being conducted is not a defence to the offence of failing to vote.

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| Recommendation 20 | 22 |
| That the NSW Government amends the <i>Electoral Act 2017</i> to better protect the security of election information that the NSW Electoral Commissioner must provide under section 222. | |
| Recommendation 21 | 23 |
| That the NSW Government provides additional funding to enable education programs such as Vote Talk to be rolled out to a broader range of culturally and linguistically diverse communities for the 2027 state election. | |
| Recommendation 22 | 26 |
| That the NSW Electoral Commission provides additional resources for culturally and linguistically diverse voters at polling places for the 2027 state election. | |
| Recommendation 23 | 26 |
| That the NSW Electoral Commission promotes its easy-read materials and information to people with disability more widely, including through social media. | |
| Recommendation 24 | 27 |
| That the NSW Government ensures that the NSW Electoral Commission is adequately resourced to provide co-designed disability awareness training to staff working at elections. | |
| Finding 2 | 28 |
| Technology assisted voting options at the 2023 NSW state election were not adequate for voters with vision impairment. | |
| Finding 3 | 32 |
| There is concern in the community about misinformation and disinformation in relation to elections, and some support for truth in political advertising laws as a way to address this issue. | |
| Finding 4 | 38 |
| Truth in political advertising laws would be difficult to implement and would not be an effective way to address misinformation and disinformation relating to election campaigns. | |
| Recommendation 25 | 45 |
| That the NSW Government considers measures to strengthen the NSW Electoral Commission's capacity to take action against misinformation and disinformation about electoral processes during election campaigns. | |
| Recommendation 26 | 47 |
| That the NSW Government considers increasing existing penalties under the <i>Electoral Act 2017</i> for offences relating to non-complying electoral material. | |
| Finding 5 | 53 |
| While there is some support for extending the prohibited donor provisions in the <i>Electoral Funding Act 2018</i> , a change is not needed at this time. | |

Chapter One – Conduct of the 2023 state election

The 2023 NSW state election

- 1.1 The 2023 NSW state election was held on 25 March 2023. At the election, voters elected 93 seats in the Legislative Assembly and 21 of the 42 seats in the Legislative Council.
- 1.2 Under the *Electoral Act 2017*, the NSW Electoral Commissioner must review the administration of each general election and report to the Minister on the outcome of the review.¹ The NSW Electoral Commission's (NSWEC) report on the administration of the 2023 election provided an overview of the conduct of the election and included proposals for legislative change.²
- 1.3 The Committee has adopted a number of the NSWEC's proposals as recommendations, which are detailed in this chapter. The Committee's report also draws on submissions and evidence received from other inquiry participants.

Party registration and access to enrolment information

Summary

- Parties should not be able to use the word 'independent' in their registered names.
- Candidates' ability to request a list of electors should be limited to no later than 48 hours before an election.
- Funding consequences of late dis-endorsement of a candidate by a party need to be clarified.
- The rules for advance payments to candidates and parties in relation to elections should be clarified.

Preventing the use of the word 'independent' in registered party names

Recommendation 1

That the NSW Government considers amending the *Electoral Act 2017* to clarify that a party name cannot be registered or remain registered if it includes the word 'independent'.

- 1.4 The Committee recommends that the Electoral Act be amended to prevent parties from using the word 'independent' in their registered name. This change would align the Electoral Act with the *Electoral Funding Act 2018*. It would also reflect the general understanding of an independent candidate as someone who

¹ *Electoral Act 2017*, s 271.

² The Electoral Commission's report is in three parts: the [first part](#) gives an overview of the election, [part two](#) outlines the Commission's integrity and enforcement activities related to the election, and [part three](#) has election information about each electoral district. The Commissioner and Commission make recommendations for change in parts one and two of its report.

is not aligned with a party.

- 1.5 The NSWEC recommended that party names containing the word 'independent' should not be registered or continue to be registered. The Electoral Act currently allows parties to register with names that include the word 'independent' as long as they do not contain a reference to an existing registered party. There are currently several registered political parties with the word 'independent' in their registered name.³
- 1.6 The NSW Electoral Commission characterised the use of the word 'independent' in a party name as an 'anomaly' of the Electoral Act, querying whether it aligns with the ordinary understanding of the word 'independent'.⁴ They noted it is also inconsistent with the Electoral Funding Act, which only uses the term for candidates and elected members who are not endorsed by political parties. The NSWEC stated that it would be useful to address this anomaly for fairness and integrity.⁵

Providing enrolment information to candidates

Recommendation 2

That the NSW Government limits candidates' ability under section 49 of the *Electoral Act 2017* to request a list of electors to no later than 48 hours before the close of voting, to ensure that this information is only used for election-related purposes.

- 1.7 The Committee considers that candidates' access to elector information should be restricted to ensure that elector information is used for election purposes only. Candidates should only be allowed to request a list of electors from the Electoral Commissioner no later than 48 hours before the close of voting.
- 1.8 Under section 49 of the Electoral Act, parties, members of Parliament and candidates can request the Electoral Commissioner to provide them with enrolment information for the relevant area. The Commissioner must provide parties and members a copy of relevant enrolment information once every four years, or on request from a party or member no more than once a year.⁶ The list the NSWEC provides contains the name and postal address of electors and other particulars but does not contain the addresses of silent electors.⁷
- 1.9 Candidates nominated for the Legislative Assembly can request a list of electors for the electoral district they are standing for, while candidates for the Legislative Council can request a list of all electors in New South Wales.⁸
- 1.10 The NSWEC proposed that to support elector privacy, candidates should only be permitted to request a list of electors no later than 48 hours before the close of

³ [Submission 24](#), NSW Electoral Commission, p 5.

⁴ [Submission 24](#), p 5.

⁵ [Submission 24](#), p 5.

⁶ *Electoral Act 2017*, [s 49](#).

⁷ NSW Electoral Commission (NSWEC), [Report on the administration of the 2023 NSW State election](#), 2023, p 67, viewed 15 July 2024.

⁸ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 16, viewed 15 July 2024.

voting.⁹ The NSWEC noted that there are limits on the use of enrolment information to protect voters' privacy. Given these limits, enrolment information received within 48 hours of an election would not likely be used for the election-related purposes specified under the Act.¹⁰

Clarifying the funding consequences of late dis-endorsement of a candidate

Recommendation 3

That the NSW Government clarifies the funding consequences of late dis-endorsement of a candidate by a party.

- 1.11 The Committee recommends that the consequences of late dis-endorsement of a candidate be clarified in the Electoral Funding Act.
- 1.12 Inquiry participants told us that the consequences of late dis-endorsement of a candidate by a party should be clarified. The NSWEC reported that, for the 2023 election, a small number of candidates were dis-endorsed by a party after they were nominated but before election day.¹¹ The NSWEC has recommended that the impact of late dis-endorsement be clarified, particularly in relation to:
- Establishing the applicable cap on electoral expenditure for the affected party and candidate.
 - The candidate's eligibility to claim from the Election Campaigns Fund.
 - Section 9(9) of the Electoral Funding Act, which permits electoral expenditure incurred by the party for the candidate to be invoiced to the candidate.¹²
- 1.13 We heard that clarifying the funding consequences of late dis-endorsement will provide assurance for candidates and parties and assist the Commission's enforcement of applicable caps on electoral expenditure.¹³
- 1.14 The Committee also heard from the Nationals (NSW Branch) that the Electoral Funding Act should be amended to clarify who the relevant claimant is for electoral funding if a candidate is dis-endorsed.¹⁴ They stated that the Act allows a dis-endorsed candidate to claim for public funding that was incurred by a party on the candidate's behalf while they were endorsed.¹⁵
- 1.15 The NSW Nationals noted that, despite amendments to the Electoral Funding Act in 2022 to clarify the person responsible for making disclosures for dis-endorsed

⁹ [Submission 24](#), p 3 and NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 16, viewed 15 July 2024.

¹⁰ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 16, viewed 15 July 2024 and *Electoral Act 2017*, ss [51](#), [52](#).

¹¹ NSW Electoral Commission (NSWEC), [Special Report on the public funding and regulation of the 2023 NSW State election](#), 2023, p 15, viewed 15 July 2024.

¹² [Submission 24](#), p 5 and NSWEC, [Special Report on the public funding and regulation of the 2023 NSW State election](#), 2023, p 15, viewed 15 July 2024.

¹³ NSWEC, [Special Report on the public funding and regulation of the 2023 NSW State election](#), 2023, p 15, viewed 15 July 2024.

¹⁴ [Submission 30](#), The Nationals (NSW Branch), p 2.

¹⁵ [Submission 30](#), p 3.

candidates, there were no amendments regarding who can make a claim for public funding for dis-endorsed candidates.¹⁶

Clarifying the rules for advance payment of public funding

Recommendation 4

That the NSW Government clarifies the provisions for advance payments in relation to elections, to make clear whether candidates and parties who fail to lodge declarations or annual financial statements under the *Electoral Funding Act 2018* are eligible to receive advance payments.

- 1.16 The Committee considers that the requirements for advance payments should be amended to clarify whether candidates and parties are eligible for advance payments if they do not lodge declarations or financial statements.
- 1.17 The NSWEC suggested aligning the provisions for withholding advance public funding payments with the provisions for withholding final payments, on the basis that the intent of the current provisions is unclear.¹⁷
- 1.18 The Commission observed that if a party or candidate fails to lodge declarations or annual financial statements, they are not eligible for any payment from the Election Campaigns Fund, except for advance payments. The NSWEC stated that it is unclear whether this was intended to be an exception, especially since there have been recent amendments to increase the amount that can be received as an advance payment.¹⁸
- 1.19 The NSWEC submitted that it should be able to determine that a party or candidate is ineligible to receive an advance payment from the Election Campaigns Fund if 'there continues to be a failure to lodge a disclosure declaration or annual financial statement.'¹⁹

Improving compliance with groups' disclosure obligations

Recommendation 5

That the NSW Government amends the *Electoral Funding Act 2018* to provide that the lead candidate of a group of independent candidates is responsible for the disclosures of all candidates in the group.

- 1.20 The Committee recommends amending the Electoral Funding Act to provide that the lead candidate of a group of independent candidates is responsible for the disclosures of all candidates in the group.
- 1.21 The NSWEC proposed changing section 14 of the Electoral Funding Act so that the responsibility for disclosures of a group of independent candidates is assigned to

¹⁶ [Submission 30](#), p 3.

¹⁷ NSWEC, [Special Report on the public funding and regulation of the 2023 NSW State election](#), 2023, p 15, viewed 16 July 2024.

¹⁸ NSWEC, [Special Report on the public funding and regulation of the 2023 NSW State election](#), 2023, p 15, viewed 16 July 2024.

¹⁹ [Submission 24](#), p 4.

the lead candidate, to improve compliance and reduce confusion.²⁰

- 1.22 Currently, each candidate is responsible for their own disclosures when a party agent is not. The Electoral Commission stated that this can lead to confusion and noncompliance, as many independent candidates expect the lead candidate of their group to manage disclosures. The Committee heard that making the lead candidate responsible will likely improve compliance and simplify managing and disclosing relevant transactions, as the donations and expenditures of the group and its members will be centralised in one campaign account.²¹

Early voting

Summary

- The locations of voting centres and voting places should be published well before an election.
- Electoral material distributed during the early voting period should be registered by the Electoral Commissioner.

Publishing the locations of voting places

Recommendation 6

That the NSW Electoral Commission publishes the locations of early voting centres and voting places well before the 2027 state election, where possible.

- 1.23 The Committee considers that a provisional list of early voting centres could be published well before the 2027 election, to advise electors where to vote and assist political parties and candidates with planning. While the evidence the Committee heard focused on the locations of early voting centres, we consider that the NSWEC should also aim to publish the locations of all voting centres well before the election.
- 1.24 The Committee heard that a provisional list of early voting centres was published in December 2018 for the 2019 state election. Comparatively, a list of early voting centres for the 2023 state election, held on 25 March, was not released until 3 February 2023.²²
- 1.25 Inquiry participants told us that a provisional list of early voting centres should be published earlier to assist political parties and candidates with planning for election day and advising electors where to vote.²³
- 1.26 The Liberal Party of Australia (NSW Division) told us that coordinating members, volunteers and supports is a logistical challenge involving planning and communication. They suggested that the NSWEC provide a provisional list of early voting centres 'well in advance' to assist candidates and volunteers in

²⁰ [Submission 24](#), p 5.

²¹ NSWEC, [Special Report on the public funding and regulation of the 2023 NSW State election](#), 2023, p 15, viewed 17 July 2024.

²² [Submission 31](#), Liberal Party of Australia (NSW Division), p 6.

²³ [Submission 31](#), p 7.

planning for future early voting and election day activities.²⁴

- 1.27 Similarly, Mr Dominic Ofner, General Secretary, NSW Labor, said the Commission should consider providing the list of early voting centres to candidates and parties much earlier than it did at the 2023 election.²⁵ NSW Labor proposed that the location and opening hours of early polling centres be published as early as possible and no less than 14 days before the opening of early voting.²⁶
- 1.28 The Committee notes that the Commission had to lease far more venues for early voting for the 2023 election, and this may have impacted timelines for publishing voting centre locations. The NSWEC stated that the number of early voting centres grew by 42 per cent from the 2019 election due to the rise in demand for early voting.²⁷ The Committee acknowledges that the NSWEC has to consider several factors when leasing venues, including size, location, accessibility, amenities, street frontage, access for deliveries, internet connectivity and workplace health and safety.²⁸

Requiring electoral material distributed during the early voting period to be registered

Recommendation 7

That the NSW Government amends the *Electoral Act 2017* to require electoral material distributed during the early voting period to be registered by the Electoral Commissioner, consistent with the requirements for electoral material distributed on election day.

- 1.29 The Committee considers that the Electoral Act should be amended to require electoral material distributed in the early voting period to be registered by the Electoral Commissioner. This would be consistent with the rules for material distributed on election day.²⁹
- 1.30 As a result of the rise in early voting, the NSWEC has proposed consistent rules for electoral material for early voting and election day.³⁰ Under the Electoral Act, electoral material 'means any thing, including without limitation a how-to-vote card, poster or advertisement, containing electoral matter (whether in a tangible or an electronic form)'.³¹
- 1.31 The NSWEC stated that this change would improve compliance with electoral material provisions and reduce the risk of breaches. It would also reduce the likelihood of voters being 'confused, misled or offended by unlawful material'.³²

²⁴ [Submission 31](#), p 7.

²⁵ Mr Dominic Ofner, General Secretary, NSW Labor, [Transcript of evidence](#), 12 April 2024, p 1.

²⁶ [Submission 17](#), NSW Labor, p 22.

²⁷ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 45, viewed 15 July 2024.

²⁸ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, pp 45, 66, viewed 15 July 2024.

²⁹ [Submission 24](#), p 4 and NSWEC, [Special Report on the public funding and regulation of the 2023 NSW State election](#), 2023, p 14, viewed 17 July 2024.

³⁰ [Submission 24](#), p 4.

³¹ *Electoral Act 2017*, [s 4](#).

³² NSWEC, [Special Report on the public funding and regulation of the 2023 NSW State election](#), 2023, p 14, viewed 17 July 2024.

Postal, overseas and interstate voting

Summary

- Political participants should not be able to distribute postal vote applications.
- Processes for overseas voting should allow postal votes to be returned to the Electoral Commission in time to be included in the count.
- Printing requirements for postal voting should ensure that the printing of postal votes is not delayed by issues with securing a printing supplier.
- Absent declaration voting for all electoral districts should be permitted at overseas voting centres.
- The Electoral Commissioner should be able to appoint election officials for overseas voting centres.
- The processes for voting interstate and overseas should be consistent.

NSW Electoral Commission to deliver postal vote applications

Recommendation 8

That the NSW Government prohibits political participants from distributing and collecting postal vote applications.

- 1.32 The Committee is recommending that political participants no longer be permitted to distribute and collect postal vote applications.
- 1.33 One of the most significant concerns raised in the inquiry was about political parties distributing and collecting postal vote applications. The NSWEC proposed that the practice whereby parties and candidates handle and distribute postal vote applications should end. This is to protect voters' privacy and prevent voters from being disenfranchised when applications are not returned by the deadline.³³
- 1.34 The circulation of postal vote applications by parties, candidates and elected members is a long-standing practice in New South Wales.³⁴ At the 2023 state election, over 74,000 postal vote applications were received by political participants before being forwarded to the Electoral Commission.³⁵
- 1.35 The NSWEC encourages political participants to include privacy information and the option to return forms directly to the NSWEC on postal vote applications. However, the Commission reported that party handling of postal vote applications still raises administrative and privacy challenges.³⁶
- 1.36 The NSWEC noted that personal information collected from postal vote applications by candidates, political parties and third-party campaigners is not protected under the *Privacy and Personal Information Protection Act 1998*, as they are not public sector agencies. Moreover, registered political parties are exempt from the requirements of the *Privacy Act 1988* (Cth) for 'political acts or

³³ [Submission 24](#), p 3 and NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 17, viewed 15 July 2024.

³⁴ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 17, viewed 15 July 2024.

³⁵ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 42, viewed 15 July 2024.

³⁶ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 17, viewed 15 July 2024.

practices' in connection to an election.³⁷

- 1.37 The NSWEC also observed that there is a risk that application forms may falsely appear to be official communication from the NSWEC, which is an offence under section 215 of the Electoral Act. For example, political participants may embed the NSWEC's postal vote application form in their documents, without specifying that the document has not been authorised by the Electoral Commission.³⁸
- 1.38 At the 2023 state election, changes were made to the postal vote application form to address practices at previous elections where forms had been 'modified to such an extent that the role of the sending election participant was obscured.' The changes to the form included:
- A blank field for political participants to include election material.
 - A requirement for a personal information collection notice on all applications.³⁹
- 1.39 These changes were designed to improve transparency around the application sender, inform voters how their personal information may be used, and advise that forms could be returned directly to the NSWEC. However, the Commission still supports reconsideration of candidate-issued postal vote applications.⁴⁰
- 1.40 Some inquiry participants agreed that parties should not distribute postal vote applications. NSW Labor said that distributing postal vote applications through political parties undermines rather than enhances trust in the political system and should be discontinued. Voters often assume that applications are issued by and returned to the Commission, however, parties can issue and receive postal vote applications before they are processed by the NSWEC.⁴¹
- 1.41 The Committee heard that community expectations, the significant increase in postal vote applications, and media coverage should warrant a review of parties handling postal vote applications.⁴² Mr Dominic Ofner, General Secretary of NSW Labor told the Committee that while he was unaware of instances of fraud or misconduct relating to postal vote applications, this is still a risk, especially as more electors are applying directly to parties.⁴³
- 1.42 The Greens NSW recommended that postal vote applications be returned only to the NSWEC or the District Returning Officer. They also suggested that it should be illegal to encourage voters to send applications to anyone else.⁴⁴ According to the Greens NSW, the current framework:

³⁷ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 17, viewed 15 July 2024.

³⁸ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 17, viewed 15 July 2024.

³⁹ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 42, viewed 15 July 2024.

⁴⁰ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 42, viewed 15 July 2024.

⁴¹ [Submission 17](#), p 18.

⁴² Mr Ofner, [Evidence](#), 12 April 2024, p 3.

⁴³ Mr Ofner, [Evidence](#), 12 April 2024, p 3.

⁴⁴ [Submission 27](#), The Greens NSW, p 9.

- Causes delays and an 'administrative burden' for the NSWEC, especially when applications are delivered near the deadline.
- Compromises the NSWEC's identity and blurs the lines between official and party communications.
- Is susceptible to 'fraud and unwarranted advantage', particularly when information encouraging postal votes is designed to look like NSWEC material.⁴⁵

1.43 The Committee notes that the Liberal Party of Australia (NSW Division) held a different view. The Liberal Party of Australia (NSW Division) said that political participants distributing and collecting postal vote applications aligns with the NSWEC's purpose 'to deliver trusted and independent systems, processes, oversight and engagement that support democracy in New South Wales.' Furthermore, it allows collaboration between stakeholders to increase formal votes.⁴⁶

1.44 The Committee also notes that other jurisdictions are moving to prohibit party distribution of postal vote application forms. In Victoria, only the Victorian Electoral Commission can distribute postal vote applications. In South Australia postal vote applications must be returned directly to the Electoral Commissioner.⁴⁷ Furthermore, the Federal Joint Standing Committee on Electoral Matters has recommended that the Australian Electoral Commission should be the only body that can issue or receive a postal vote application.⁴⁸

Ensuring overseas postal votes are returned to the NSW Electoral Commission

Recommendation 9

That the NSW Government enables postal votes to be received by an election official located overseas by a prescribed date and time, and for these votes to be forwarded to the NSW Electoral Commission by courier.

1.45 The Committee recommends that the NSW Government enables postal votes to be received by an election official located overseas by a fixed date and time, with the votes then being sent to the NSWEC by courier to ensure they are included in the count. This change will ensure that postal votes filled in by voters who are overseas are received on time.

1.46 The Committee heard that, due to global postal service delays, overseas postal votes are often not received by the NSWEC in time to be included in the count. Of the 20,418 international postal votes issued by the NSWEC in 2023, only 5,706 were received before the cut-off date. This was 28 per cent of the international postal applications issued.⁴⁹

⁴⁵ [Submission 27](#), p 9.

⁴⁶ [Answers to supplementary questions](#), Liberal Party of Australia (NSW Division), 6 June 2024, p 1.

⁴⁷ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 17, viewed 15 July 2024.

⁴⁸ Joint Standing Committee on Electoral Matters, [Conduct of the 2022 federal election and other matters](#), Final Report, Parliament of Australia, November 2023, p 137.

⁴⁹ [Submission 13a](#), Mr Michael Regan MP, p 1.

- 1.47 To address this issue, the NSWEC suggested that overseas election officials should be able to receive postal votes and forward them via courier to the Commission. The Commission noted that options to manage overseas postal voting at the 2023 state election were limited because the legislation did not explicitly provide for postal votes to be returned from overseas.⁵⁰
- 1.48 The Committee heard that the NSWEC offered 'a small number of postal drop-off locations' which enabled some voters to drop off their votes, but other voters had to return their packs by post or courier.⁵¹ The NSWEC collaborated with the Department of Foreign Affairs and Trade (DFAT) to provide postal vote collection services from Monday 20 March to Friday 24 March in missions in Berlin, Hong Kong, New York, Ottawa, Paris, Rome, Singapore and The Hague.⁵²
- 1.49 To ensure more overseas postal votes are received in time to be counted, the NSWEC suggested enabling election officials to receive postal votes by a prescribed date and time to be forwarded to the Commission by courier.⁵³ The NSWEC added that more flexibility around who can be appointed as an election official (see paragraph 1.65 below) would also help with receiving overseas postal votes.⁵⁴

Changing printing requirements for postal voting

Recommendation 10

That the NSW Government ensures that changes to postal voting for the 2023 state election in relation to specific printing requirements are made permanent.

- 1.50 The Committee considers that temporary changes to printing requirements for postal voting for the 2023 election should be made permanent. This will ensure that printing of postal votes is not delayed by difficulties with securing a printing supplier.
- 1.51 Prior to the 2023 state election, schedule 8 of the Electoral Act was amended to change printing requirements for postal voting for the 2023 state election and by-elections up to the 2027 election.⁵⁵ The change means that an elector's postal vote certificate can be sealed inside the envelope in which their vote is returned, rather than being printed on that envelope. According to the NSWEC, this meant that there was less risk in producing the required number of envelopes within the statutory deadlines.⁵⁶
- 1.52 The NSWEC proposed that this change be made permanent. This is particularly important as challenges in the Australian print industry have made it difficult to

⁵⁰ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 18, viewed 22 July 2024.

⁵¹ Ms Andrea Summerell, Executive Director, Elections, NSW Electoral Commission, [Transcript of evidence](#), 17 May 2024, p 48.

⁵² Dr Matthew Phillips, Acting Electoral Commissioner for NSW, NSW Electoral Commission, [Transcript of evidence](#), 17 May 2024, p 48 and [Answers to supplementary questions](#), NSW Electoral Commission (NSWEC), 5 June 2024, p 5.

⁵³ [Submission 24](#), p 3 and [Answers to supplementary questions](#), NSWEC, 5 June 2024, p 7.

⁵⁴ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 18, viewed 22 July 2024 and [Answers to supplementary questions](#), NSWEC, 5 June 2024, p 7.

⁵⁵ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 18, viewed 22 July 2024.

⁵⁶ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 14, viewed 22 July 2024.

secure a supplier that can meet the print specifications of the standard postal certificate at the scale needed for state elections. The Commission stated that making this change permanent would ensure a consistent process and voter experience for postal voting.⁵⁷

Better processes for overseas voting

Voter experience of overseas voting at 2023 election

- 1.53 The Committee heard that there were fewer overseas voting options for the 2023 election than for previous elections. A number of factors meant that only postal voting was available for most overseas voters. iVote, a technology assisted voting system (TAV) used during previous elections, was not available at the 2023 election (TAV is discussed in more detail at paragraph 1.155). Ongoing impacts of the COVID-19 pandemic meant that in-person voting options were largely unavailable. There were also problems with postal voting, with short timeframes for returning postal votes meaning that some voters were disenfranchised.
- 1.54 The NSWEC told us that the only in-person international voting options for the 2023 state election were in New Zealand, where three in-person voting locations were available, with the New Zealand Electoral Commission's assistance.⁵⁸
- 1.55 The NSWEC worked with Investment NSW and the Department of Foreign Affairs and Trade (DFAT) to explore the provision of overseas attendance voting. However, while Investment NSW has offices in a number of cities worldwide, the offices were not resourced on a full-time basis, which made it operationally difficult to facilitate voting services.⁵⁹
- 1.56 In addition, DFAT could not support in-person voting at consular locations, as it had significantly reduced the number of voting locations for the 2022 federal election. DFAT did agree to provide postal vote collection services in select missions (as discussed at paragraph 1.48).⁶⁰ Ms Andrea Summerell, Executive Director, Elections, NSWEC, told us that the COVID-19 period saw a reduction in overseas attendance voting locations.⁶¹
- 1.57 These factors meant that voters who were overseas were largely limited to postal voting. The NSWEC issued 20,418 postal votes to overseas electors, 5,706 of which were returned by the required return date. Overseas postal vote packs were sent to electors by international courier.⁶²
- 1.58 Inquiry participants told the Committee that some overseas voters experienced difficulties voting or were not able to vote at all, due to issues such as limited technology-assisted voting (TAV) options and short timeframes for postal vote

⁵⁷ [Submission 24](#), p 3 and NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 18, viewed 22 July 2024.

⁵⁸ Ms Summerell, [Evidence](#), 17 May 2024, p 49 and [Answers to supplementary questions](#), NSWEC, 5 June 2024, p 6.

⁵⁹ Ms Summerell, [Evidence](#), 17 May 2024, p 48 and [Answers to supplementary questions](#), NSWEC, 5 June 2024, p 5.

⁶⁰ [Answers to supplementary questions](#), NSWEC, 5 June 2024, p 5; Dr Phillips, [Evidence](#), 17 May 2024, p 48 and NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 43, viewed 12 August 2024.

⁶¹ Ms Summerell, [Evidence](#), 17 May 2024, p 48.

⁶² NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, pp 43-44, viewed 12 August 2024.

applications.⁶³

- 1.59 NSW Labor told the Committee that electors living or travelling abroad were 'forced' to vote by post. NSW Labor noted that at previous elections, electors could vote using other methods, such as iVote or at polling booths in embassies and High Commissions. NSW Labor submitted that earlier arrangements increased voter enfranchisement for voters for whom voting is compulsory and called for in-person polling booths to be reintroduced in select major international voting centres.⁶⁴
- 1.60 The NSW Nationals stated that constituents had expressed concern about being unable to vote while on cruise ships. Mr Joe Lundy, Registered Officer, NSW Nationals, said the ability for overseas electors to vote is 'an essential part of our democratic process'.⁶⁵
- 1.61 We note that the NSWEC will collaborate with Investment NSW and DFAT to explore overseas attendance voting options for the 2027 state election. The NSWEC is also collaborating with the Australian Electoral Commission, which provided in-person overseas voting for the 2023 Voice to Parliament referendum. We heard that international in-person voting centres for the referendum had increased from those available at the 2022 federal election.⁶⁶

Enabling absent declaration voting for all electoral districts at overseas voting centres

Recommendation 11

That the NSW Government permits absent declaration voting for all electoral districts, at all voting centres that are appointed outside Australia by the NSW Electoral Commissioner.

- 1.62 The Committee considers that absent declaration voting should be permitted at overseas voting centres for future elections. This will simplify the process for voters who are overseas and make it easier for the NSW Electoral Commission to administer overseas voting.
- 1.63 The NSWEC recommended that overseas voting provisions like those introduced for the 2023 state election be considered for all future state elections.⁶⁷ The provisions enabled voting centres to be appointed outside Australia for all electoral districts, where voters could cast an absent declaration vote before and on election day.⁶⁸

⁶³ [Submission 13a](#), pp 1-2 and NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, pp 14, 18-19, viewed 23 July 2024.

⁶⁴ [Submission 17](#), p 22.

⁶⁵ [Submission 30](#), p 3 and Mr Joe Lundy, Registered Officer, NSW Nationals, [Transcript of evidence](#), 12 April 2024, p 6.

⁶⁶ [Answers to supplementary questions](#), NSWEC, 5 June 2024, p 6 and Ms Summerell, [Evidence](#), 17 May 2024, pp 48-49.

⁶⁷ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 19, viewed 23 July 2024 and [Submission 24](#), p 4.

⁶⁸ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 19, viewed 23 July 2024 and [Answers to supplementary questions](#), NSWEC, 5 June 2024, p 6.

- 1.64 While a number of factors (outlined in the section above) meant that this did not occur in practice for the 2023 election, the Committee considers that enabling absent declaration voting in overseas voting centres would provide more voting options for electors who are overseas, and ensure they are able to vote.

Allowing the Electoral Commissioner to appoint election officials for overseas voting centres

Recommendation 12

That the NSW Government provides the NSW Electoral Commissioner with the authority to appoint election officials for overseas voting centres based on their skills and experience.

Recommendation 13

That the NSW Government considers amending the eligibility requirements for election officials at section 81 of the *Electoral Act 2017* to better facilitate overseas voting.

- 1.65 The Committee recommends that the NSW Electoral Commissioner be given the authority to appoint election officials for overseas voting centres based on skills and experience. We also recommend that the NSW Government considers amending the eligibility requirements for election officials to better facilitate overseas voting. These changes aim to improve the Commission's ability to administer overseas voting.
- 1.66 Changes to the Electoral Act that only applied to the 2023 election extended the range of persons who could be appointed as an election official overseas. This meant that any person with the appropriate skills and experience could be appointed as an election official for an overseas voting centre.⁶⁹
- 1.67 However, the NSWEC stated that as the provision only applied to the 2023 state election, further legislative change is needed to ensure that appropriately skilled persons can be appointed to administer elections in overseas voting centres at future elections.⁷⁰
- 1.68 The NSWEC also noted that the Electoral Commissioner does not have the authority to appoint an individual who is not an Australian citizen as an election official overseas, even if they are an ongoing employee of the Electoral Commission, or a staff member of an Australian embassy.⁷¹ This presents challenges for the NSWEC in securing election officials overseas to administer elections.⁷²
- 1.69 The NSWEC emphasised the importance of the Electoral Commissioner having the power to appoint officials based on skills and experience.⁷³

⁶⁹ [Answers to supplementary questions](#), NSWEC, 5 June 2024, p 6; NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 16, viewed 23 July 2024 and *Electoral Act 2017*, Sch 7, [cl 16](#).

⁷⁰ [Answers to supplementary questions](#), NSWEC, 5 June 2024, p 6.

⁷¹ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 16.

⁷² [Answers to supplementary questions](#), NSWEC, 5 June 2024, p 6.

⁷³ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 19, viewed 23 July 2024.

- 1.70 The NSWEC also proposed that eligibility requirements for election officials be reviewed. Section 81 of the Electoral Act requires an election official to either reside in New South Wales and be enrolled as an elector for the Legislative Assembly, or be enrolled in another State or Territory as an elector for the House of Representatives.⁷⁴ The NSWEC said that this requirement adds to the challenges of recruiting election officials for overseas voting services.⁷⁵
- 1.71 The Greens NSW supported the removal of citizenship requirements for the eligibility of election officials if the official is employed by 'known trusted organisations' such as the Electoral Commission or Australian embassies and consulates.⁷⁶

Consistent processes for interstate and overseas voting

Recommendation 14

That the NSW Government adopts provisions similar to those for overseas voting, for interstate voting.

- 1.72 The NSWEC supported provisions similar to those for overseas voting being adopted for interstate voting, as they are simpler than the current requirements for interstate voting.⁷⁷ The Committee agrees that provisions for interstate voting should be simplified and made consistent with the process for voting overseas.
- 1.73 The provisions (outlined in the previous sections) would enable voting centres to be appointed for every electoral district for absent declaration voting before and on election day, and election officials to be appointed based on their skills and experience.⁷⁸
- 1.74 Currently, interstate voting centres are required to be appointed in relation to a specific electoral district, as opposed to all districts. The eligibility requirements for election officials noted in the section above also apply to interstate election officials.⁷⁹ The Committee considers that any change to these requirements for overseas voting should be replicated for interstate voting.
- 1.75 The NSWEC reported that at the 2023 state election, statutory requirements for overseas voting were administratively 'simpler and less burdensome' than those for interstate voting.⁸⁰ Noting the NSWEC's view that overseas voting provisions are more appropriate and simpler to administer for voting outside of New South Wales,⁸¹ the Committee is recommending that similar provisions be adopted for interstate voting for future elections.

⁷⁴ *Electoral Act 2017*, s 81.

⁷⁵ [Answers to supplementary questions](#), NSWEC, 5 June 2024, p 6.

⁷⁶ [Answers to supplementary questions](#), The Greens NSW, 31 May 2024, p 1.

⁷⁷ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 19, viewed 25 July 2024 and [Submission 24](#), p 4.

⁷⁸ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 19, viewed 25 July 2024.

⁷⁹ [Answers to supplementary questions](#), NSWEC, 5 June 2024, p 7 and NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 19, viewed 25 July 2024.

⁸⁰ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 19, viewed 25 July 2024.

⁸¹ [Answers to supplementary questions](#), NSWEC, 5 June 2024, p 7.

Election day operations

Summary

- More clarity is needed about how the Electoral Commissioner can conduct elections in the event of a major disruption to an election.
- There is a need for clarity around election officials' powers to maintain safety at polling places.
- Voters should not have to prove their identity to vote at state elections.

Clarifying how elections should be conducted during major disruptions

Recommendation 15

That the NSW Government amends the *Electoral Act 2017* to clarify how the NSW Electoral Commission is to conduct an election in the case of a major disruption such as a pandemic or natural disaster that may lead to a failure of the election. This amendment should state that the Commission is to consult with candidates prior to any significant decision being made.

- 1.76 The Electoral Act should be amended to clearly outline how elections should be conducted during major disruptions as it is currently unclear what powers the NSWEC has to respond to major events that have the potential to cause the failure of elections.
- 1.77 The NSWEC proposed amending the Electoral Act to include clear provisions for responding to major disruptions to an election, including those that may lead to the failure of the election.⁸²
- 1.78 The Commission noted that in the last few years, New South Wales has experienced a number of disruptive events such as the COVID-19 pandemic, bushfires and flooding. Major events such as these can impact the conduct of elections and possibly lead to their failure. It would therefore be useful to provide the Commission with clear powers and processes to respond to possible future events.⁸³
- 1.79 While the Electoral Act provides for minor or temporary disruptions to elections, the Committee notes that there are gaps in processes for major disruptions. For example, it is not clear if the date for return of the writs could be extended in response to a major disruption. The Electoral Act also does not allow a writ to be returned before the final date with no result recorded.⁸⁴
- 1.80 The NSWEC pointed to other Australian jurisdictions with more certainty and flexibility in their electoral laws. This includes the ability to return the writs without a recorded result.⁸⁵ The Committee believes that this amendment should state that the NSWEC is to consult with candidates prior to any significant

⁸² [Submission 24](#), p 4 and NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 21.

⁸³ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 21.

⁸⁴ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 21.

⁸⁵ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 21.

decision being made.

Clarifying election officials' ability to maintain safety at voting places

Recommendation 16

That the NSW Government amends the *Electoral Act 2017* to clarify the power of an election official to make a direction to maintain safety at a polling place in circumstances that are not caused by a person, such as fire, flash flooding or COVID-19.

- 1.81 The Committee heard that the Electoral Act should be amended to remove ambiguity about the extent of powers available to election officials to maintain safety in polling locations.⁸⁶
- 1.82 Section 203 of the Electoral Act allows election officials to give directions that are needed to maintain order at polling locations or any place where voting is occurring.⁸⁷ While this section provides for unsafe conditions caused by any person, including through verbal abuse and violence, the NSW Electoral Commission noted that it is not clear if the power to 'maintain order' extends to unsafe conditions that are not caused by a person, such as flash flooding or COVID-19.⁸⁸ It is therefore unclear if directions given by election officials in such circumstances must be followed.⁸⁹
- 1.83 Sections 176 and 177 of the Electoral Act, which allow the Electoral Commissioner to adjourn voting or a centre manager to suspend voting, do apply to unsafe conditions caused by events such as storms, health hazards, and fires. However, these sections may require election officials to temporarily suspend or adjourn voting in response to such events.⁹⁰ Depending on the severity of the unsafe conditions, this may not be necessary and may increase the risk of an election failing.
- 1.84 Therefore, the Committee agrees that clear provision for election officials to give lawful directions to maintain order in such unsafe circumstances is required for effective risk management.⁹¹

Not requiring voters to prove their identity to vote

Finding 1

There should be no change to New South Wales laws to require voters to produce proof of identity to vote at state elections.

- 1.85 The Committee considers that voters should not have to produce identification to vote at New South Wales state elections. There is no evidence that multiple voting and fraud has affected election results. Requiring voters to provide proof

⁸⁶ [Submission 24](#), p 4 and NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 19.

⁸⁷ *Electoral Act 2017*, s 203.

⁸⁸ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 19.

⁸⁹ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 19.

⁹⁰ *Electoral Act 2017*, div 13.

⁹¹ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 19.

of identity would disenfranchise marginalised groups in our community, making it harder for all voters in New South Wales to be represented.

- 1.86 The introduction of voter ID requirements has been considered by this Committee in previous inquiries.⁹² During this inquiry the Committee heard that requiring voters to provide proof of identity would disenfranchise people who don't have identification documents, including homeless people, young people, the elderly, Aboriginal and Torres Strait Islanders, people from culturally and linguistically diverse communities,⁹³ and people with a disability.⁹⁴
- 1.87 NSW Labor commented that the implementation of voter ID requirements places an extra burden on voters and election staff and would slow down the voting process.⁹⁵
- 1.88 The Committee also notes that proof of identification is not required at federal elections and that previous attempts to require voter identification at federal elections have failed.⁹⁶ The Committee believes that implementing voter ID requirements at a state level, when there are none at a federal level, may confuse voters.
- 1.89 The Committee notes that the Liberal Party of Australia (NSW Division) argued that voter ID requirements are needed to prevent instances of multiple voting and fraud.⁹⁷
- 1.90 Multiple voting occurs when an individual casts more than one vote at an election. It is an offence under the Electoral Act and can result in a fine, a jail sentence and/or being designated by the Commissioner as a 'special elector' and being restricted to casting declaration votes only.⁹⁸ Voter impersonation is also an offence, with a maximum penalty of 200 penalty units, imprisonment, or both.⁹⁹
- 1.91 Mr Richard Shields, State Director, Liberal Party of Australia (NSW Division) observed that seats can be won with small margins, noting the 54-vote margin that occurred in Ryde at the 2023 state election.¹⁰⁰ Mr Shields said that due to these small margins, voter ID requirements are 'critical', as cases of multiple voting and impersonation can affect election outcomes.¹⁰¹

⁹² Joint Standing Committee on Electoral Matters, [Administration of the 2015 NSW Election And Related Matters](#), report 2/56, Parliament of NSW, November 2016, pp 5-6 and Joint Standing Committee on Electoral Matters, [Administration of the 2019 NSW State Election](#), report 1/57, Parliament of NSW, October 2020, p 34.

⁹³ [Submission 17](#), NSW Labor, p 23.

⁹⁴ [Submission 17](#), p 23 and [Submission 23](#), NSW Council for Intellectual Disability, p 6.

⁹⁵ [Submission 17](#), p 23.

⁹⁶ Parliament of Australia, [Electoral Legislation Amendment \(Voter Integrity\) Bill 2021](#), viewed on 25 July 2024 and [Submission 31](#), pp 8-9

⁹⁷ [Submission 31](#), p 9.

⁹⁸ *Electoral Act 2017*, [s 212](#), [Sch 6](#).

⁹⁹ *Electoral Act 2017*, [s 212](#).

¹⁰⁰ Mr Richard Shields, State Director, Liberal Party of Australia (NSW Division), [Transcript of evidence](#), 17 May 2024, pp 38-39.

¹⁰¹ Mr Shields, [Evidence](#), 17 May 2024, p 39.

- 1.92 This view was not supported by the Acting NSW Electoral Commissioner, Dr Matthew Phillips, who stated that while voter ID is often mentioned in relation to multiple voting, it is 'potentially a solution almost looking for a problem'. Dr Phillips maintained that there is no evidence that prevention measures against multiple voting are needed.¹⁰²
- 1.93 On this issue, the NSWEC conducted analysis after the 2023 state election, with the following findings:
- There were 1,023 instances of apparent double voting.
 - Three electors apparently voted between three and five times (in three separate electorates).
 - None of the eight electors who had previously been identified as 'special electors' voted more than once.¹⁰³
- 1.94 The Commission's report confirmed that instances of multiple voting had no impact on the election result.¹⁰⁴ This is consistent with research from 2014 by the Commission, which found that cases of multiple voting were too few to affect election results and were accidental rather than strategic.¹⁰⁵
- 1.95 The previous Joint Standing Committee on Electoral Matters' review of the 2019 state election found that there should be no change to New South Wales laws to require voters to produce proof of identity to vote at state elections.¹⁰⁶ While the Committee did recommend the introduction of voter ID requirements as part of its earlier review of the 2015 state election, the recommendation was not accepted by the previous NSW Government.¹⁰⁷
- 1.96 In its response to that inquiry, the Government stated that it was not clear how introducing voter ID requirements would address the issue of multiple voting, and there was no evidence to suggest multiple voting was a significant enough issue to require a solution. It also noted that requiring voter ID could disenfranchise voters who do not have access to ID, and that the NSWEC had concerns about the practicalities and costs of implementing voter ID requirements.¹⁰⁸

¹⁰² Dr Phillips, [Evidence](#), 17 May 2024, p 47.

¹⁰³ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 72.

¹⁰⁴ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 72.

¹⁰⁵ Professor Rodney Smith, commissioned by the NSW Electoral Commission, [Multiple voting and voter identification](#), February 2014, pp 38-39.

¹⁰⁶ Joint Standing Committee on Electoral Matters, [Administration of the 2019 NSW State Election](#), report 1/57, Parliament of NSW, October 2020, p 34.

¹⁰⁷ Joint Standing Committee on Electoral Matters, [Administration of the 2015 NSW Election And Related Matters](#), report 2/56, Parliament of NSW, November 2016, pp 5-6.

¹⁰⁸ NSW Government, [Government Response - Inquiry into the 2015 NSW State Election and related matters](#), pp 3-4.

Vote counting

Summary

- Ballot boxes should be opened earlier on election day so that votes can be sorted and counted more quickly.
- Early votes cast for the Legislative Assembly should be prioritised over Legislative Council votes in counting on election night, to ensure the result of the election is clear.

Processing early votes on election day

Recommendation 17

That the NSW Government amends the *Electoral Act 2017* to permit the opening of ballot boxes from early voting centres from 4pm on election day to process ballot papers only, with counting to start from 6pm.

- 1.97 To speed up the early vote count on election day the Electoral Act should be amended to allow early ballot boxes to be opened from 4pm. This will allow election officials to unfold and sort ballot papers before the vote closes at 6pm, when counting can begin.
- 1.98 The Committee heard that an increase in early voting has had an impact on the vote count on election night.¹⁰⁹ Analysis by Mr Antony Green, election analyst, showed that early voting has increased from less than one per cent in 1984 to 32.6 per cent in 2023.¹¹⁰ Dr Matthew Phillips, Acting NSW Electoral Commissioner, confirmed that there was a more than 50 per cent increase in early voting in 2023 compared to the 2019 state election.¹¹¹
- 1.99 At the 2023 election, a low number of early votes were counted on election night compared to polling place votes. While 96.1 per cent of polling place votes had first preferences reported on election night, only 20.8 per cent of early votes were reported on the night.¹¹²
- 1.100 To speed up the count on election night, the Committee heard from a number of stakeholders that ballot boxes with early votes could be opened, and votes unfolded and sorted, prior to vote counting at 6pm.¹¹³ This should be conducted under secure conditions and no counting should take place before voting closes.¹¹⁴
- 1.101 To ensure proper transparency the Committee notes the importance of allowing scrutineers to be present at all stages of vote processing. This should include any

¹⁰⁹ [Submission 25](#), Mr Antony Green, pp 2-3; NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 18 and [Submission 17](#), p 3.

¹¹⁰ [Submission 25](#), p 2.

¹¹¹ Dr Phillips, [Evidence](#), 17 May 2024, p 42.

¹¹² [Submission 25](#), p 2.

¹¹³ [Submission 24](#), p 3; NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 18; [Submission 25](#), pp 6-7; [Submission 27](#), p 7; [Submission 17](#), p 3 and [Answers to supplementary questions](#), Liberal Party of Australia, NSW Division, 6 June 2024, p 1.

¹¹⁴ [Submission 24](#), p 3; NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 18; [Submission 27](#), p 7 and [Submission 17](#), p 3.

unfolding and sorting of early votes before 6pm.¹¹⁵

- 1.102 The NSWEC suggested that processing ballot papers from early voting centres before 6pm could be adopted on a trial basis for the 2027 NSW state election.¹¹⁶ Ms Andrea Summerell, Executive Director, Elections, NSWEC, confirmed that the Electoral Act already allows for postal ballot papers to be removed from their envelopes in the lead-up to the election. She stated that this process makes counting votes more efficient. As a result, the NSWEC supports implementing a similar process for early voting ballots.¹¹⁷
- 1.103 Amending the Electoral Act to allow the opening of early vote ballot boxes before 6pm is in line with current Federal and Victorian processes. The *Commonwealth Electoral Act 1918* (Cth) allows the opening of early ballot boxes from 4pm to unfold and sort ballot papers.¹¹⁸ Similarly, amendments to the *Electoral Act 2002* (Vic) prior to the 2018 Victorian state election allowed the opening of postal votes from 8am on election day, and early voting ballot boxes from 4pm on election day.¹¹⁹ Mr Antony Green, Election Analyst observed that in comparison to the 20 per cent of early votes counted in the 2023 New South Wales state election, the Australian Electoral Commission counted almost all early votes for the lower house and the Victorian electoral office counted all within-district early votes on the respective election nights.¹²⁰

Prioritising the counting of early votes for the Legislative Assembly

Recommendation 18

That the NSW Electoral Commission prioritises counting Legislative Assembly ballot papers from early voting centres, and considers not counting Legislative Council ballot papers from early voting centres on election night.

- 1.104 Inquiry participants told the Committee that the NSWEC should prioritise counting Legislative Assembly ballot papers from early voting centres over Legislative Council ballot papers.¹²¹ This will increase the amount of Assembly early votes counted on election night and facilitate the timely calling of the election.
- 1.105 The Committee heard that, for the 2023 state election, Legislative Council ballot boxes at early voting centres were opened alongside Legislative Assembly ballot boxes from the same location.¹²²
- 1.106 As noted above, only around 20 per cent of early vote ballot papers were

¹¹⁵ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 18 and [Submission 17](#), p 3.

¹¹⁶ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 18.

¹¹⁷ Ms Summerell, [Evidence](#), 17 May, p 44.

¹¹⁸ [Submission 17](#), p 3; [Submission 27](#), p 7 and *Commonwealth Electoral Act 1918* (Cth), [s 274 \(2AA\)](#).

¹¹⁹ NSWEC [Report on the administration of the 2023 NSW State election](#), 2023, p 18; [Submission 27](#), p 7 and *Electoral Act 2002* (Vic), s 110J as at 1 August 2018. The Victorian Electoral Act was amended again on 1 June 2022 enabling the processing of postal and early voting ballots from 8am on election day (see *Electoral Act 2002* (Vic), [s 110J](#)).

¹²⁰ Mr Antony Green, Election Analyst, [Transcript of evidence](#), 17 May 2024, p 7.

¹²¹ [Submission 17](#), pp 4-5; [Submission 18](#), Name suppressed, p 1 and [Submission 25](#), pp 5-6.

¹²² [Submission 25](#), p 5.

counted on election night, despite accounting for 32.6 per cent of the total votes in 2023.¹²³ NSW Labor said that the slow count of early votes meant the results were unclear in some Legislative Assembly seats, including Miranda, Kiama and Ryde.¹²⁴ Mr Antony Green observed that due to the limited number of early vote ballot papers recorded on election night, 'we were quite unclear in a number of seats about the result'.¹²⁵

- 1.107 The Committee heard that it takes longer to count Legislative Council ballots. Mr Antony Green noted that, due to their larger size, and the increased likelihood that an elector will have folded the ballot paper twice, it is physically more difficult to process and count Legislative Council ballot papers.¹²⁶ Mr Green estimated that prioritising counting of Legislative Assembly ballots and keeping Council early vote ballot boxes sealed on election night would at least double the amount of Assembly early votes counted.¹²⁷
- 1.108 Mr Green noted that a reason for the current process of opening and counting Legislative Council ballot boxes with Legislative Assembly ballot boxes at early voting centres is to ensure that Assembly ballot papers placed in the wrong ballot box are identified on election night. Mr Green recommended adding an extra check to the post-election scrutiny to ensure that incorrectly placed Assembly ballot papers are added to the correct Assembly count.¹²⁸
- 1.109 It was noted that prioritising the count of Assembly ballot papers would align with the Australian and Victorian Electoral Commissions' counting processes. In Federal and Victorian elections, upper house ballot boxes remain sealed to maximise the counting of lower house votes on election night.¹²⁹ Mr Green observed that this has been successful over several Federal and Victorian elections.¹³⁰
- 1.110 The NSWEC stated that it will review options to speed up the count for the 2027 election, including not counting Legislative Council early votes.¹³¹ As part of this review, the Commission should aim to prioritise counting Legislative Assembly votes, including Legislative Assembly preferences from early voting centres, before counting Council ballot papers on election night.

¹²³ [Submission 25](#), p 2.

¹²⁴ [Submission 17](#), pp 4-5.

¹²⁵ Mr Green, [Evidence](#), 17 May 2024, p 6.

¹²⁶ [Submission 25](#), p 5 and Mr Green, [Evidence](#), 17 May, pp 8-9.

¹²⁷ Mr Green, [Evidence](#), 17 May, p 8.

¹²⁸ [Submission 25](#), pp 5-6.

¹²⁹ [Submission 25](#), p 6.

¹³⁰ Mr Green, [Evidence](#), 17 May, p 7.

¹³¹ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 61.

Post election

Summary

- The offence of failing to vote in an election should be changed to make it clear that not knowing about the election is not a defence.
- There should be changes to better protect the security of election information that is given to parties and candidates.

Clarifying the offence of failing to vote

Recommendation 19

That the NSW Government amends section 207 of the *Electoral Act 2017* to put beyond doubt that not knowing that an election was being conducted is not a defence to the offence of failing to vote.

- 1.111 The NSWEC proposed amending section 207 of the Electoral Act to clarify that it is not a defence in court proceedings that the elector did not know that an election was being conducted. This is to avoid future unnecessary litigation and costs for all parties.¹³²
- 1.112 In New South Wales, voting is compulsory for all eligible electors under section 207 of the Act, which provides that an elector who fails to vote at an election is guilty of an offence. The maximum penalty for the offence is one penalty unit.¹³³ The penalty notice provision at section 259 of the Act outlines how the NSWEC is to proceed with offences of failing to vote.¹³⁴
- 1.113 The NSWEC noted that while the penalty notice provision states that ignorance that an election is being conducted is not a sufficient reason for an elector to fail to vote, this is not specified in the offence provision.¹³⁵
- 1.114 The Committee agrees that section 207 of the Act should be amended to put beyond doubt that an elector cannot use ignorance of the election as a defence in court proceedings for an offence of failing to vote. This would bring the offence provision in line with the penalty notice provision.¹³⁶

Protecting the security of election information

Recommendation 20

That the NSW Government amends the *Electoral Act 2017* to better protect the security of election information that the NSW Electoral Commissioner must provide under section 222.

¹³² [Submission 24](#), p 5 and NSWEC, [Special report on the public funding and regulation of the 2023 NSW state election](#), 2023, p 15.

¹³³ *Electoral Act 2017*, [s 207](#).

¹³⁴ *Electoral Act 2017*, [s 259](#).

¹³⁵ [Submission 24](#), p 5 and NSWEC, [Special report on the public funding and regulation of the 2023 NSW state election](#), 2023, p 15.

¹³⁶ [Submission 24](#), p 5 and NSWEC, [Special report on the public funding and regulation of the 2023 NSW state election](#), 2023, p 15.

- 1.115 The Electoral Act should be amended to allow the NSWEC to require recipients of election information to make undertakings regarding security. This will better protect the personal information of electors in New South Wales.
- 1.116 The Electoral Act (section 222(2)) provides that after an election, the Electoral Commissioner must provide certain information to registered parties and members of Parliament if requested. This information includes the names and addresses of electors who voted, where they voted and the method they used to vote.¹³⁷
- 1.117 The NSWEC stated that there is no provision to require recipients of this election information to make undertakings about its security. This is not consistent with the provisions for requests for enrolment information under section 48, which do require undertakings about the information's security.¹³⁸ There is also no provision for the Commission to audit compliance and take enforcement action if recipients do not comply with any undertakings.¹³⁹
- 1.118 The Commission stated that if the proposal to require undertakings is not accepted, an alternative option would be to amend the Act to allow the Commission to provide deidentified statistical data that shows voting trends and behaviours without including electors' personal information. This data could then be given to eligible political participants as requested.¹⁴⁰

Programs and services for culturally and linguistically diverse voters

Summary

- Programs for culturally and linguistically diverse voters should be expanded.
- There should be more resources for culturally and linguistically diverse communities at polling places.

Expanding education programs and pre-election resources for culturally and linguistically diverse communities

Recommendation 21

That the NSW Government provides additional funding to enable education programs such as Vote Talk to be rolled out to a broader range of culturally and linguistically diverse communities for the 2027 state election.

- 1.119 While the NSWEC made efforts to engage with culturally and linguistically diverse (CALD) communities in the lead up to the 2023 state election, additional resources are required to ensure better awareness of the electoral system and improve participation in these communities. Pre-election education programs should be expanded.

¹³⁷ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 21 and *Electoral Act 2017*, s 222.

¹³⁸ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 21 and *Electoral Act 2017*, s 48.

¹³⁹ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 21.

¹⁴⁰ [Submission 24](#), p 4 and NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 21.

- 1.120 The Committee heard that there is a lack of understanding about Australian democracy in CALD communities.¹⁴¹ Mr Peter Doukas OAM, Chair of the Ethnic Communities' Council of NSW, stated that 'new communities that come to Australia engage in politics sooner than they engage in government or engage in understanding our political system'. Mr Doukas said that more should be done in terms of education about our democratic institutions and our system more broadly.¹⁴²
- 1.121 NSW Labor noted that the highest rates of informal votes were recorded in electoral districts with large CALD communities, including Fairfield, Bankstown, Auburn, Liverpool and Granville. Informal rates across these five electorates ranged between 5.9 per cent and 7.1 per cent, compared to the 3.28 per cent average across the state.¹⁴³
- 1.122 NSW Labor stated that there is a 'pressing need' to increase in-language resources and multicultural media campaigns about voting processes, to promote equal participation for CALD communities.¹⁴⁴

CALD voters' view of election services

- 1.123 After the 2023 election the NSWEC engaged Fiftyfive5 to independently evaluate the services provided. This independent study surveyed 1,200 eligible New South Wales voters (the core subject group) and an in-language CALD subject group with 50 voters from each of the three major language groups surveyed: Arabic, Mandarin and Cantonese.¹⁴⁵
- 1.124 There was variation between the different language groups, with overall satisfaction with the voting experience reported as highest by the Mandarin-speaking participants (96 per cent) compared to the Arabic-speaking participants (86 per cent) and the Cantonese-speaking participants (79 per cent).¹⁴⁶
- 1.125 Differences reported in levels of trust in the voting process were significant, with 61 per cent of the in-language CALD group trusting the voting process, compared with 81 per cent of the core group.¹⁴⁷ Arabic-speaking participants recorded particularly low levels of trust (20 per cent) and limited confidence in election results (38 per cent).¹⁴⁸
- 1.126 According to this research, CALD voters called for more communication about the voting process (44 to 78 per cent, depending on the language group), compared to the rest of the community (37 per cent). Across all three language cohorts, the

¹⁴¹ Mr Peter Doukas OAM, Chair, Ethnic Communities' Council of NSW, [Transcript of evidence](#), 12 April 2024, p 25.

¹⁴² Mr Doukas OAM, [Evidence](#), 12 April 2024, p 26.

¹⁴³ [Submission 17](#), p 19.

¹⁴⁴ [Submission 17](#), p 19.

¹⁴⁵ Fiftyfive5 for NSW Electoral Commission (NSWEC), [Evaluation of NSW Electoral Commission services at the 2023 NSW state election report](#), December 2023, p 12.

¹⁴⁶ Fiftyfive5 for NSWEC, [Evaluation of NSW Electoral Commission services at the 2023 NSW state election report](#), December 2023, p 14.

¹⁴⁷ Fiftyfive5 for NSWEC, [Evaluation of NSW Electoral Commission services at the 2023 NSW state election report](#), December 2023, pp 34-35.

¹⁴⁸ Fiftyfive5 for NSWEC, [Evaluation of NSW Electoral Commission services at the 2023 NSW state election report](#), December 2023, pp 13-14.

most sought after information was information in languages other than English and information about candidates or parties.¹⁴⁹

Vote Talk project and other awareness campaigns

- 1.127 In the lead up to the 2023 NSW state election, the NSWEC engaged with CALD communities in a variety of ways, including:
- media and awareness campaigns with tailored components and distribution strategies directed at key language groups¹⁵⁰
 - translated information in 26 languages on the Commission's website¹⁵¹
 - translated community awareness videos in seven languages
 - translated stakeholder packs in seven languages, distributed via community organisations
 - a 'Vote here' in-language banner trial and 'Vote Talk' project.¹⁵²
- 1.128 The Vote Talk project was a partnership between the NSWEC and Ethnic Communities' Council of NSW which aimed to inform CALD communities about Australia's electoral and political system in a non-partisan way.¹⁵³ The project was run in six community languages in various formats and included:
- in-language interviews on community radio
 - in-language community education events and sessions
 - 'bilingual café conversations' disseminated as in-language podcasts.¹⁵⁴
- 1.129 The NSWEC reported that Vote Talk was a success, as demonstrated by participant survey results before and after engaging with the program. Participants reported their knowledge of, and confidence in, voting options and processes increased from 28.6 per cent to 86.7 per cent.¹⁵⁵
- 1.130 To further increase electoral awareness, enrolment, and voting formality rates across the CALD community, the Ethnic Communities' Council proposed expanding Vote Talk to more language groups. Mr Peter Doukas OAM, Chair, Ethnic Communities' Council of NSW, stated that, depending on funding, the next steps would be to start operating in 10 additional large language groups while

¹⁴⁹ Fiftyfive5 for NSWEC, [Evaluation of NSW Electoral Commission services at the 2023 NSW state election report](#), December 2023, pp 15-16.

¹⁵⁰ NSWEC, [Report on the administration of the 2023 NSW state election](#), 2023, p 80.

¹⁵¹ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 87.

¹⁵² NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 88; [Submission 15](#), Ethnic Communities' Council of NSW, p 1 and NSW Electoral Commission (NSWEC), [Multicultural Action Plan](#), 2024, p 7.

¹⁵³ Mr Doukas OAM, [Evidence](#), 12 April 2024, p 25.

¹⁵⁴ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 108; Ethnic Communities Council, [Response to question on notice](#), 10 May 2024, p 2 and NSWEC, [Multicultural Action Plan](#), 2024, p 7.

¹⁵⁵ NSWEC, [Multicultural Action Plan](#), 2024, p 7.

also considering dialects and sub-language groups.¹⁵⁶

Expanding resources for culturally and linguistically diverse communities at polling places

Recommendation 22

That the NSW Electoral Commission provides additional resources for culturally and linguistically diverse voters at polling places for the 2027 state election.

- 1.131 The Committee considers that, in addition to more in-language resources and initiatives in the lead up to the election, support for the CALD community at polling locations should also be increased.
- 1.132 For the 2023 election, the NSWEC provided interpreter support through the Translating and Interpreting Service (TIS) and increased the number of election officials who spoke more than one language. In 2023, 27.53 per cent of election staff spoke a language other than English, compared to 20.83 per cent in 2019 and 20.63 per cent in 2015.¹⁵⁷
- 1.133 While the increase in languages spoken by election officials is positive, the Committee notes the importance of maintaining access to the TIS for all polling locations to ensure languages not spoken by election staff are sufficiently catered for.
- 1.134 NSW Labor recommended that the Commission be given extra resources to support CALD voters at polling locations. They also emphasised the importance of increasing the number of multilingual election staff.¹⁵⁸
- 1.135 To improve engagement with CALD voters, the NSWEC sought additional resourcing for community engagement activities from the 2024-2025 state budget. The Commission recommended that funding for programs to provide accurate information to CALD communities should continue.¹⁵⁹

Improving voting options for people with disability

Summary

- There should be more voting options for voters with a disability.
- Resources for people with disability should be promoted more widely.
- There should be co-designed disability awareness training for election staff.

Promoting resources for people with disability

Recommendation 23

That the NSW Electoral Commission promotes its easy-read materials and information to people with disability more widely, including through social

¹⁵⁶ Mr Doukas OAM, [Evidence](#), 12 April 2024, p 25.

¹⁵⁷ NSWEC, [Multicultural Action Plan](#), 2024, p 6.

¹⁵⁸ [Submission 17](#), p 19.

¹⁵⁹ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 108.

media.

- 1.136 The Committee is recommending that the NSWEC promotes its resources for people with a disability more widely, including through social media and outreach programs.
- 1.137 The Committee acknowledges that the NSWEC made efforts to support people with intellectual disability at the election. In particular, the NSWEC provided easy-read information and accessible videos which were developed by the Council for Intellectual Disability to clearly outline the voting process.¹⁶⁰ Two easy-read guides were created about the enrolment and voting process and homelessness and voting. The guides used everyday language and images to communicate information clearly.¹⁶¹
- 1.138 While easy-read guides significantly increased access for people with intellectual disability, the Committee heard that they should be promoted more actively. The NSW Council for Intellectual Disability recommended education and outreach programs and social media to promote easy-read guides and improve use of these resources.¹⁶² This would improve awareness and use of these resources across the intellectual disability community in New South Wales.
- 1.139 Better promotion of resources for people with disability may improve the voting experience of those voters. The Committee notes that the independent evaluation conducted by Fiftyfive5 for the NSWEC indicated that survey participants with a disability had a poorer election experience.¹⁶³ The results showed that people with disability:
- found ease of voting to be lower than other participants and were less satisfied with their overall voting experience.
 - had lower confidence in election results and whether the election was conducted fairly and impartially.¹⁶⁴
 - had a lower level of trust in the voting process.¹⁶⁵

Co-designed disability awareness training for election staff

Recommendation 24

That the NSW Government ensures that the NSW Electoral Commission is adequately resourced to provide co-designed disability awareness training to staff working at elections.

¹⁶⁰ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 89 and [Submission 23](#), pp 5-7.

¹⁶¹ [Submission 23](#), pp 6-7.

¹⁶² [Submission 23](#), pp 6-7.

¹⁶³ Fiftyfive5 for NSWEC, [Evaluation of NSW Electoral Commission services at the 2023 NSW state election report](#), December 2023, pp 39-44.

¹⁶⁴ Fiftyfive5 for NSWEC, [Evaluation of NSW Electoral Commission services at the 2023 NSW state election report](#), December 2023, pp 40-41.

¹⁶⁵ Fiftyfive5 for NSWEC, [Evaluation of NSW Electoral Commission services at the 2023 NSW state election report](#), December 2023, p 42.

- 1.140 The Committee considers that the NSWEC should be resourced to provide co-designed disability awareness training to staff working at elections.
- 1.141 The Committee notes that voters with disability are able to bring a support person to help fill out the ballot papers.¹⁶⁶ However, the Committee heard that not all election staff were aware that a support person was permitted.¹⁶⁷
- 1.142 Mr James Simpson, Senior Advocate at the NSW Council for Intellectual Disability, stated that, while the NSWEC advised that a support person could help voters with disability, the service was refused at some polling locations as some election staff were unaware it was allowed.¹⁶⁸ Mr Simpson shared the experience of one of their members:
- ... at a recent election ... he was refused to have a support person with him. He found that extremely anxiety provoking. A number of times, he filled out his ballot incorrectly and had to go back and get a replacement. The awareness of electoral officials about their own processes is very important.¹⁶⁹
- 1.143 The Committee considers that more training is needed for NSWEC staff to address gaps in awareness of the needs of people with disability.
- 1.144 In particular, the NSW Council for Intellectual Disability recommended that the NSWEC be adequately funded to provide improved, co-designed disability training to election workers.¹⁷⁰ This training may cover election staff awareness of existing processes and supports in place to assist voters with a disability, as well as other measures that would enhance the voting experience for people with disability.

Technology assisted voting options were inadequate for voters with vision impairment

Finding 2

Technology assisted voting options at the 2023 NSW state election were not adequate for voters with vision impairment.

- 1.145 The Committee considers that technology assisted voting (TAV) options at the 2023 election were not adequate to meet the needs of voters with vision impairment. While noting evidence on the experience of voters with vision impairment at the 2023 election below, the Committee will conduct a detailed review of the NSWEC's findings and recommendations on TAV as part of a separate inquiry into proposals to increase voter engagement, participation and confidence.

Changes to technology assisted voting options at the 2023 NSW state election

- 1.146 The Committee heard that TAV options for vision impaired voters at the 2023

¹⁶⁶ [Submission 23](#), p 5.

¹⁶⁷ [Submission 23](#), p 5.

¹⁶⁸ Mr James Simpson, Senior Advocate, Council for Intellectual Disability, [Transcript of evidence](#), 17 May 2024, pp 31-32.

¹⁶⁹ Mr Simpson, [Evidence](#), 17 May 2024, p 32.

¹⁷⁰ [Submission 23](#), p 6.

election were limited, and this impacted voters' experience of the election.¹⁷¹

- 1.147 TAV at the 2023 election was restricted to operator-assisted telephone voting for electors who were blind or had low vision.¹⁷² iVote, a TAV system previously used by the NSWEC, allowed voters to choose between human-assisted telephone voting, automated telephone keypad voting and internet voting.¹⁷³ However, iVote experienced failure at the 2021 local government elections and was not used for the 2023 state election.¹⁷⁴ Instead, the only TAV option for vision impaired voters was operator-assisted telephone voting.
- 1.148 Inquiry participants told us that limiting TAV to operator-assisted telephone voting at the 2023 election was not adequate.¹⁷⁵ Mr Bruce Maguire, Lead Policy Advisor, Vision Australia, asserted that removing iVote meant that people who were blind or have low vision could not cast an independent, secret and verifiable vote.¹⁷⁶ Both Mr Maguire and Mr Jackson Reynolds-Ryan, Policy and Advocacy Manager, Blind Citizens Australia, stressed that the loss of iVote was a 'backward step' for equality and independence.¹⁷⁷ Vision Australia noted that, to their knowledge, the loss of iVote is 'the only example in contemporary Australian society of a systemic, discriminatory barrier being reinstated a decade after it had been eliminated'.¹⁷⁸
- 1.149 Vision Australia conducted a survey of voter experience at the 2023 election. While the survey had limited participants, Vision Australia said that respondents' lack of confidence in aspects of the voter experience 'demonstrates a fundamental shortcoming' in the voting options at the election.¹⁷⁹

Operator-assisted telephone voting

- 1.150 The Committee heard that operator-assisted telephone voting did not provide the same range of voting options, secrecy, independence or verifiability as iVote.¹⁸⁰ Phone voting involved a process whereby eligible voters first registered via a dedicated telephone service to receive a unique ID number. They then cast their vote by again calling the telephone service, giving their ID number and telling their preferences to an election official, who would manually fill in a paper ballot on the elector's behalf. To ensure accuracy and integrity, another election official (the 'verifying official') listened to the call and could read back the

¹⁷¹ See NSW Electoral Commission, [Technology assisted voting, Paper 3: Final review report](#), November 2023, p 9, viewed 29 August 2024.

¹⁷² NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 46.

¹⁷³ [Submission 9](#), Vision Australia, p 6.

¹⁷⁴ [Submission 11](#), Dr Vanessa Teague, p 1 and [Submission 26](#), People with Disability Australia, p vi.

¹⁷⁵ [Submission 9](#), pp 2-3; [Submission 20](#), Blind Citizens Australia, p 6; [Submission 26](#), p vi and [Submission 16](#), NSW Council for Civil Liberties, p 10.

¹⁷⁶ Mr Bruce Maguire, Lead Policy Advisor, Vision Australia, [Transcript of evidence](#), 17 May 2024, p 33.

¹⁷⁷ Mr Maguire, [Evidence](#), 17 May 2024, p 33 and Mr Jackson Reynolds-Ryan, Policy and Advocacy Manager, Blind Citizens Australia, [Transcript of evidence](#), 17 May 2024, p 33.

¹⁷⁸ [Submission 9](#), p 3.

¹⁷⁹ [Submission 9](#), pp 3-6.

¹⁸⁰ [Submission 20](#), pp 6-7 and [Submission 9](#), p 6.

preferences stated by the voter if asked.¹⁸¹

- 1.151 While the use of ID numbers meant a voter did not have to provide their name, they did have to disclose their vote to another person, meaning phone-assisted votes were not cast in secret. Additionally, voters were not able to verify the accuracy of their vote after completing the call.¹⁸²
- 1.152 The NSWEC reported the following stakeholder feedback on the operator assisted telephone voting service:
- that there was limited reassurance from telephone operators that voters could take their time to finish their vote.
 - that there was audible background noise heard from the call centre.¹⁸³
- 1.153 Vision Australia and Blind Citizens Australia suggested improving the service by ensuring that the verifying official is not present during the conversation between the recording official and voter but enters the call after the vote has been recorded. This would mean that the verifying official would actively check what has been recorded, rather than assume the vote has been recorded correctly, and would increase voter confidence in the accuracy of vote recording. The Committee notes that Vision Australia has already made this suggestion to the NSWEC for consideration.¹⁸⁴
- 1.154 The Committee heard that while the operator-assisted telephone voting service could be improved, and does not offer the same options as iVote, it was generally well received.¹⁸⁵ Vision Australia recommended that operator-assisted telephone voting should remain an option at future elections.¹⁸⁶ It was also observed that the NSWEC made a committed effort to widely promote this service.¹⁸⁷
- 1.155 To make electoral processes more inclusive, Vision Australia stressed the importance of offering a range of voting options to cater for the diverse nature of the blind and low vision community. While operator-assisted telephone voting is an important service for many members of the blind and low vision community, it should not be the only choice.¹⁸⁸ We heard that an internet voting option that allows vision impaired voters an independent, verifiable, and secret vote is also needed.¹⁸⁹

NSW Electoral Commission's review of technology assisted voting

- 1.156 The Committee heard that there is support for the NSWEC's proposals to identify

¹⁸¹ [Submission 20](#), p 7; NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 47 and Mr Maguire, [Evidence](#), 17 May 2024, p 36.

¹⁸² [Submission 20](#), p 7.

¹⁸³ NSWEC, [Report on the administration of the 2023 NSW State election](#), 2023, p 47.

¹⁸⁴ Mr Maguire, [Evidence](#), 17 May 2024, p 36 and Mr Reynolds-Ryan, [Evidence](#), 17 May 2024, p 36.

¹⁸⁵ [Submission 9](#), pp 3-4 and [Submission 20](#), p 7.

¹⁸⁶ [Submission 9](#), p 5.

¹⁸⁷ Mr Maguire, [Evidence](#), 17 May 2024, p 33.

¹⁸⁸ [Submission 9](#), p 6.

¹⁸⁹ [Submission 9](#), p 6; [Submission 16](#), pp 10-11 and [Submission 20](#), pp 8-9.

a new TAV system,¹⁹⁰ and notes that the business case process is underway.¹⁹¹ Stakeholders emphasised the importance for any future TAV systems to be co-designed with the disability community.¹⁹²

- 1.157 Inquiry participants noted that while the NSWEC acknowledged the possibility of small-scale internet voting in the future,¹⁹³ they recommend that, for all by-elections until the 2027 state election, telephone voting should be the only TAV option for electors who are blind or have low vision. This will allow time for a new TAV system to be identified, developed and tested before use.¹⁹⁴
- 1.158 As noted above, the Committee is considering the Commission's findings and recommendations resulting from its review of TAV as part of a separate inquiry into proposals to increase voter engagement, participation and confidence.

¹⁹⁰ [Submission 16](#), p 11; [Submission 9](#), p 3; [Submission 17](#), p 21; [Submission 20](#), p 9 and [Submission 26](#), p vii.

¹⁹¹ Dr Phillips, [Evidence](#), 17 May 2024, pp 43, 45.

¹⁹² [Submission 26](#), pp ix-x; [Submission 20](#), p 10; [Submission 16](#), p 11; [Submission 9](#), p 7 and Dr Phillips, [Evidence](#), 17 May 2024, p 45.

¹⁹³ Dr Phillips, [Evidence](#), 17 May 2024, p 45.

¹⁹⁴ [Submission 24](#), p 3.

Chapter Two – Truth in political advertising laws

Support for laws to address misinformation and disinformation about elections

Summary

Concern about misinformation and disinformation related to elections is increasing. Misinformation can affect voters' confidence in the integrity of our electoral system and undermine democracy. There is some limited support for introducing truth in political advertising laws to combat misinformation and disinformation during election campaigns.

Concern about the impact of misinformation on elections

Finding 3

There is concern in the community about misinformation and disinformation in relation to elections, and some support for truth in political advertising laws as a way to address this issue.

What is misinformation and disinformation?

- 2.1 The Committee heard that there is growing concern in the community about misinformation and disinformation relating to elections. Misinformation (false or misleading information that may not intend to cause harm) and disinformation (false or misleading information that is spread to cause harm) about candidates and parties during election campaigns may mislead voters and even change election outcomes.
- 2.2 Publishing misleading information about electoral processes (for example, material that aims to interfere with an elector voting) is already an offence under the *Electoral Act 2017*, and the NSW Electoral Commission (NSWEC) can take action in response to this type of misinformation (discussed at paragraph 2.69).¹⁹⁵ However, there is a view that false or misleading statements made about political parties and candidates in advertisements during election campaigns should also be prohibited through truth in political advertising laws.

Why misinformation about elections is concerning

- 2.3 Inquiry participants highlighted the potential impact of misinformation and disinformation on elections. Professor Emerita Anne Twomey observed that political campaigns built on lies and deception can affect election results and undermine public trust in our system of government. This 'weakens social cohesion and makes Australia more vulnerable to external threats'.¹⁹⁶
- 2.4 We also heard that misinformation and false political advertising jeopardise

¹⁹⁵ *Electoral Act 2017*, [s 180](#), [s 183](#).

¹⁹⁶ [Submission 8](#), Professor Emerita Anne Twomey, p 1.

democracy.¹⁹⁷ The Hon Emma Hurst MLC said that misinformation in political advertisements hinders the public's ability to make informed choices about voting. This risks misleading voters, and impacting the outcome of elections due to confusion and lies.¹⁹⁸ The NSWEC stated that misinformation and disinformation in relation to electoral processes is a threat to democracy.¹⁹⁹

- 2.5 The Law Society of NSW referred to international developments that have 'highlighted the pervasiveness, sophistication and effectiveness of misinformation and disinformation campaigns to undermine and distort election outcomes'. They pointed to the 'very significant potential costs' mis and disinformation may have on the integrity of election outcomes.²⁰⁰
- 2.6 While noting the differing views on how to address the issue, the Independent Commission Against Corruption (ICAC) stated that misinformation and disinformation can be a significant threat to the integrity of electoral processes, 'potentially swaying public opinion through the dissemination of false or misleading information.'²⁰¹
- 2.7 Similarly, the NSW Council for Civil Liberties observed that misleading political advertising can cause serious social harms by weakening trust in democratic processes, and trust between and among public and private entities. It can also undermine the legitimacy of the social contract between voters and elected representatives, and an informed populace.²⁰²
- 2.8 Concerns about misinformation during election campaigns were also raised by political participants. The Greens NSW said that some media outlets and political candidates spread false information about other candidates and parties to damage their credibility and their vote. These statements can be made in various types of media. They argued that little can be done to address misrepresentations during an election period, as existing laws are largely ineffectual.²⁰³
- 2.9 The Hon Emma Hurst MLC submitted that cases of misinformation in state and federal elections are increasing, including political parties making false claims about rival parties' policies and positions, to influence the outcome of elections. Rather than being genuine debates about policy, she was concerned that elections are 'becoming platforms for disinformation, eroding public confidence in both politicians and the democratic process itself'.²⁰⁴
- 2.10 We heard that misinformation and disinformation is becoming more prevalent. The NSW Council for Civil Liberties noted that in a May 2022 survey conducted by the Australia Institute, 73 per cent of respondents had come across political

¹⁹⁷ [Submission 32](#), Climate 200, p 12 and [Submission 37](#), The Hon Emma Hurst MLC, pp 1-2.

¹⁹⁸ [Submission 37](#), pp 1-2.

¹⁹⁹ [Submission 24](#), NSW Electoral Commission, p 11.

²⁰⁰ [Submission 29](#), Law Society of NSW, p 1.

²⁰¹ [Submission 14](#), Independent Commission Against Corruption, pp 8-9.

²⁰² [Submission 16](#), NSW Council for Civil Liberties, pp 5-6.

²⁰³ [Submission 27](#), The Greens NSW, p 9.

²⁰⁴ [Submission 37](#), pp 1-2.

advertisements they knew to be misleading.²⁰⁵

Arguments for truth in political advertising laws

- 2.11 Some inquiry participants supported the introduction of truth in political advertising laws, on the basis that there is public support for the laws, and that false or misleading statements about a party or candidate should be penalised. The Committee also heard that compulsory voting makes it more important to ensure that voters are casting an informed vote.
- 2.12 We heard that the Australian community supports truth in political advertising laws. The Australia Institute conducted an exit poll on truth in political advertising laws after the Voice to Parliament referendum in October 2023. Respondents were asked if truth in political advertising laws should be in place for the next federal election campaign. Eighty-five per cent of New South Wales residents agreed, including 46 per cent who strongly agreed. Only five per cent disagreed, and one per cent strongly disagreed.²⁰⁶
- 2.13 Inquiry participants argued that compulsory voting makes it more necessary to address misinformation and disinformation. Ms Debra Smith, Deputy Chair of the Law Society's Public Law Committee, observed that Australia's parliaments have an increased duty to protect voters from misinformation and disinformation, as voting is compulsory in Australia.²⁰⁷ Similarly, the PSA said that a full democracy relies on a free and fully informed public making informed decisions.²⁰⁸
- 2.14 The Hon Emma Hurst MLC said that mandatory voting makes it even more important that voters are not 'fed lies and untruths about political parties or their policies, as doing so removes their ability to make an informed vote'.²⁰⁹ Ms Hurst called for urgent change to make it illegal to make misleading statements in political advertisements.²¹⁰
- 2.15 Other stakeholders also called for changes to address disinformation. The NSW Council for Civil Liberties submitted that there should be penalties for candidates, political parties and other campaigners who intentionally and repeatedly mislead voters.²¹¹ The Greens NSW supported legislation prohibiting individuals or media outlets from making false or misleading statements about a party or candidate, to enhance democracy.²¹²
- 2.16 Mr Simon Holmes à Court, Convenor of Climate 200, argued that truth in political advertising laws would improve the quality and integrity of communications

²⁰⁵ [Submission 16](#), pp 5-6 and Australia Institute, [Exit poll – misinformation in the federal election campaign](#), June 2022, p 1, viewed 16 July 2024.

²⁰⁶ [Submission 33](#), Australia Institute, p 45 and Australia Institute, [Polling – misinformation and the referendum](#), October 2023, p 12, viewed 16 July 2024.

²⁰⁷ Ms Debra Smith, Deputy Chair of Public Law Committee, Law Society of New South Wales, [Transcript of evidence](#), 12 April 2024, pp 39-40.

²⁰⁸ Mr Dylan Smith, Manager, Industrial Support, Public Service Association of NSW, [Transcript of evidence](#), 12 April 2024, p 15.

²⁰⁹ [Submission 37](#), p 2.

²¹⁰ [Submission 37](#), pp 1-2.

²¹¹ [Submission 16](#), p 6.

²¹² [Submission 27](#), p 10.

between parties and voters, or political players and voters, in elections.²¹³ Climate 200 also noted that a significant amount of taxpayer funding is spent on election campaigns, and it would be reasonable for taxpayers to expect that this funding is used for truthful campaigning.²¹⁴

- 2.17 Some inquiry participants noted that protections against false and misleading claims already exist in the Australian Consumer Law.²¹⁵ The Australia Institute, for example, noted that Australian Consumer Law outlaws misleading and deceptive conduct by anyone engaged in trade and commerce. Penalties include damages and contract variation, and the law applies an objective test, meaning that conduct can be misleading or deceiving even if someone does not intend to deceive.²¹⁶
- 2.18 Mr Timothy Roberts, Secretary of the NSW Council for Civil Liberties argued that, just as consumer law ensures that organisations cannot lie to their consumers, political actors should not be able to mislead or deceive the electorate.²¹⁷ Similarly, the Hon Emma Hurst MLC questioned why candidates, politicians and political parties are not held to the same standard as corporations.²¹⁸

Support for truth in political advertising laws in other jurisdictions

- 2.19 Supporters of truth in political advertising laws argued that laws operating in South Australia and the Australian Capital Territory can serve as a model for New South Wales.
- 2.20 The Australia Institute argued that successful implementation of truth in political advertising laws in South Australia provides New South Wales with a working model for similar legislation.²¹⁹ Similarly, The Greens NSW recommended legislation similar to South Australia's to prohibit false or misleading statements about a party or candidate in the media and electoral material, with appropriate penalties.²²⁰
- 2.21 The Law Society of NSW submitted that South Australia's legislation 'has withstood constitutional challenge, is supported by significant case law, [and] has been shown to be enforceable.'²²¹ Ms Debra Smith, Deputy Chair of the Law Society of NSW's Public Law Committee said the South Australian legislation is 'a useful starting point'. She described the law as an effective deterrent, though she acknowledged that complexities and challenges with the law have increased.²²²

²¹³ Mr Simon Holmes à Court, Convenor, Climate 200, [Transcript of evidence](#), 12 April 2024, p 13.

²¹⁴ Ms Alexandria Rantino, Chief Operating Officer, Climate 200, and Mr Simon Holmes à Court, Convenor, Climate 200, [Transcript of evidence](#), 12 April 2024, p 13.

²¹⁵ The [Australian Consumer Law](#) is at Volume 4, Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

²¹⁶ [Additional information](#), Australia Institute, pp 6-7.

²¹⁷ Mr Timothy Roberts, Secretary, NSW Council for Civil Liberties, [Transcript of evidence](#), 12 April 2024, p 34.

²¹⁸ [Submission 37](#), p 2.

²¹⁹ [Additional information](#), Australia Institute, p 5.

²²⁰ [Submission 27](#), p 10.

²²¹ [Submission 29](#), p 1.

²²² Ms Smith, [Evidence](#), 12 April 2024, p 40.

South Australia's truth in political advertising law

- 2.22 South Australia's *Electoral Act 1985* makes it an offence to authorise, cause or permit the publication of an electoral advertisement containing a statement that purports to be a statement of fact but is materially inaccurate and misleading.²²³
- 2.23 The Committee notes Professor Anne Twomey's evidence that 'the law is confined to purported statements of fact in an advertisement'.²²⁴
- 2.24 In its report on the 2022 South Australian state election, South Australia's Electoral Commission noted that the offence has a number of elements which must be established for the Electoral Commissioner to take action:
- The complaint must be about an electoral advertisement that contains electoral matter, defined as matter calculated to affect the result of an election.
 - The electoral advertisement must contain a statement purporting to be a statement of fact. Opinions and predictions of the future cannot be considered statements of fact, as neither can be proved.
 - The statement must be shown to be *both* inaccurate and misleading to a material extent – one of these is not enough for the Electoral Commissioner to intervene.²²⁵
- 2.25 South Australia's Electoral Commissioner has a regulatory and enforcement role, and can request that advertisements be withdrawn from publication and a retraction published. The Commission can also apply to the Supreme Court to enforce withdrawal and retraction. South Australia's Court of Disputed Returns can declare an election of a member of the House of Assembly, or an election of members of the Legislative Council, void on the grounds of misleading advertising, if the Court is satisfied that the election result was affected by the advertising.²²⁶
- 2.26 The Australia Institute noted that the offence is rarely prosecuted, and the South Australian Electoral Commissioner's requests for withdrawal and/or retraction are generally complied with. While there have been cases of candidates taking legal action, to date the Court of Disputed Returns has not declared an election void on the grounds of misleading advertising.²²⁷
- 2.27 The Australia Institute also highlighted the *Electoral Act 1992* (ACT), which they noted is similar to South Australia's Act. In both jurisdictions, the Electoral Commissioner has the power to decide if an electoral advertisement is inaccurate or misleading and the power to request, but not compel, an advertisement to be withdrawn or retracted. South Australia's Electoral Commission receives legal

²²³ *Electoral Act 1985* (SA), [s 113](#).

²²⁴ Professor Emerita Anne Twomey, [Transcript of evidence](#), 17 May 2024, p 17.

²²⁵ Electoral Commission South Australia, [Election report: 2022 South Australian state election and 2022 Bragg by-election](#), viewed 22 July 2024.

²²⁶ [Submission 33](#), pp 39-40 and *Electoral Act 1985* (SA), [s 107\(5\)](#).

²²⁷ [Submission 33](#), pp 39-40.

advice from the Crown Solicitor's Office to assist in making its determinations.²²⁸

- 2.28 As noted above, some inquiry participants supported elements of this framework for regulating truth in political advertising.²²⁹

Who would enforce truth in political advertising laws?

- 2.29 Under the legislation in other jurisdictions, electoral commissions perform the role of regulator of truth in political advertising. Some stakeholders had concerns about electoral commissions taking on this role (discussed at paragraph 2.44), while others argued that they are well placed to do so.
- 2.30 The Australia Institute stated that electoral commissions are 'trusted, non-partisan, familiar with electoral processes and used to ramping up during election periods' with South Australia's Electoral Commission having 'successfully handled misleading advertising complaints for 27 years'. The Institute noted that other options for a regulator could include a separate branch within the Electoral Commission, a consumer affairs regulator, or setting up a separate organisation to act as regulator.²³⁰
- 2.31 Ms Debra Smith, Deputy Chair of the Law Society's Public Law Committee said that care is needed to ensure that the Electoral Commission is not 'unduly burdened or distracted from its core functions, or exposed to the risk of any perception that it is not impartial'.²³¹
- 2.32 The Greens NSW broadly supported the South Australian model, but recommended that an election tribunal made up of members of the public and legal professionals be created and given the power to determine the truth of public statements and impose penalties.²³² They argued that matters should be referred to an independent election tribunal that would make quick judgments about the truth of statements when elections are imminent; make public announcements about the inaccuracy of published statements before an election; and impose appropriate penalties.²³³

Adoption of truth in political advertising laws in other jurisdictions

- 2.33 Inquiry participants noted that the Federal Joint Standing Committee on Electoral Matters and Victoria's Electoral Matters Committee have recommended truth in political advertising laws consistent with the South Australian model be introduced at the federal level and in Victoria.²³⁴ Legislation to implement these

²²⁸ [Submission 33](#), pp 39-40.

²²⁹ [Submission 33](#), pp 40-41; [Submission 27](#), p 10 and [Submission 32](#), p 12.

²³⁰ [Submission 33](#), pp 40-41.

²³¹ Ms Smith, [Evidence](#), 12 April 2024, p 40.

²³² [Submission 27](#), p 10.

²³³ [Submission 27](#), p 10.

²³⁴ [Submission 33](#), pp 38, 43 and [Submission 32](#), p 12. See Parliament of Australia, Joint Standing Committee on Electoral Matters, [Conduct of the 2022 federal election and other matters](#), Interim report, June 2023, pp xiv, 105-107; Parliament of Victoria, Electoral Matters Committee, [Inquiry into the impact of social media on Victorian elections and Victoria's electoral administration](#), 2021, pp xxiv, 114-124, viewed 17 July 2024 and Victoria, and [The conduct of the 2022 Victorian state election, volume 1: key reforms](#), 2024, pp 47-48, viewed 1 August 2024.

recommendations has not been introduced.

- 2.34 The Law Society of NSW noted that 'while harmony with any Commonwealth regime is desirable, NSW should not be deterred from proceeding with its own legislation as a priority'.²³⁵

Truth in political advertising laws would not be effective

Summary

While truth in political advertising laws are one option to address misinformation and disinformation during election campaigns, in practice such laws would not provide a workable solution. The laws would have limited application as they would not apply to many types of content, and would therefore be limited in their effectiveness. It would also be difficult to regulate and enforce limits on political advertising, particularly in light of the constitutionally implied freedom of political communication.

Finding 4

Truth in political advertising laws would be difficult to implement and would not be an effective way to address misinformation and disinformation relating to election campaigns.

- 2.35 While some inquiry participants supported truth in political advertising laws, the Committee heard that the laws would be difficult to implement and would not be effective in addressing misinformation and disinformation about elections. Stakeholders argued that regulating truth in political advertising would have a number of risks, including hindering freedom of speech (including the constitutional right to freedom of political communication), and amplifying or giving a platform to false and misleading statements, instead of effectively deterring them. Other challenges include questions around who should regulate the laws, and what appropriate and effective penalties would be.

Many types of communication would not be covered

- 2.36 Inquiry participants told us that truth in political advertising laws would not capture many types of communication. Emerita Professor Anne Twomey noted that truth in political advertising laws can only address verifiable statements of fact and would not capture much of the content generated during election campaigns such as unprovable assertions and opinions.²³⁶
- 2.37 Professor Twomey gave examples of communication during election campaigns that would not, or should not, be covered by truth in political advertising laws:
- Opinions – many politicians and parties will offer opinions about their opponents, for example, that party Y is a better economic manager or politician Z is untrustworthy. As opinions are the views of those who offer

²³⁵ [Submission 29](#), p 2.

²³⁶ [Submission 8](#), p 1.

them, they cannot be verified as true or false.²³⁷

- Predictions – there may be claims that party X will or will not ‘stop the boats’, or interest rates will be higher under party Y. These are predictions and no one can know whether they will come true, especially as circumstances affecting the outcome can change. Many would regard these as exaggerated party political claims that are not intended to be taken literally.²³⁸
- Promises – campaigns are about promises to act in a certain way in the future. When a promise is made, the candidate and their party most likely intend to implement it. However, it is not always possible to give effect to a promise due to legal or constitutional limits, or because circumstances have changed. Breaking a promise in this case does not mean that it was a ‘lie’. It would not be wise to require politicians to implement promises in changed future conditions, or penalise them for not doing so, especially if implementing a promise would be irresponsible and not in the public interest.²³⁹

2.38 These restrictions on the types of communication that can be covered by a truth in political advertising law would limit the effectiveness of a truth in political advertising law.

Only paid advertising would be captured

2.39 The Committee heard that content such as social media commentary and statements are not paid advertising and would therefore not be captured by truth in political advertising laws. This would further limit the effectiveness of such laws, given the increasing prevalence of such content in election campaigns.

2.40 Professor Anne Twomey commented on the ambiguity of what is defined as advertising. Professor Twomey noted that paid advertising on social media is likely to fall within the concept of advertising, but material that a member posts on their Instagram or X account would not. It is also unclear whether posts that are boosted or made more visible on social media for a fee can be classed as an advertisement. Speeches and excerpts of speeches posted on social media may also fall outside the definition, as they are not paid advertising.²⁴⁰

2.41 Professor Twomey observed that a political party could easily spread inaccurate and misleading claims outside of political advertising, for example through media reporting of statements in speeches or press conferences, or through social media. She stated that ‘professionally organised political parties would be unlikely to be caught by such a law’.²⁴¹

Penalties and enforcement would be problematic

2.42 Inquiry participants also raised issues around enforcement and penalties for truth

²³⁷ [Submission 8](#), p 2.

²³⁸ [Submission 8](#), p 2.

²³⁹ [Submission 8](#), p 2.

²⁴⁰ Professor Emerita Twomey, [Evidence](#), 17 May 2024, p 19.

²⁴¹ [Submission 8](#), p 4.

in political advertising laws, including who would enforce the laws and how, and the potential for a criminal offence to be unconstitutional while lighter penalties would be ineffective.

Concerns about NSW Electoral Commission being arbiter of truth in political advertising

- 2.43 We heard that the suggestion that the NSWEC should make determinations about the truth of statements in political advertising would raise difficulties. While proponents of truth in political advertising laws argued that the Electoral Commission would be best placed to enforce such laws (see paragraph 2.30 above), this was a significant concern for other stakeholders, including the NSWEC themselves.
- 2.44 The NSWEC stated that if a law on truth in political advertising was introduced, 'no functions should be conferred on the Electoral Commissioner or the Electoral Commission without a clear understanding of the potential significant risks and impacts for the administration of elections in New South Wales'.²⁴² The Commission identified the following risks:
- The role would be materially different to the Commission's other roles, and is likely to require intense resources during election periods, creating inefficiencies and possibly risking the successful administration of the election. Even if funding were increased, the Commissioner and senior staff would be required to focus on complaints about truth in political advertising, when they should be administering and regulating the election. This may compromise the proper conduct of the election.²⁴³
 - Focusing on complaints about the truth of statements made by political adversaries would risk compromising public trust in the Electoral Commission's political neutrality, which is critical to maintaining confidence in the electoral system.²⁴⁴
 - Making rulings that may impact the electorate's perception or opinion of a political participant and the success or otherwise of an election campaign, is not compatible with the need for those who administer electoral processes to be, and be seen to be, completely independent and politically neutral.²⁴⁵
 - Candidates and parties (and their supporters) are likely to disagree with a determination that they have made an untruthful statement. Adverse comments and accusations about the exercise of 'arbiter' functions and published rulings could open the Electoral Commissioner and Commission to perceptions of bias against political participants.²⁴⁶
 - Eroding trust in the agency to impartially conduct elections could extend to all areas of its operation, if parties and members of the public who disagree

²⁴² [Submission 24](#), p 9.

²⁴³ [Submission 24](#), p 9 and [Answers to supplementary questions on notice](#), NSW Electoral Commission (NSWEC), p 10.

²⁴⁴ [Submission 24](#), p 9 and [Answers to supplementary questions on notice](#), NSWEC, p 9.

²⁴⁵ [Answers to supplementary questions on notice](#), NSWEC, p 9.

²⁴⁶ [Answers to supplementary questions on notice](#), NSWEC, p 9.

with decisions on truth in political advertising have to engage with the Electoral Commission during the electoral process.²⁴⁷

- 2.45 These concerns were echoed by other stakeholders. Professor Twomey noted that electoral commissions rely on bipartisan support to operate effectively and must ensure they are not perceived as biased. Further, electoral commissions may not be equipped to make assessments about the truth of political claims, or do so in a procedurally fair way, as it is not part of their usual business.²⁴⁸ Professor Twomey stated that electoral commissions would view the role as politicising and distracting from their role of running elections.²⁴⁹
- 2.46 The ICAC submitted that a careful approach is needed in considering where powers to regulate political advertising are housed to avoid 'perceptions of partiality or any conflicting duties, roles, functions or responsibilities'. The ICAC noted that members of the public could perceive that an electoral commission has unduly focused on monitoring electoral statements or is favouring the interests of one political party over another, at the expense of its duty to administer the electoral process impartially.²⁵⁰
- 2.47 The Liberal Party's NSW Division agreed that 'the power to determine whether statements in political advertising are factual or not should not rest in the hands of the Electoral Commissioner or any other unelected official'. The Liberal Party said that administering such legislation would distract from the Commissioner's main responsibilities.²⁵¹
- 2.48 Inquiry participants noted that electoral commissions in various jurisdictions have commented on their role in misinformation and disinformation, and political advertising. The ICAC and Liberal Party referred to comments by the Australian and South Australian electoral commissions, which indicated that involving electoral commissions in regulation in these areas runs counter to the principles of neutrality and non-partisanship, and endangers their perceived independence.²⁵²

Alternative options for regulating truth in political advertising

- 2.49 Inquiry participants discussed alternative options for a regulator of truth in political advertising. The Australia Institute suggested a dedicated body could be set up for this purpose.²⁵³ However, Professor Anne Twomey noted that such a body would not be efficient, as complaints are likely to arise mainly during election campaigns for a short period every four years.²⁵⁴
- 2.50 The Committee heard that courts could make determinations about truth in

²⁴⁷ [Answers to supplementary questions on notice](#), NSWEC, p 9.

²⁴⁸ [Submission 8](#), p 4.

²⁴⁹ Professor Emerita Twomey, [Evidence](#), 17 May 2024, p 17.

²⁵⁰ [Submission 14](#), pp 10-11.

²⁵¹ [Submission 31](#), Liberal Party of Australia, NSW Division, p 16.

²⁵² Mr Richard Shields, State Director, Liberal Party of Australia, NSW Division, [Transcript of evidence](#), 17 May 2024, p 38 and [Submission 14](#), pp 10-11.

²⁵³ [Additional information](#), Australia Institute, pp 5-6.

²⁵⁴ [Submission 8](#), p 5.

political advertising, but the court system would limit the law's effectiveness. Professor Anne Twomey noted that court proceedings take too long to be an effective response to misleading advertisements during an election campaign. Parties could seek interim injunctions, with full proceedings to be held after the election. However, this could result in parties trying to take down opponents' advertisements and tying up finances and attention on legal proceedings during an election campaign.²⁵⁵

- 2.51 Professor Twomey also observed that caps on campaign expenditure have been successful in limiting the costs of campaigns. These caps could be undermined under a system where 'we end up all trying to knock each other's advertisements out during an election campaign'.²⁵⁶

Penalties

- 2.52 Inquiry participants commented on the challenge of determining penalties, and who would be penalised for breaching truth in political advertising laws. Professor Anne Twomey noted that the question of what penalties should apply and who should be penalised is a difficult area. She noted that the risk of imprisonment may be a more effective deterrent, but it raises the question of who would be subject to the penalty. The person who authorises an advertisement is usually a party official, not a politician or party leader, and it may be hard to fill these positions given the potential risks. On the other hand, volunteers who distribute advertisements may not be aware of their content and whether they are true or not.²⁵⁷
- 2.53 We heard that the severity of the penalty for an offence is also problematic. Penalties need to be severe enough to deter breaches but Professor Twomey noted that if the penalty is more severe, a court will be more likely to read the provision down or find that it does not meet the proportionality requirement required by the implied freedom of political communication (discussed further below).²⁵⁸
- 2.54 On the other hand, inquiry participants noted that fines for breaching truth in political advertising laws may be viewed as the cost of doing business. Professor Twomey relayed a case where a person who was caught by the law stated that the publicity of the legal proceedings significantly increased the reach of the advertisement. Professor Twomey said that paying a \$5,000 fine following a court case about an advertisement could achieve the aim of misleading the public even more effectively, as a result of the litigation.²⁵⁹
- 2.55 This illustrates the difficulty of determining workable penalties for truth in political advertising laws.

²⁵⁵ [Submission 8](#), p 5 and Professor Emerita Twomey, [Evidence](#), 17 May 2024, p 17.

²⁵⁶ Professor Emerita Twomey, [Evidence](#), 17 May 2024, p 18.

²⁵⁷ [Submission 8](#), p 5.

²⁵⁸ [Submission 8](#), p 5.

²⁵⁹ Professor Emerita Twomey, [Evidence](#), 17 May 2024, p 17.

Potential to breach implied freedom of political communication

- 2.56 Professor Twomey observed that political advertising is a core part of the constitutionally implied freedom of political communication, as it is a key way to communicate with electors and influence their decision on how to vote. This means that limits on political advertising are vulnerable to challenge as a breach of the implied freedom of political communication. While such laws are likely to be considered to have a legitimate purpose – that of stopping voters from being misled – they would need to provide defences to assist with issues of proportionality and constitutional validity. Essentially, attempts to improve the law's validity will weaken it, while a stronger law may be unconstitutional.²⁶⁰
- 2.57 Professor Twomey referred to a challenge to the South Australian truth in political advertising law, to illustrate how defences limit the law's effectiveness:
- ... in *Cameron v Becker* (1995) 64 SASR 238, the South Australian Supreme Court noted that s 113 was restricted to statements of fact, not opinion or comment, only applied to electoral advertisements, not speeches or other statements, and that it did not penalise those who published inaccurate and misleading statements of fact under an honest and reasonable mistake of fact, relying on a common law defence. All these limitations on the offence, which were necessary to support its validity, also limit its effectiveness ...²⁶¹
- 2.58 However, the NSW Council for Civil Liberties argued that while a law restricting political advertising would have to be drafted carefully, the task is not so unachievable that it is not worth attempting. The Council for Civil Liberties argued that the implied freedom of political communication would not protect communications that are false or unreasoned and that the aim of preventing electors from being misled at elections is a legitimate aim 'compatible with the maintenance of the constitutionally prescribed system of representative and responsible government'.²⁶²

Gaps and unintended consequences of the law

- 2.59 Inquiry participants also pointed to possible unintended consequences with the laws. Professor Twomey noted that, if the regulator finds that an advertisement did not breach the law, there may be claims that the advertisement has been found to be accurate.²⁶³ Mr Dominic Ofner, General Secretary of NSW Labor, told the Committee that 'if such a complaint is dismissed, the people being complained about can then point to the endorsement of the independent umpire—presumably the Electoral Commissioner—to say that what is being asserted is accurate. I think that's an unintended consequence that we should be mindful of'.²⁶⁴
- 2.60 A further complexity raised during the inquiry would be how to similarly regulate material in other languages and international media. Mr Peter Doukas, Chair of the Ethnic Communities Council of NSW, observed that there is a strong and

²⁶⁰ Professor Emerita Twomey, [Evidence](#), 17 May 2024, pp 17-18 and [Submission 8](#), p 6.

²⁶¹ [Submission 8](#), pp 6-7.

²⁶² [Answers to questions on notice](#), NSW Council for Civil Liberties, p 2.

²⁶³ [Submission 8](#), p 4.

²⁶⁴ Mr Dominic Ofner, General Secretary, NSW Labor, [Transcript of evidence](#), 12 April 2024, p 4.

diverse multicultural media network in Australia which is influenced by international media in language. The different types of multicultural media that are available makes it difficult to regulate the truthfulness of messaging. Mr Doukas also noted that practical questions arise, including who controls translations, the existence of regional languages and the potential for mistranslations.²⁶⁵

Challenges with South Australia's truth in political advertising laws

- 2.61 While some inquiry participants supported truth in political advertising laws operating in South Australia (see paragraph 2.19 above), others argued that the laws are not effective and are easy to avoid. Professor Anne Twomey said that for someone who is deliberately seeking to send out misinformation 'it's child's play to get around it'.²⁶⁶
- 2.62 Professor Twomey noted that laws like South Australia's truth in political advertising law are limited to purported statements of fact in an advertisement. Political parties can avoid this type of law by making assertions in speeches, social media posts, robocalls and texts rather than in advertisements. Statements can also be reframed as opinions, predictions or questions instead of an assertion of fact.²⁶⁷
- 2.63 Professor Twomey also noted that penalties under the South Australian legislation are low – a fine of \$5,000 for a natural person and \$25,000 for a body corporate.²⁶⁸
- 2.64 The Committee notes that the South Australia Electoral Commission outlined the following challenges with the legislation in its report on the 2022 state election:
- Complainants must show that a statement is inaccurate and misleading. The SA Electoral Commission cannot materially investigate matters to make determinations and relies on information from complainants. Even though an online form with instructions has been introduced, before the 2022 election a number of complainants either failed to give enough information, or to state what they alleged to be inaccurate and misleading and give evidence to support this. This meant the Commission had to follow up with complainants to further investigate complaints.
 - Another obstacle to quick resolution of alleged breaches of the law is the need to seek comment from the person or organisation about who the complaint has been made. This requires seeking more information from the complainant, which causes delays that are beyond the Commission's control.
 - Matters that involve a request to cease publication or publish a retraction can be delayed if the respondent disputes the request. This is becoming more common and in several cases the Commission wrote to a respondent a number of times. In some cases, this delayed the publication of a retraction

²⁶⁵ Mr Peter Doukas, Chair, Ethnic Communities' Council of NSW, [Transcript of evidence](#), 12 April 2024, pp 28-29.

²⁶⁶ Professor Emerita Twomey, [Evidence](#), 17 May 2024, p 18.

²⁶⁷ Professor Emerita Twomey, [Evidence](#), 17 May 2024, p 17 and [Submission 8](#), p 3.

²⁶⁸ [Submission 8](#), p 3.

by several days and frustrated complainants.

- There have been challenges with what is considered to be an electoral advertisement, especially in relation to social media. The legislation does not define 'advertisement' and different dictionary definitions are being presented to argue whether or not material is an advertisement.²⁶⁹

2.65 The Committee has outlined why truth in political advertising laws would not be effective in combatting misinformation and disinformation about electoral processes. In the section below we discuss ways to strengthen the Electoral Commission's ability to act against misinformation and disinformation.

Measures to respond to misinformation and disinformation

Summary

The NSW Government should consider ways to increase the NSW Electoral Commission's ability to take action against misinformation and disinformation about electoral processes during election campaigns. The Government should also consider increasing penalties for offences related to non-complying electoral material under the *Electoral Act 2017*.

Boosting the Electoral Commission's capacity to act against misinformation and disinformation

Recommendation 25

That the NSW Government considers measures to strengthen the NSW Electoral Commission's capacity to take action against misinformation and disinformation about electoral processes during election campaigns.

2.66 The Committee is recommending that the Government considers measures to enable the NSWEC to take stronger action against misinformation and disinformation about electoral processes. While the Commission can take some action in such cases, the Commission's capacity to address potential threats to the integrity of elections should be strengthened.

2.67 The increase in community concern about misinformation and disinformation means that it is important to step up efforts to combat it effectively. Given the evidence the Committee heard about the limited effectiveness of truth in political advertising laws, other ways to address misinformation need to be explored. This may include extra powers for the Electoral Commission, and more resources to allow it to respond to a potential increase in misinformation about electoral processes during future election campaigns. The Committee supports strengthening proven ways to combat misinformation about electoral processes, rather than introducing laws that are unlikely to be effective.

NSW Electoral Commission's strategies to address misinformation and disinformation

2.68 The Committee notes the Electoral Commission's work to combat misinformation and disinformation before the 2023 election. The Committee supports initiatives

²⁶⁹ Electoral Commission South Australia, [Election report: 2022 South Australian state election and 2022 Bragg by-election](#), viewed 22 July 2024.

that seek to educate and inform voters about misinformation and provide them with accurate information about electoral processes.

- 2.69 The Commission used a number of strategies to address online misinformation and disinformation created to disrupt electoral processes. It created an online Disinformation Register to track and rebut significant false and misleading statements about electoral processes. Members of the public and election participants could report possible disinformation and misinformation about electoral processes through the NSWEC's website. Reports were then assessed for inclusion on the Register.²⁷⁰
- 2.70 The Commission also ran a 'Stop and consider' campaign, encouraging voters to consider information that may have influenced their vote. Voters were given information to help assess potential mis and disinformation, encouraging them to consider three aspects of election-related information they received on any communication channel: reliability, currency, and safety.²⁷¹
- 2.71 The campaign ran from February to April 2023 on digital and print media. It included translated digital and print advertising in Cantonese, Vietnamese, Mandarin, Arabic, Greek, Italian and Korean. Animated videos, social media tiles, print advertising and supporting information were published on the NSWEC's website. Social media advertising was also published on Meta and Weibo.²⁷²
- 2.72 Before the 2023 election, the NSWEC also engaged with online platforms to agree on processes for removing material that breached NSW electoral legislation, or that may have adversely affected the successful delivery of an election and breached the platform's terms on personal safety or mis/disinformation about elections. While it is an offence to publish non-complying electoral material, the Commission does not have the power to order or direct an online platform to take down published material.²⁷³
- 2.73 The Acting Electoral Commissioner said there were some instances where disinformation was created or amplified by candidates before the election. In those cases the Commission contacted the relevant social media organisations to request removal of the content. All requests to remove footage of election officials with false accusations of wrongdoing were acted on within 24 hours, and the content was removed in all but one case. In that case a warning was added to the post stating that it included false information and linking to a fact-checking article.²⁷⁴
- 2.74 The Committee heard that electoral commissions should focus on continuing these approaches to combat misinformation about elections. The NSWEC stated

²⁷⁰ NSW Electoral Commission (NSWEC), [Report on the administration of the 2023 NSW state election](#), pp 25-26. Entries on the Register provided a summary of the disinformation and the relevant correct information; the action taken to counter the false claim; and the date that claim was detected and where it was seen. The published version of the register did not include the disinformation itself, to avoid amplifying it.

²⁷¹ NSWEC, [Report on the administration of the 2023 NSW state election](#), pp 26-27.

²⁷² NSWEC, [Report on the administration of the 2023 NSW state election](#), pp 26-27.

²⁷³ NSWEC, [Report on the administration of the 2023 NSW state election](#), p 27 and [Submission 24](#), p 10.

²⁷⁴ Dr Matthew Phillips, Acting Electoral Commissioner for New South Wales, NSW Electoral Commission, [Transcript of evidence](#), 17 May 2024, pp 42-43.

that 'the focus and efforts of electoral commissions should be on using all of the tools at their disposal, including social media and disinformation registers, to combat misinformation and disinformation about electoral processes and the act of voting.'²⁷⁵

- 2.75 Professor Anne Twomey observed that engaging with social media organisations to remove incorrect material is a more effective way to deal with misleading statements about electoral processes than truth in political advertising laws. She noted that both the NSW and federal electoral commissions are effective at monitoring misinformation about electoral processes on social media and requesting and achieving corrections.²⁷⁶
- 2.76 Professor Twomey argued that cooperative codes and communication can be more successful than legal means of compelling social media organisations to remove content, particularly as social media organisations are global entities.²⁷⁷
- 2.77 The Committee also heard that educating voters to improve awareness of the electoral system and processes can be a useful strategy against misinformation. Ms Lydia Shelly, President of the NSW Council for Civil Liberties spoke of the 'overarching principle that there needs to be more education in the community about what democratic processes look like—what their rights and obligations are as citizens in a country in order to participate meaningfully'. Ms Shelly said that better education would 'plug some of the gaps or concerns when we're talking about how the electoral process runs out into a community, including CALD communities'.²⁷⁸

Increasing penalties for non-complying electoral material

Recommendation 26

That the NSW Government considers increasing existing penalties under the *Electoral Act 2017* for offences relating to non-complying electoral material.

- 2.78 The Committee is also recommending that the Government considers increasing the penalties for offences under the Electoral Act for non-complying electoral material during election periods. Higher penalties may be more effective in deterring candidates and parties from creating or endorsing material that aims to mislead voters. The Committee notes that penalties in New South Wales are lower than penalties for similar offences in some other jurisdictions.
- 2.79 The Electoral Act contains rules for the content, type and positioning of electoral material during election periods, and offences for distributing electoral material that breaches those rules.²⁷⁹

²⁷⁵ [Answers to supplementary questions on notice](#), NSWEC, p 10.

²⁷⁶ Professor Emerita Twomey, [Evidence](#), 17 May 2024, p 20.

²⁷⁷ Professor Emerita Twomey, [Evidence](#), 17 May 2024, p 20.

²⁷⁸ Ms Lydia Shelly, President, NSW Council for Civil Liberties, [Transcript of evidence](#), 12 April 2024, p 33.

²⁷⁹ Electoral material means anything (including a how-to vote card, poster or advertisement) containing electoral matter, both in a tangible or an electronic form: NSWEC, [Report on the administration of the 2023 NSW state election](#), pp 37-38 and *Electoral Act 2017*, [s 180](#), [s 183](#).

- 2.80 Electoral material breaches the Act if it contains:
- Voting directions, or incorrect or untrue statements, that intend to mislead or improperly interfere with the casting of electors' votes.
 - Incorrect or misleading information about whether or not a person is a candidate for the election, or for a particular electoral district, is a member of a registered party or group, or is nominated or endorsed by a registered party.
 - A registered party's name (or an abbreviation, acronym or derivative of the name) in a way that is intended or likely to mislead any elector.
 - The word 'independent' and a registered party's name, or an abbreviation or acronym or derivative of the name, in a way that suggests or indicates an affiliation with that party.
 - Voting directions that breach the Act, for example, to leave the ballot paper blank, or repeat or leave out a number when indicating preferences.²⁸⁰
- 2.81 The maximum penalty for the offence of printing, publishing or distributing non-complying electoral material is 100 penalty units for a corporation, or 20 penalty units or imprisonment for 6 months, or both, for any other case.²⁸¹
- 2.82 The Committee heard that penalties under the Act could be increased. Professor Anne Twomey said that the existing penalty for misleading statements about electoral processes is low.²⁸²
- 2.83 The Liberal Party's NSW Division supported the existing provisions relating to non-complying electoral material, including misleading information that aims to undermine confidence in the election process, and strengthening the penalties. The Liberal Party observed that the previous federal government increased the penalty for committing the equivalent offence under section 329 of the *Commonwealth Electoral Act 1918* (Cth) from six months to three years. The Liberal Party suggested the penalty for committing such an offence in New South Wales be aligned with the penalty under the Commonwealth law.²⁸³
- 2.84 The Committee notes that the penalty for a similar offence under Victoria's Electoral Act is 60 penalty units or 6 months imprisonment in the case of a natural person; and 300 penalty units in the case of a body corporate.²⁸⁴ The penalty for misleading voters under Queensland's Electoral Act is 40 penalty units

²⁸⁰ *Electoral Act 2017*, [s 180](#). It's also a breach to produce material that could result in an elector casting an informal vote, state or imply that voting is not compulsory, and to mislead an elector that material is an official communication from the Electoral Commissioner or the Electoral Commission.

²⁸¹ *Electoral Act 2017*, [s 180](#), [s 183](#). It is also an offence to publicly display or permit or cause to be publicly displayed, a poster containing or consisting of electoral material that contravenes the Act: [s 184](#).

²⁸² Professor Emerita Twomey, [Evidence](#), 17 May 2024, p 20.

²⁸³ [Submission 31](#), p 16.

²⁸⁴ *Electoral Act 2002* (Vic), [s 84](#).

for a person.²⁸⁵

Commonwealth Misinformation and Disinformation Bill and truth in political advertising laws

- 2.85 In considering truth in political advertising laws, the Committee was required to take into account any implications of the Commonwealth's Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023 (the Bill).
- 2.86 The Committee heard that the proposed Commonwealth law would differ from truth in political advertising laws. However, we also received evidence that the practical implementation of the Bill by digital platform providers is likely to capture political advertisements. The Committee will monitor the progress of the Bill and its impact on political and electoral content on digital platforms, should it be enacted. The Committee will also follow the progress of any truth in political advertising legislation at the Commonwealth level and in other jurisdictions.

Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill

- 2.87 The Federal Government released a draft version of the Bill for public consultation in June 2023.²⁸⁶ Following consultation on the draft Bill, the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024 was introduced into the Federal Parliament on 12 September 2024.²⁸⁷ Evidence received during the inquiry, which is outlined below, was based on the draft version of the Bill.
- 2.88 The Bill proposes to increase the Australian Communications and Media Authority's (ACMA) powers over digital platforms to deal with 'false, misleading or deceptive' content, by enabling it to:
- Gather information from digital platform providers or require them to keep certain records relating to misinformation²⁸⁸ and disinformation.²⁸⁹

²⁸⁵ *Electoral Act 1992* (Qld), s 185.

²⁸⁶ Parliament of the Commonwealth of Australia, [Exposure Draft Communications Legislation Amendment \(Combatting Misinformation and Disinformation\) Bill 2023](#), viewed 5 September 2024.

²⁸⁷ Parliament of the Commonwealth of Australia, [Communications Legislation Amendment \(Combatting Misinformation and Disinformation\) Bill 2024](#), viewed 1 October 2024

²⁸⁸ **Misinformation** is defined as content disseminated using a digital service that is false, misleading or deceptive; provided on the digital service to one or more end-users in Australia; and the provision of which is reasonably likely to cause or contribute to serious harm. Some types of content are excluded: content produced in good faith for entertainment, parody or satire; professional news content; content authorised by the Australian Government, a state or territory government, or local government; and content produced by or for an accredited education provider. See Australian Government, Department of Infrastructure, Transport, Regional Development, Communications and the Arts, [Communications Legislation Amendment \(Combatting Misinformation and Disinformation\) Bill 2023–Fact sheet](#), p 3, viewed 5 September 2024.

²⁸⁹ **Disinformation** is defined as content that meets the criteria for misinformation; and is disseminated with intent to deceive, including through automated processes and foreign interference. This captures content that is purposefully or maliciously disseminated disinformation. See Australian Government, Department of Infrastructure, Transport, Regional Development, Communications and the Arts, [Communications Legislation Amendment \(Combatting Misinformation and Disinformation\) Bill 2023–Fact sheet](#), p 3, viewed 5 September 2024.

- Request industry to develop a code of practice for measures to combat misinformation and disinformation on digital platforms, which ACMA could register and enforce.
- Create and enforce an industry standard if a code of practice is considered to be ineffective in combatting misinformation and disinformation on digital platforms.²⁹⁰

2.89 A voluntary industry code of practice is already in place to protect against the spread of disinformation and misinformation on digital platforms. ACMA oversees the industry code and assesses its effectiveness. The Bill was developed in response to a 2021 ACMA recommendation that ACMA be provided with new powers to address misinformation and disinformation.²⁹¹

The Bill's interaction with truth in political advertising laws

2.90 Stakeholders commented on how the draft misinformation and disinformation Bill would differ from potential state truth in political advertising laws:

- Truth in political advertising laws would cover online and offline advertising. The Bill would cover content on digital platforms, but would not capture advertisements on radio, television, print media and other media.²⁹²
- ACMA would not have the power to request content or posts to be removed, while the regulator of truth in political advertising laws would be able to request the removal of specific advertisements and the courts could enforce this.²⁹³
- The Bill is limited to misinformation and disinformation in content that is false, misleading or deceptive and may cause harm, including to the integrity of democratic processes and government institutions. Truth in political advertising laws would cover political advertising that is misleading and inaccurate to a material extent.²⁹⁴
- Under the Bill, digital platforms would resolve combatting misinformation and disinformation in practice, while truth in political advertising laws would create a mechanism and remedies for identifying and correcting misleading political advertising.²⁹⁵ Digital platform providers will need to have systems to manage misinformation and disinformation, effectively requiring them to

²⁹⁰ The code and standard-making powers would not apply to authorised electoral and referendum content. The powers apply to digital platform services accessible in Australia including social media, search engines, instant messaging services (the content of private messages is out of scope), news aggregators and podcast services. Australian Government, Department of Infrastructure, Transport, Regional Development, Communications and the Arts, [Communications Legislation Amendment \(Combatting Misinformation and Disinformation\) Bill 2023–Fact sheet](#), pp 1-4, viewed 17 July 2024.

²⁹¹ Australian Government, Department of Infrastructure, Transport, Regional Development, Communications and the Arts, [Communications Legislation Amendment \(Combatting Misinformation and Disinformation\) Bill 2023–Fact sheet](#), p 3, and ACMA, [Online misinformation](#), viewed 19 July 2024.

²⁹² [Submission 16](#), pp 7-8 and [Submission 33](#), pp 43-44.

²⁹³ [Submission 33](#), pp 43-44.

²⁹⁴ [Submission 33](#), pp 43-44.

²⁹⁵ [Submission 33](#), pp 43-44.

assess the likelihood of potential harm. Providers may not be the best body to be making this assessment.²⁹⁶

- It is unclear how misinformation and disinformation would be dealt with under the Bill. For example, whether content would be removed or deprioritised in an algorithm, and whether the person who posted it would be penalised. Politicians, candidates or publishers (apart from digital service providers) who disseminate misinformation or disinformation would not be penalised.²⁹⁷

- 2.91 Inquiry participants also commented on the Bill's application to political advertising. The NSW Council for Civil Liberties submitted that the Bill will be insufficient to address truth in political advertising.²⁹⁸ The Australia Institute said that truth in political advertising laws would 'complement other misinformation regulation by creating a specific, direct remedy for a particularly dangerous class of misinformation – that of misleading political advertisements'.²⁹⁹
- 2.92 Emerita Professor Anne Twomey noted that government authorised advertisements, which sometimes contain party-political messaging, are excluded from the Bill. Also, ACMA's code and standard making powers will not apply to electoral and referendum content. Professor Twomey said this will mean that political parties and candidates may make an advertisement with false, misleading or deceptive information, and the codes and standards imposed by ACMA will not be able to address this 'unless it contains disinformation, and even then, not if it falls within advertising that requires an authorisation statement'.³⁰⁰
- 2.93 Professor Twomey noted that in practice digital platforms will use algorithms to sweep up categories of communications and exclude them or demote them, even if they are not covered by a code or standard, as this will be the most effective way to comply with the Bill. This means that political advertisements disseminated on digital platforms are likely to be affected, even if they are not directly targeted by the Bill.³⁰¹
- 2.94 The NSWEC said that the interrelationship between ACMA and electoral commissions for the administration of the draft Bill should be carefully considered, 'in the context of existing electoral laws on misleading and deceptive content'.³⁰²
- 2.95 The Commission stated that the Bill should aim to complement and support electoral commissions' relationships with online platforms, which have helped to address misinformation and disinformation during recent electoral events.³⁰³
- 2.96 In terms of interaction with the Bill, the Commission said that 'if truth in political

²⁹⁶ [Submission 16](#), pp 7-8.

²⁹⁷ [Submission 16](#), pp 7-8.

²⁹⁸ [Submission 16](#), pp 7-8.

²⁹⁹ [Submission 33](#), pp 43-44.

³⁰⁰ [Submission 8](#), p 7.

³⁰¹ [Submission 8](#), pp 7-8.

³⁰² [Submission 24](#), p 11.

³⁰³ [Submission 24](#), p 11.

advertising laws were introduced in New South Wales, any overlap with new Commonwealth laws should be carefully considered to avoid jurisdictional issues'.³⁰⁴

- 2.97 The Committee will follow the Bill's progress and monitor its impact on electoral content on digital platforms, if it is enacted.

³⁰⁴ [Submission 24](#), p 11.

Chapter Three – Prohibitions on political donations

Existing prohibitions on political donations should not be changed

Summary

There should be no change to the prohibited donor provisions in the *Electoral Funding Act 2018*. Complying with and enforcing existing donor prohibitions is complex and resource intensive and amendments would add to this burden. Additional categories of prohibited donors would not, on balance, effectively manage attempts to circumvent political donations and expenditure laws.

Some other strategies warrant further investigation. More consistency between jurisdictions in election funding and donation laws could reduce loopholes that allow some donors to get around these laws. Changes to the codes of conduct for members of Parliament may also help to improve politicians' understanding of conflicts of interest related to political donations.

Finding 5

While there is some support for extending the prohibited donor provisions in the *Electoral Funding Act 2018*, a change is not needed at this time.

- 3.1 The Committee considers that amending the *Electoral Funding Act 2018* to prohibit political donations from people and entities whose business relates to property development, and to address the risk of property developers making donations through shell companies, is not needed at this time.

Rationale for existing prohibited donor provisions

- 3.2 The Electoral Funding Act makes it unlawful for a prohibited donor to make a political donation, or to solicit another person to make a political donation. A person cannot make a political donation on behalf of a prohibited donor, or accept a political donation that was made by a prohibited donor, or by a person on behalf of a prohibited donor. Soliciting another person on behalf of a prohibited donor to make a political donation is also prohibited.³⁰⁵
- 3.3 Prohibited donors are defined in the Act as 'a property developer'; 'a tobacco industry business entity'; or 'a liquor or gambling industry business entity'. The definition also includes 'any industry representative organisation if the majority of its members are such prohibited donors'.³⁰⁶
- 3.4 The Independent Commission Against Corruption (ICAC) observed that the definition of prohibited donor does not cover:

³⁰⁵ *Electoral Funding Act 2018*, [s 52](#).

³⁰⁶ *Electoral Funding Act 2018*, [s 51](#), [s 53](#).

- Industries that are engaged by property developers, including subcontractors and consultants.
- Corporations that make development applications but are not designated 'property developers', for example, supermarkets and other retail businesses, and businesses that make planning applications in relation to properties where they conduct their business.
- Family members of property developers.³⁰⁷

3.5 The NSW Council for Civil Liberties explained that the rationale for the prohibited donor provisions is that property developers' commercial interests are directly affected by the exercise of public power through development applications. Allowing developers to make political donations can jeopardise the integrity of development decisions.³⁰⁸

3.6 The High Court has upheld the validity of the prohibition on property developers making political donations. The Court referred to corruption involving property developers being the subject of eight adverse reports by the ICAC and other bodies from 1990 to 2015.³⁰⁹

3.7 The ICAC noted that Operations Cyrus, Spicer, and Aero considered donations by property developers and four separate investigations have examined political donations in the local government sector.³¹⁰

3.8 Earlier ICAC investigations revealed schemes to circumvent donations and disclosure laws through intermediaries and third parties. The Electoral Funding Act has since been amended to address these issues by preventing donations being made through third parties, tightening disclosure requirements and imposing caps on expenditure and donations.³¹¹

3.9 The ICAC noted that it has also identified intermediaries who are not covered by recent legislative changes because they are not third-party campaigners, lobbyists or public officials. Recent investigations have highlighted cases of intermediaries inducing public officials to favour developers' interests, though not through political donations.³¹²

Political parties' compliance with existing provisions

3.10 We heard that complying with the prohibited donor provisions is resource intensive for political parties. The Liberal Party noted that compliance with the existing prohibited donor list is already onerous as political parties and candidates spend considerable time and resources searching federal and local

³⁰⁷ [Submission 14](#), NSW Independent Commission Against Corruption (ICAC), p 3. The ICAC also notes that while property developers often establish holding companies or special purpose subsidiaries for legitimate business reasons, such as liability and risk prevention, not all entities incorporated for a particular development are within the meaning of section 53 in cases where the activity test has not been met.

³⁰⁸ [Submission 16](#), NSW Council for Civil Liberties, p 3.

³⁰⁹ [Submission 16](#), p 3 and [Submission 14](#), pp 2-3.

³¹⁰ [Submission 14](#), pp 1-2.

³¹¹ [Submission 14](#), pp 7-8.

³¹² [Submission 14](#), p 8.

government databases and websites to determine whether a potential donor is eligible to make a political donation.³¹³

- 3.11 Mr Joe Lundy, Registered Officer of the NSW Nationals also spoke about the significant administrative burden of identifying prohibited donors. He explained that the National Party uses a checklist to ensure someone is not a prohibited donor and a list of people who attend events to ensure donations are not accepted from prohibited donors.³¹⁴ The NSW Nationals and the Liberal Party referred to evidence to the Committee's inquiry into the 2019 election, proposing an online database of development applications to assist political parties' compliance with the prohibited donor provisions.³¹⁵

NSW Electoral Commission's enforcement of existing provisions

- 3.12 The NSW Electoral Commission (NSWEC) outlined how it mitigates the risk of prohibited donations being made and/or received through investigations and enforcement actions. The following approach is used:

- During compliance audits, donations that appear to be from a person or entity involved in the property/building industry, liquor or gambling industry, or tobacco industry are reviewed against open-source information about the person/entity. If it appears the entity could be involved in a prohibited industry, the matter is referred to an internal Investigations team for review and potential investigation.
- The Investigations team reviews allegations that a donor is a prohibited donor. Investigative powers may be used during these investigations.
- The Regulatory Education and Policy team develops resources for election participants about prohibited donors, including fact sheets and webinars.³¹⁶

- 3.13 If the NSWEC forms the view that a prohibited donor, including a close associate, has made a political donation, it may:

- Educate or issue a warning to the prohibited donor and/or the person or entity that accepted the political donation.
- Prosecute the prohibited donor and/or the person or entity that accepted the political donation. A court can impose a fine for the offence but the NSWEC cannot issue a penalty notice. (The offence has a maximum penalty of 400 penalty units (\$44,000) or imprisonment for 2 years, or both.)
- Recover from the person or entity that accepted the donation an amount equal to the value of the donation or double that amount, if the person knew that it was unlawful.³¹⁷

³¹³ [Submission 31](#), Liberal Party of Australia, NSW Division, p 12.

³¹⁴ Mr Joe Lundy, Registered Officer, NSW Nationals, [Transcript of evidence](#), 12 April 2024, p 8.

³¹⁵ Mr Lundy, [Evidence](#), 12 April 2024, p 8 and [Submission 31](#), p 12.

³¹⁶ [Answers to supplementary questions](#), NSW Electoral Commission (NSWEC), p 8.

³¹⁷ [Answers to supplementary questions](#), NSWEC, p 9.

- 3.14 The NSWEC stated that there were few alleged unlawful donations by property developers before the 2023 state election. In the year ending June 2023, the Commission reviewed three matters involving allegations of prohibited donations by a property developer. However, the Commission noted that the number of allegations is not an indication of whether further limits on donations are needed.³¹⁸

Extending the prohibited donor provisions

Support for extending the prohibited donor provisions

- 3.15 There was some support for extending the prohibited donor provisions to include entities and individuals whose business relates to property development.³¹⁹
- 3.16 Some stakeholders argued that other groups, such as real estate agents and those representing mining interests, should also be prevented from making political donations. NSW Labor submitted that real estate agents should be added to the list of prohibited donors, as they share many financial incentives with property developers.³²⁰
- 3.17 The Greens NSW noted that 'the definition of a prohibited donor in the Electoral Funding Act includes property developers and tobacco, liquor and gambling business entities because of a perception of undue influence or corruption'. The Greens argued that, as the public has the same perception about mining interests, the prohibition should be widened to cover those who seek licences to explore or exploit mineral resources.³²¹

Unintended consequences

- 3.18 The Committee heard that if the current donor prohibitions were extended, a careful approach would be needed. The NSW Division of the Liberal Party stated that if more categories of individuals or businesses were prohibited from making political donations, the legislation needs to clearly define who is prohibited, and the NSWEC needs to provide clear guidance to electoral participants to assist with compliance.³²²
- 3.19 The NSW Division of the Liberal Party observed that proposing to ban groups associated with property developers would potentially involve businesses such as real estate agents, builders, plumbers, electricians, engineers, surveyors, town planners, delivery services, hardware stores, lawyers, accountants, and banks. The Liberal Party said that it is necessary to be mindful of all parties' compliance with the legislation when considering extending the definition of prohibited

³¹⁸ [Answers to supplementary questions](#), NSWEC, p 8. The number of donations under review increased after 1 July 2023, as more individuals were potentially captured by the definition of a prohibited donor through involvement with a registered club.

³¹⁹ [Submission 22](#), Public Service Association of NSW, p 1.

³²⁰ [Submission 17](#), NSW Labor, p 10.

³²¹ [Submission 27](#), The Greens NSW, p 13.

³²² [Submission 31](#), p 12.

donor.³²³

- 3.20 Similarly, the ICAC observed that extending the ban to cover entities and individuals whose businesses relate to property development could potentially capture a wide range of 'ancillary actors', including tradespeople, architects, banks/financiers/mortgage brokers, real estate agents, surveyors, planning consultants, engineers, lawyers and conveyancers. This would raise the possibility of unduly restricting the implied freedom of political communication under the Commonwealth Constitution.³²⁴
- 3.21 The Committee also heard that extending the current prohibited donor provisions could lead to unintended consequences. Mr Joe Lundy, Registered Officer of the NSW Nationals argued that widening the provisions would lead to significant unintended consequences, particularly for regional areas. As an example, Mr Lundy noted that the recent change to prevent registered clubs from donating to political parties and candidates has captured people who might be on the board of their local club. Mr Lundy suggested that this was an unintended consequence of that reform and that further reforms would result in more unintended consequences.³²⁵

Impact on compliance and enforcement

- 3.22 The Committee heard that the prohibited donor definitions are already complex, and the NSWEC would need more resources to enforce wider provisions. The NSWEC said that the definitions of various types of prohibited donors and their close associates are complicated and not every person or entity who is involved in property development or benefits financially from developing land will be considered a 'property developer' under the Electoral Funding Act. The NSWEC observed that it cannot audit every disclosed donation to confirm whether it was made by a prohibited donor, as this would be resource-intensive and inefficient.³²⁶
- 3.23 The NSWEC recommended precise descriptions of any new categories of prohibited donor to assist enforcement and duty holders' understanding of compliance obligations. The NSWEC observed that, as the definition of 'property developer' in the Electoral Funding Act is referred to in a clause of the Local Government Regulation, which requires candidates to declare whether they are a property developer, any changes to the definition would need to consider the impact on local government candidates.³²⁷
- 3.24 The NSWEC told the Committee that it would need more funding for compliance and enforcement if the prohibited donor provisions were changed. The Commission observed that detecting and investigating donations made on behalf

³²³ Mr Richard Shields, State Director, Liberal Party of Australia, NSW Division, [Transcript of evidence](#), 17 May 2024, p 38.

³²⁴ [Submission 14](#), p 3.

³²⁵ Mr Lundy, [Evidence](#), 12 April 2024, p 6.

³²⁶ [Answers to supplementary questions](#), NSWEC, p 8.

³²⁷ [Submission 24](#), NSW Electoral Commission, pp 6-7.

of or solicited by others can require significant resources.³²⁸

Property developers making donations through shell companies

- 3.25 Some inquiry participants supported amendments to address the risk of property developers making donations through shell companies.³²⁹
- 3.26 The NSW Division of the Liberal Party noted that shell companies have no significant assets or operations when they are incorporated. These companies can be set up domestically or offshore, and have no physical presence, employees or products. Their ownership structures can obscure beneficial ownership. While a shell company can have legitimate purposes, such as asset protection, confidentiality and tax planning, their use has drawn scrutiny due to potential misuse for illegal activities. Federal reforms have required companies to disclose beneficial owners, strengthened money laundering laws, and scrutiny of tax-related activities.³³⁰
- 3.27 The Council for Civil Liberties referred to evidence to an inquiry by the Legislative Council Standing Committee on State Development, indicating that property developers were using shell companies to conceal political donations in breach of the Electoral Funding Act. The NSW Government's response to the inquiry stated that the Act remains appropriate and makes this type of conduct unlawful. However, the Council for Civil Liberties argued that, as such unlawful donations could be made undetected, the legislation (or its administration) is not sufficient to deter or capture such behaviour.³³¹
- 3.28 The Council for Civil Liberties also observed that while there are legitimate business reasons for setting up shell companies, they are often used to conceal ownership. Using shell companies to make donations goes against the objects of the Electoral Funding Act, which include a transparent electoral funding, expenditure and disclosure scheme.³³²
- 3.29 The Council for Civil Liberties suggested that the Committee considers whether the ultimate beneficial owner of a shell company should be disclosed when those entities make political donations. (Beneficial owners are the person/s who ultimately own or control a company but may not be its legal owner.) The Council proposed that donations from other legal entities such as trusts and partnerships should disclose the entity's beneficial owner. This would improve transparency and discourage the use of shell companies to obscure donors' identities.³³³
- 3.30 The Council for Civil Liberties further suggested that political donations made by a shell company whose beneficial owner is a prohibited donor should be unlawful. While close associates of prohibited donors are prohibited from making donations, the Council argued that this does not adequately capture the range of

³²⁸ [Submission 24](#), p 8.

³²⁹ [Submission 22](#), p 1.

³³⁰ [Submission 31](#), pp 12-13.

³³¹ [Submission 16](#), p 4.

³³² [Submission 16](#), p 4.

³³³ [Submission 16](#), pp 4-5.

persons who may benefit from or control a company.³³⁴

- 3.31 However, the ICAC questioned whether further changes would effectively address the risk of developers making donations through shell companies. The ICAC noted that previous amendments to the Act have made it an offence to enter into or carry out a scheme to circumvent political donations or electoral expenditure requirements.³³⁵ As using an entity that has no active business purpose other than circumventing disclosure obligations is likely to breach this provision, the ICAC stated that further amendments in this regard may not be required.³³⁶
- 3.32 The Liberal Party's NSW Division said that it supported measures to close loopholes that can be exploited by prohibited donors to circumvent electoral funding and disclosures laws. However, the Liberal Party noted that it would be hard for political parties and candidates to conduct due diligence on shell companies, given that beneficial owners may not be obvious through publicly available ASIC searches. The Liberal Party said that in these circumstances, the recipient of a donation made by such a company should be exempt from any offence. Additionally, clear definitions of what constitutes a shell company would be needed, given there is no strict legal definition of such companies, and the NSWEC would need to provide clear guidance to all electoral participants to assist with compliance.³³⁷
- 3.33 The Committee heard that it is difficult to assess if donors would go to the trouble of using shell companies to make donations. The NSWEC noted that the Electoral Funding Act already contains a number of provisions to prevent property developers and donation recipients avoiding the ban on property developer donations by funnelling donations through third parties. Despite these provisions however, the Commission gave examples of scenarios where a company would be able to make a political donation, even if its owner was connected to property development or was a property developer.³³⁸

Other approaches to preventing breaches of donations laws

- 3.34 Stakeholders highlighted other ways to address breaches of donations laws, including ensuring that there are consistent laws around Australia, and focusing on improving politicians' conflicts of interest disclosures.

Disclosing conflicts of interest

- 3.35 The ICAC stated that it is not practical to keep adding further groups to the list of prohibited donors. The ICAC warned against over-reliance on prohibitions as integrity safeguards, noting that its investigations, Operation Aero and Spicer, have shown how prohibitions can be undermined.³³⁹ Instead, the Hon John Hatzistergos AM, Chief Commissioner of the ICAC, recommended that the issue

³³⁴ [Submission 16](#), p 5.

³³⁵ *Electoral Funding Act 2018*, [s 144](#). The maximum penalty for the offence is imprisonment for 10 years.

³³⁶ [Submission 14](#), pp 7-8.

³³⁷ [Submission 31](#), p 13.

³³⁸ [Submission 24](#), pp 7-8.

³³⁹ [Submission 14](#), p 3.

should be addressed as a conflict of interest, rather than by creating a long list of prohibited donors.³⁴⁰

- 3.36 The ICAC favoured an improved governance framework for conflicts of interest, which would capture political donations. The ICAC referred to the 'Model Code of Conduct' for local government, which requires councillors to disclose political donations from individuals with matters before a council as a conflict of interest, and recuse themselves from voting and discussing matters involving donors in certain circumstances.³⁴¹
- 3.37 The ICAC has previously recommended that mechanisms for disclosing and managing members' conflicts of interest be improved by providing clear and consistent information about what a conflict of interest is, and how it can be avoided, disclosed and managed. The ICAC has also recommended requiring continuous updating of registered interests. The ICAC has also noted the need for better ongoing professional education to raise awareness and promote an ethical culture, and more guidance and practical examples of how to avoid, resolve, disclose and manage a conflict of interest.³⁴²
- 3.38 The Committee notes that in early 2024 the Government released a draft Constitution (Disclosures by Members) Regulation, which would require members of Parliament to disclose more matters, including conflicts of interest. The draft regulation was referred to the Legislative Assembly's Standing Committee on Privilege and Ethics and the Legislative Council's Privileges Committee for inquiry.³⁴³ The Legislative Assembly's Privilege and Ethics Committee's report, tabled in August 2024, identified a number of issues with the draft regulation, including in relation to the clauses relating to conflicts of interest.³⁴⁴ The Legislative Council's Privileges Committee's report, tabled in September 2024, also raised issues with the conflicts of interest section of the regulation and proposed changes to address these issues.³⁴⁵

Consistent laws across jurisdictions

- 3.39 Inconsistency between jurisdictions was also identified as a barrier to effective political donations and expenditure laws. Inquiry participants expressed support for a consistent approach to election funding laws.³⁴⁶ The Committee heard that inconsistencies in donations and expenditure laws can create loopholes, with funds being moved between state and federal campaign funds to avoid donation

³⁴⁰ The Hon John Hatzistergos AM, Chief Commissioner, Independent Commission Against Corruption, [Transcript of evidence](#), 17 May 2024, p 1.

³⁴¹ [Submission 14](#), pp 3-4.

³⁴² [Submission 14](#), pp 4-5.

³⁴³ [Submission 14](#), pp 4-5; Legislative Assembly, Standing Committee on Privilege and Ethics, [Inquiry into Draft Constitution \(Disclosures by Members\) Regulation 2024 and](#) Legislative Council, [Privileges Committee, Inquiry into Draft Constitution \(Disclosures by Members\) Regulation 2024](#).

³⁴⁴ Legislative Assembly, Standing Committee on Privilege and Ethics, [Draft Constitution \(Disclosures by Members\) Regulation 2024](#), report 3/54, August 2024, pp 20-30.

³⁴⁵ Legislative Council, Privileges Committee, [Draft Constitution \(Disclosures by Members\) Regulation 2024](#), report 96, September 2024, pp 5-15.

³⁴⁶ Mr Dominic Ofner, General Secretary, NSW Labor, [Transcript of evidence](#), 12 April 2024, p 1; [Submission 27](#), p 13 and [Submission 14](#), pp 5-6.

caps and donor prohibitions in particular jurisdictions.³⁴⁷

- 3.40 The ICAC stated that it had heard evidence that 'accepting funds into the federal account of a major political party, which would otherwise be prohibited at the state level, is a known practice'.³⁴⁸

Committee inquiry into voter engagement, participation and confidence

- 3.41 In June 2024, the Committee resolved to conduct an inquiry into proposals to improve voter engagement, participation and confidence. As part of that inquiry the Committee will consider ways to strengthen the security and integrity of the electoral system, and improve systems for political donations, electoral funding and party governance.³⁴⁹
- 3.42 The financial and administrative burden on the NSWEC and on political parties has continued to increase as they seek to meet the obligations imposed by NSW legislation and the growing complexity of the IT landscape. In this next inquiry the Committee will further consider these issues and the thresholds that political parties should be required to meet in order to obtain additional funding.
- 3.43 To maintain confidence in the integrity of electoral processes, both the Commission and political parties are obliged to meet these challenges; in particular those posed by ever more sophisticated cyber infiltrations. This requires continual upgrading of IT infrastructure and staffing resources. The need to provide additional funding to both the Commission and political parties to meet these obligations will be examined further in the Committee's inquiry into voter engagement, participation and confidence.

³⁴⁷ [Submission 27](#), p 13 and Mr Hatzistergos, [Evidence](#), 17 May 2024, pp 1, 3.

³⁴⁸ [Submission 14](#), pp 5-6.

³⁴⁹ Legislative Assembly, Joint Standing Committee on Electoral Matters, [Terms of reference: Proposals to increase voter engagement, participation and confidence](#).

Appendix One – Terms of reference

Resolutions passed in the Legislative Assembly on Thursday 22 June 2023, Legislative Assembly Votes and Proceedings no 12, entry no 16, and Thursday 30 November 2023, Votes and Proceedings no 39, entry no 17.

Resolutions passed in the Legislative Council on Thursday 29 June 2023, Minutes of Proceedings no 15, entry no 23, and Thursday 30 November 2023, Minutes of Proceedings no 39, entry no 49.

That:

(2) The Committee inquire into and report upon such matters as may be referred to it by either House of the Parliament or a Minister that relate to:

(a) The following electoral laws:

(i) *Electoral Act 2017* (other than Part 3);

(ii) *Electoral Funding Act 2018*; and

(iii) Those provisions of the *Constitution Act 1902* that relate to the procedures for, and conduct of, elections for members of the Legislative Assembly and the Legislative Council (other than sections 27, 28 and 28A);

(b) The administration of and practices associated with the electoral laws described at (a).

(3) All matters that relate to (2) (a) and (b) above in respect of the 25 March 2023 State Election, shall stand referred to the Committee for any inquiry the Committee may wish to make, including:

(i) Whether other entities and individuals whose business relates to property development should be prohibited from making political donations.

(ii) Whether it is necessary to address the risk of property developers making political donations through shell companies.

(iii) Whether truth in political advertising laws for New South Wales state elections would enhance the integrity and transparency of the electoral system, taking into account any implications of the Commonwealth's Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023.

The Committee shall report on the outcome of any such inquiry within 18 months of the date of this resolution being agreed to by both Houses.

Appendix Two – Conduct of inquiry

Terms of reference

On 22 June 2023 and 29 June 2023, the Legislative Assembly and Legislative Council resolved to establish the Committee and referred an inquiry into the administration of the 2023 NSW state election to the Committee.

On 30 November 2023, the Legislative Assembly and Legislative Council resolved to add further terms of reference to the referral of the inquiry into the administration of the 2023 state election.

The Committee met on 11 December 2023 and resolved to conduct an inquiry as per the amended referral.

The terms of reference for the inquiry are at Appendix One.

Submissions

The Committee called for submissions and wrote to key stakeholders inviting them to make a submission. The closing date for submissions was 16 February 2024.

The Committee received 38 submissions from political parties and members of Parliament; third party campaigners; academics; advocacy groups and peak bodies; integrity bodies; election analysts; and private citizens.

A list of submissions is at Appendix Three.

Hearings

The Committee held two public hearings on 12 April 2024 and 17 May 2024. Thirty three witnesses appeared at the hearings. They included the Acting NSW Electoral Commissioner, Dr Matthew Phillips, and Commission staff; representatives of political parties; third party campaigners; academics; voter accessibility advocacy groups; and election analysts including Mr Antony Green.

A list of the witnesses who appeared at the hearings is at Appendix Four.

Appendix Three – Submissions

| No | Author |
|-----------|---|
| 1 | Confidential |
| 2 | Mr Chris Dahlitz |
| 3 | Confidential |
| 4 | Independent members of the Legislative Assembly |
| 5 | Mrs Sonia Powell |
| 6 | Mr Gareth Ward |
| 7 | Mr Gregory Briscoe-Hough |
| 8 | Professor Emerita Anne Twomey |
| 9 | Vision Australia |
| 10 | newDemocracy |
| 11 | Dr Vanessa Teague |
| 12 | Mr Ben Raue |
| 13 | Mr Michael Regan |
| 13a | Mr Michael Regan |
| 14 | NSW Independent Commission Against Corruption |
| 15 | Ethnic Communities' Council of NSW |
| 16 | NSW Council for Civil Liberties |
| 17 | NSW Labor |
| 18 | Name suppressed |
| 19 | Dr Jonathan King |
| 20 | Blind Citizens Australia |
| 21 | Ms Rebecca Clarke |
| 22 | Public Service Association of NSW |
| 23 | NSW Council for Intellectual Disability |
| 24 | NSW Electoral Commission |
| 25 | Mr Antony Green |
| 26 | People with Disability Australia |
| 27 | The Greens NSW |
| 28 | Ms Janine Kitson |
| 29 | The Law Society of New South Wales |
| 30 | NSW Nationals |
| 31 | Liberal Party of Australia - NSW Division |

| No | Author |
|-----------|-------------------------|
| 32 | Climate 200 |
| 33 | The Australia Institute |
| 34 | Unions NSW |
| 35 | Mr Ethan du Toit |
| 36 | Confidential |
| 37 | The Hon Emma Hurst MLC |
| 38 | Mr Alexander Roberts |

Appendix Four – Witnesses

12 April 2024

Parliament House, Jubilee Room, Sydney, NSW

| Witness | Position and Organisation |
|-------------------------|--|
| Mr Dominic Ofner | General Secretary, NSW Labor |
| Mr Joe Lundy | Registered Officer, NSW Nationals |
| Ms Alexandria Rantino | Chief Operating Officer, Climate 200 |
| Mr Simon Holmes à Court | Convenor, Climate 200 |
| Mr Thomas Costa | Assistant Secretary, Unions NSW |
| Mr Ed Yap | Senior Legal and Industrial Officer, Unions NSW |
| Mr Dylan Smith | Manager Industrial Support, Public Service Association of NSW |
| Ms Marianne Ledic | Manager Campaign and Communications, Public Service Association of NSW |
| Mr Iain Walker | Executive Director, newDemocracy |
| Mr Peter Doukas OAM | Chair, Ethnic Communities' Council of NSW |
| Ms Lydia Shelly | President, NSW Council for Civil Liberties |
| Mr Timothy Roberts | Secretary, NSW Council for Civil Liberties |
| Mr Bill Browne | Director Democracy and Accountability Program, The Australia Institute |
| Ms Debra Smith | Deputy Chair of Public Law Committee, The Law Society of New South Wales |

17 May 2024

Parliament House, Macquarie Room, Sydney, NSW

| Witness | Position and Organisation |
|-------------------------------|---|
| The Hon John Hatzistergos AM | Chief Commissioner, NSW Independent Commission Against Corruption |
| Mr Antony Green | Election analyst |
| Mr Ben Raue | Electoral analyst |
| Professor Emerita Anne Twomey | |
| Mr Seamus Lee | Registered Officer, The Greens NSW |
| Mr Chris Maltby | Deputy Registered Officer, The Greens NSW, The Greens NSW |

| Witness | Position and Organisation |
|--------------------------|---|
| Dr Vanessa Teague | |
| Mr Bruce Maguire | Lead Policy Advisor, Vision Australia |
| Mr Jackson Reynolds-Ryan | Policy and Advocacy Manager, Blind Citizens Australia |
| Mr James Simpson | Senior Advocate, NSW Council for Intellectual Disability |
| Ms Joanne Yates | A/Deputy Chief Executive Officer, People with Disability Australia |
| Mr Richard Shields | State Director, Liberal Party of Australia - NSW Division |
| Dr Matthew Phillips | Acting Electoral Commissioner for NSW, NSW Electoral Commission |
| Mr Hugo Bergeron | Acting Executive Director - Funding Disclosure and Compliance, NSW Electoral Commission |
| Ms Philippa Brandon | Director - Communications, NSW Electoral Commission |
| Mr John Cant | Executive Director - Digital Modernisation, NSW Electoral Commission |
| Mr Doug Catchpole | Director - Finance, NSW Electoral Commission |
| Mr Vladas Leonas | Executive Director - Information Services, NSW Electoral Commission |
| Ms Andrea Summerell | Executive Director - Elections, NSW Electoral Commission |

Appendix Five – Extracts from minutes

MINUTES OF MEETING NO 2

3.15pm, 11 December 2023

Room 1254 and Webex

Members present

Mr Primrose (Chair)

Via Webex: Mr Borsak (Deputy Chair), Mrs Quinnell, Mr Bali, Ms Saffin, Mr Nanva and Mr Farraway

Apologies

Ms Faehrmann, Mr Hagarty, Mr Rath, Mr James

Officers present

Leon Last, Dora Oravec, Ilana Chaffey and Isabella Ciampa

1. ***

2. ***

3. ***

4. Inquiry into administration of the 2023 NSW state election and other matters

Resolved, on the motion of Mr Borsak, that the Committee:

- Conducts an inquiry into the 2023 NSW state election as per the referral in its establishing resolution, including amendments passed on 30 November 2023 to include further issues.
- Calls for submissions with a closing date of 16 February 2024 and writes to the stakeholders on the list circulated inviting them to make a submission.

Members were asked to advise committee staff if they wish to suggest additional stakeholders.

5. ***

6. Next meeting

The meeting adjourned at 3.28pm until a time and date to be determined.

MINUTES OF MEETING NO 3

1.17pm, 14 March 2024

Room 1136

Members present

Mr Primrose (Chair), Mr Borsak (Deputy Chair), Mrs Quinnell, Mr Bali, Mr Nanva, Mr Farraway, Ms Faehrmann, Mr Hagarty, Mr Rath and Mr James

Apologies

Ms Saffin

Officers present

Leon Last, Dora Oravecz, Janelle Taouk and Isabella Ciampa

1. Confirmation of minutes

Resolved, on the motion of Mr Borsak: That the minutes of the meeting of 11 December 2023 be confirmed.

2. ***

3. Inquiry into administration of the 2023 NSW state election

3.1 Briefing note

The Committee noted a briefing note on the additional terms of reference that were referred to the Committee.

3.2 Publishing submissions

The Committee considered publication of submissions 1 to 36.

Resolved, on the motion of Ms Faehrmann:

- That the Committee accepts and publishes submissions 2, 4 to 17, and 20 to 33, and 35 in full.
- That the Committee accepts and publishes submission 18 with the author's name suppressed.
- That submissions 19 and 34 are accepted and published with the redactions outlined in the circulated submission table.
- That submissions 1, 3 and 36 be accepted and remain confidential to the Committee and not be published.

3.3 Inquiry timeline

The Committee noted the indicative inquiry timeline.

3.4 Public hearing dates and witness list

Resolved, on the motion of Mr Nanva: That the Committee invites the listed witnesses to give evidence at public hearings to be held on 12 April and 17 May.

4. ***

5. Next meeting

The meeting adjourned at 1.31 pm until a time and date to be determined.

MINUTES OF MEETING NO 4

9.57pm, 12 April 2024

Jubilee Room and Webex

Members present

Mr Primrose (Chair), Mr Borsak (Deputy Chair), Mr Bali, Ms Faehrmann, Mr Hagarty, Mr James, Mr Nanva, Mrs Quinnell, Mr Rath and Ms Saffin (via videoconference)

Apologies

Mr Farraway

Officers present

Monica Loftus, Dora Oravec, Caitlin Bailey, Isabella Ciampa and Yann Pearson

1. Deliberative meeting

1.1 Media orders

Resolved, on the motion of Ms Faehrmann: That the Committee authorises the audio-visual recording, photography and broadcasting of the public hearing on 12 April 2024, in accordance with the Legislative Assembly's resolution of 9 May 2023; and the Assembly's guidelines for coverage of proceedings for parliamentary committees administered by the Legislative Assembly.

1.2 Answers to questions taken on notice and supplementary questions

Resolved, on the motion of Mr Rath: That witnesses be requested to return answers to questions taken on notice and supplementary questions within 1 week of the date on which the questions are forwarded.

The meeting concluded at 9.59 am.

2. Public hearing - Inquiry into administration of the 2023 NSW state election

The Chair opened the public hearing at 10:02 am and made a short opening statement.

Mr Dominic Ofner, General Secretary, NSW Labor, was sworn and examined.

The Committee questioned the witness. Evidence concluded and the witness withdrew.

Mr Joe Lundy, Registered Officer, NSW Nationals, was affirmed and examined via videoconference.

The Committee questioned the witness. Evidence concluded and the witness withdrew.

Ms Alexandria Rantino, Chief Operating Officer, Climate 200, was affirmed and examined via videoconference.

Mr Simon Homes a Court, Convenor, Climate 200, was affirmed and examined via videoconference.

The Committee questioned the witnesses. Evidence concluded and the witnesses withdrew.

Mr Thomas Costa, Assistant Secretary, Unions NSW, was affirmed and examined via videoconference.

Mr Ed Yap, Senior Legal and Industrial Officer, Unions NSW, was affirmed and examined via videoconference.

Mr Dylan Smith, Manager, Industrial Support, Public Service Association of NSW, was affirmed and examined.

Ms Marianne Ledic, Manager, Campaign and Communications, Public Service Association of NSW, was sworn and examined.

The Committee questioned the witnesses. Evidence concluded and the witnesses withdrew. Mr Ian Walker, Executive Director, newDemocracy, was affirmed and examined.

The Committee questioned the witness. Evidence concluded and the witness withdrew.

Mr Peter Doukas, Chair, Ethnic Communities' Council of NSW, was sworn and examined.

The Committee questioned the witness. Evidence concluded and the witness withdrew.

Ms Lydia Shelly, President, NSW Council for Civil Liberties, was sworn and examined.

Mr Timothy Roberts, Secretary, NSW Council for Civil Liberties, was sworn and examined.

The Committee questioned the witnesses. Evidence concluded and the witnesses withdrew.

Mr Bill Browne, Director, Democracy and Accountability Program, The Australia Institute, was affirmed and examined via videoconference.

The Committee questioned the witness. Evidence concluded and the witness withdrew.

Ms Debra Smith, Deputy Chair of Public Law Committee, The Law Society of New South Wales, was affirmed and examined.

The Committee questioned the witness. Evidence concluded and the witness withdrew.

The hearing adjourned at 4:17 pm.

3. Deliberative meeting

3.1 Confirmation of minutes

Resolved, on the motion of Mr Rath: That the minutes of the meeting of 14 March 2024 be confirmed.

3.2 Publishing amended versions of submissions

Resolved, on the motion of Mr Nanva: That the Committee publishes an amended version of submission 22 in full.

Resolved, on the motion of Mr Bali: That the Committee publishes an amended version of submission 33 in full.

3.3 Publishing transcript of evidence

Resolved, on the motion of Mr Bali: That the corrected transcript of public evidence given today be authorised for publication and uploaded on the Committee's webpage.

3.4 Supplementary questions on notice

Resolved, on the motion of Mr Nanva: That the Committee adopts the following process in relation to supplementary questions:

- Members to email any proposed supplementary questions for witnesses to committee staff by 4pm on the second business day after the uncorrected transcript is circulated to members.
- Committee staff to circulate all proposed supplementary questions to the Committee, with members to lodge any objections to the questions by 4pm of the business day after the date on which the questions are sent to members.

4. ***

5. Next meeting

The meeting adjourned at 4.23 pm until 17 May 2024.

MINUTES OF MEETING NO 5

9.21pm, 17 May 2024

Macquarie Room and Webex

Members present

Mr Primrose (Chair), Mr Borsak (Deputy Chair), Mr Bali (until 12.45pm), Ms Faehrmann (from 9.22am, via videoconference after 2pm), Mr Faraway, Mr Hagarty, Mr James, Mr Nanva (via videoconference), Mrs Quinnell (via videoconference), Mr Rath (from 1 0am), and Ms Saffin (via videoconference)

Officers present

Monica Loftus, Dora Oravec, Janelle Taouk, Isabella Ciampa, Carolyn McNamara and Elizabeth Hawken

1. Deliberative meeting

1.1 Confirmation of minutes

Resolved, on the motion of Mr Borsak: That the minutes of the meeting of 12 April 2024 be confirmed.

1.2 Media orders

Resolved on the motion of Mr Borsak: That the Committee authorises the audio-visual recording, photography and broadcasting of the public hearing on 17 May 2024, in accordance with the Legislative Assembly's resolution of 9 May 2023; and the Legislative Assembly's guidelines for the coverage of proceedings for parliamentary committees administered by the Legislative Assembly.

1.3 ***

1.4 Supplementary questions on notice

Resolved, on the motion of Mr James: That the Committee adopts the following process in relation to supplementary questions:

- Members to email any proposed supplementary questions for witnesses to committee staff by 4pm on the second business day after the uncorrected transcript is circulated to members.
- Committee staff to circulate all proposed supplementary questions to the Committee, with members to lodge any objections to the questions by 4pm of the business day after the date on which the questions are sent to members.

1.5 Answers to questions taken on notice and supplementary questions

Resolved on the motion of Mr Hagarty: That witnesses be requested to return answers to questions taken on notice and supplementary questions within 1 week of the date on which the questions are forwarded.

1.6. Publishing submissions

Resolved on the motion of Mr Nanva: That the Committee publishes submissions 13a and 37 in full.

1.7 Publishing answers to questions on notice and supplementary questions

Resolved, on the motion of Mr Hagarty: That the Committee publishes answers to questions on notice and answers to supplementary questions received from:

- Public Service Association
- Climate 200
- Australia Institute
- Ethnic Communities Council
- Unions NSW
- NSW Council for Civil Liberties

The meeting concluded at 9.23am.

2. Public hearing: inquiry into administration of the 2023 NSW state election

The Chair opened the public hearing at 9.30am and made a short opening statement.

The Hon John Hatzistergos AM, Chief Commissioner, NSW Independent Commission Against Corruption, was sworn and examined.

The Committee questioned the witness: Evidence concluded and the witness withdrew.

Mr Antony Green, Election analyst, was affirmed and examined.

The Committee questioned the witness. Evidence concluded and the witness withdrew.

Mr Ben Raue, Election analyst, was affirmed and examined.

The Committee questioned the witness. Evidence concluded and the witness withdrew.

Professor Emerita Anne Twomey was sworn and examined.

The Committee questioned the witness. Evidence concluded and the witness withdrew.

Mr Seamus Lee, Registered Officer, The Greens NSW, was affirmed and examined.

Mr Chris Maltby, Deputy Registered Officer, The Greens NSW, was affirmed and examined.

The Committee questioned the witnesses. Evidence concluded and the witness withdrew.

Dr Vanessa Teague was affirmed and examined.

The Committee questioned the witness. Evidence concluded and the witness withdrew.

Mr Bruce Maguire, Lead Policy Advisor, Vision Australia was affirmed and examined via videoconference.

Mr Jackson Reynolds-Ryan, Policy and Advocacy Manager, Blind Citizens Australia, was affirmed and examined via videoconference.

Mr James Simpson, Senior advocate, NSW Council for Intellectual Disability, was affirmed and examined.

Ms Joanne Yates, A/Deputy Chief Executive Officer, People with Disability Australia, was affirmed and examined.

The Committee questioned the witnesses. Evidence concluded and the witnesses withdrew.

Mr Richard Shields, State Director, Liberal Party of Australia - NSW Division, was sworn and examined.

The Committee questioned the witness. Evidence concluded and the witness withdrew.

Mr Matthew Phillips, Acting Electoral Commissioner for NSW, NSW Electoral Commission, was sworn and examined.

Mr Hugo Bergeron, Acting Executive Director, Funding Disclosure and Compliance, NSW Electoral Commission, was affirmed and examined.

Ms Philippa Brandon, Director, Communications, NSW Electoral Commission, was sworn and examined.

Mr John Cant, Executive Director, Digital Modernisation, NSW Electoral Commission, was affirmed and examined.

Mr Doug Catchpole, Director, Finance, NSW Electoral Commission, was sworn and examined.

Dr Vladas Leonas, Executive Director, Information Services, NSW Electoral Commission, was affirmed and examined.

Ms Andrea Summerell, Executive Director, Elections, NSW Electoral Commission, was affirmed and examined via videoconference.

The Committee questioned the witnesses. Evidence concluded and the witnesses withdrew.

The hearing adjourned at 4.26pm.

3. Deliberative meeting

The Committee commenced a deliberative meeting at 4.27pm.

3.1 Publishing transcript of evidence

Resolved on the motion of Mr James: That the corrected transcript of public evidence given today be authorised for publication and uploaded on the Committee's webpage.

3.2 ***

4. Next meeting

The meeting adjourned at 4.38pm until a time and date to be determined.

MINUTES OF MEETING NO 6

1.08pm, 11 June 2024

Room 814 and Webex

Members present

Mr Primrose (Chair), Mr Borsak (Deputy Chair) (via videoconference), Mr Bali (via videoconference), Ms Faehrmann (via videoconference), Mr Farraway (via videoconference), Mr Hagarty (via videoconference), Mr James (via videoconference), Mr Nanva (via videoconference), Mrs Quinnell (via videoconference), Mr Rath and Ms Saffin (via teleconference)

Officers present

Rohan Tyler, Dora Oravec, Janelle Taouk, Isabella Ciampa and Carolyn McNamara

1. Confirmation of minutes

Resolved, on the motion of Mr Rath: That the minutes of the meeting of 17 May 2024 be confirmed.

2. Inquiry into the administration of the 2023 NSW state election

2.1 Publishing submission

Resolved, on the motion of Mr Nanva: That the Committee publishes submission 38 in full.

2.2 Publishing answers to questions taken on notice and supplementary questions

Resolved, on the motion of Ms Faehrmann: That answers to questions on notice and supplementary questions received from the stakeholders below be published on the inquiry webpage:

- NSW Greens
- NSW Electoral Commission
- Liberal Party of Australia, NSW Division.

3. ***

4. ***

5. Next meeting

The meeting adjourned at 1.22 pm until a date and time to be determined.

MINUTES OF MEETING NO 7

10.01am, 2 September 2024

Room 1254 and Webex

Members present

Mr Primrose (Chair), Mr Borsak (Deputy Chair), Mr Bali (via telephone), Ms Faehrmann, Mr Faraway (via videoconference), Mr Hagarty (via videoconference), Mr James (via videoconference), Mr Nanva (via videoconference), Mrs Quinnell (via videoconference) and Mr Rath

Apologies

Ms Saffin

Officers present

Monica Loftus (via videoconference), Leon Last, Dora Oravec, Isabella Ciampa and Lloyd Connolly

1. Confirmation of minutes

Resolved, on the motion of Ms Faehrmann, seconded by Mrs Quinnell: That the minutes of the

meeting of 11 June 2024 be confirmed.

2. ***

3. Inquiry into the administration of the 2023 NSW state election

Correspondence

The Committee noted correspondence received from Mr Gregory Briscoe-Hough, responding to the NSW Electoral Commission's answer to a question taken on notice.

Resolved, on the motion of Mr Borsak: That the Committee publishes correspondence received from Mr Gregory Briscoe-Hough.

4. ***

5. General business

The Committee discussed its future work program.

Resolved, on the motion of Mrs Quinnell: That the report consideration meeting for the inquiry into the administration of the 2023 NSW state election be held on Monday 28 October 2024, before the start of the hearing scheduled for that day.

6. Next meeting

The meeting adjourned at 10.20 am until 27 September 2024.

UNCONFIRMED MINUTES OF MEETING NO 9

9.32am, 28 October 2024

Jubilee Room and Webex

Members present

Mr Primrose (Chair), Mr Borsak (Deputy Chair), Mr Bali, Mr Faraway (Webex), Mr Hagarty, Mr James, Mr Nanva (Webex), Mrs Quinnell (Webex, until 10.04am), Ms Saffin (Webex) and Mr Rath

Apologies

Ms Faehrmann

Officers present

Leon Last, Dora Oravec, Janelle Taouk, Isabella Ciampa and Lloyd Connolly

1. Deliberative meeting

1.1 Confirmation of minutes

Resolved, on the motion of Mr Hagarty, seconded by Mr Borsak: That the minutes of the meeting of 27 September be confirmed.

1.2 ***

1.3 ***

1.4 ***

1.5 ***

1.6 Consideration of Chair's draft report – administration of the 2023 NSW state election

The Committee agreed to consider the report chapter by chapter.

Mr Rath moved, in globo:

- That the words 'Political participants should not be able to distribute postal vote applications.' be omitted from the summary on page 7.
- That Recommendation 8 be omitted.
- That paragraphs 1.32 to 1.44 be omitted.
- That Finding 1 be omitted.
- That paragraphs 1.85 to 1.96 be omitted.

Discussion ensued.

Question put.

The Committee divided.

Ayes 3 [Mr Rath, Mr James and Mr Faraway]

Noes 7 [Mr Primrose, Mr Borsak, Mr Bali, Mr Hagarty, Mr Nanva, Ms Saffin, Mrs Quinnell]

Question negatived.

The Committee agreed that Chapters 1, 2 and 3 stand as part of the report.

Resolved on the motion of Mr Bali:

- That the draft report be the report of the Committee and that it be signed by the Chair and presented to the House.
- That the Chair and committee staff be permitted to correct stylistic, typographical and grammatical errors.
- That, once tabled, the report be posted on the Committee's webpage.

1.7 Report cover image

Resolved on the motion of Mr Bali: That the circulated report cover image be used on the cover of the Committee's tabled report.

The meeting concluded at 10.04am.

2. ***

3. ***

4. Next meeting

The meeting adjourned at 4.34pm until a date and time to be determined.