

# Technology assisted voting review

## Optional submission form for responses to the Issues and Questions paper

Close of responses to the Issues and Questions paper is Friday, 13 January 2023

### Personal information in submissions – privacy

We intend to publish all submissions received in response to the review on the NSW Electoral Commission's website. Please do not include any personal information in your submission, about yourself or others, if you do not consider it to be suitable for publication. Individuals making a submission in a personal capacity can request, however, that it be published anonymously. In that case, do not include any personal information in the submission itself that you do not wish to be published. Names, contact details and addresses of people making submissions on behalf of organisations may be published where they are contained in a submission (that is, those details will not be redacted by the NSW Electoral Commission). Please note that the NSW Electoral Commission may also be required or authorised by law to disclose any information you provide as part of the review, regardless of website publication. The NSW Electoral Commission may also decide to redact or not publish any submission that, in our view, contains material that is discriminatory, offensive, defamatory, refers to matters currently before a court, contains sensitive health information or other personal information of third parties, or where it considers publication may otherwise be contrary to law.

#### Information about the person or organisation making the submission

- If you are providing a submission on behalf of an organisation, the name of the organisation will be published.
- Indicate below, if you want your name to be published with the submission.
- Email and telephone contact details will not be published.

<input type="text" value="Richard Kidd"/>	<input type="text" value="Australian Election Company"/>
NAME	ORGANISATION
Is your name for publication? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="text" value="XXXX XXX XXX"/>	<input type="text" value="XXX@XXX.com"/>
PHONE	EMAIL

#### Your introductory statement or summary position (optional)

The word limit in this form field is approximately 1,450 characters. If more space is required please provide additional information as an attachment to your email.

Please refer to 7.

#### How to lodge your submission

Submissions must be received by the NSW Electoral Commission no later than Friday, 13 January 2023.

##### By email:

[TAV.Review@elections.nsw.gov.au](mailto:TAV.Review@elections.nsw.gov.au)

##### By post:

Technology assisted voting review  
NSW Electoral Commission  
GPO Box 832  
SYDNEY NSW 2001

OFFICE USE ONLY

<input type="text" value="Nil"/>	<input type="text"/>
NO. OF ATTACHMENTS	RECEIPT NO.

## Primary questions

- a) Do the current settings for technology assisted voting in New South Wales remain appropriate to manage the level of risk to successful election delivery, compared to when iVote was first offered in 2011? If so, why? If not, why not?
- b) What specific changes, if any, to the current settings for delivering technology assisted voting would help to manage risk better? Should any or all of the following changes be made in New South Wales, noting some are already used in other jurisdictions:
- allowing only a specified proportion (X%) of the total number of electors in a particular election to use technology assisted voting?
  - reducing the categories of New South Wales electors entitled to use technology assisted voting and, if so, which categories of electors should still have access?
  - limiting the registration and voting periods for technology assisted voting, such as requiring early pre-registration and excluding all such voting either on election day or from an earlier time prior to election day?
  - extending the time for electors (who have registered to use technology assisted voting) to cast a vote using technology assisted voting after 6pm on election day where performance issues have impacted its availability?
  - expanding the options and/or requirements for scrutineering by election participants of technology assisting voting and associated counting processes?
  - providing where technology assisted voting is unavailable for some eligible electors or for some of the voting period (for example, due to a performance issue) that a failure to provide this voting channel cannot affect the validity of the whole election?
- c) Are there any other methods of technology assisted voting that the review should consider besides telephone voting, internet voting on personal devices and voting kiosks in voting centres?
- d) Which technology assisted voting methods – or combination of methods – best meet the needs of any category of electors that should have access in the future? Why?
- e) Are there places outside New South Wales that already have established the right settings for technology assisted voting around security, accessibility, efficiency and cost? If so, are the elections in these other places sufficiently similar to New South Wales State elections in both scale and constitutional importance to be a sound comparison?

Please respond to the questions above in the following field. The word limit in this form field is approximately 4,000 characters, if more space is required please provide additional information as an attachment to your email.

**1. The constitutional context for and policy objectives of the *Electoral Act 2017*, including the protection of the franchise for all New South Wales residents who are eligible to vote.**

**Questions**

- a) How can the different types of technology assisted voting support or challenge the principles and objects of electoral law in New South Wales, including:
- accessibility
  - fairness
  - integrity of the electoral system
  - integrity of representative government
  - free and fair citizen participation in electoral processes
- b) Are there other principles or objectives that should be considered?
- c) How should these factors be addressed and, where necessary, balanced when designing technology assisted voting systems?
- d) How does technology assisted voting maintain or increase participation in elections and referenda for particular classes of electors or the general voting population?

Please respond to the questions above in the following field. The word limit in this form field is approximately 5,500 characters, if more space is required please provide additional information as an attachment to your email.

**2. Contemporary community and industry standards for balancing accessibility, cost, privacy, and security in digital transactions that are fundamental to the relationship between citizen and state.**

**Questions**

- a) What factors should be included in a cost benefit analysis of technology assisted voting options? How could benefits such as accessibility or a secret vote be quantified?
- b) Do you agree that the ECANZ Essential Principles criteria (at Appendix B) should apply to any technology assisted voting system adopted in New South Wales? If not, are there other standards that are more suitable (for example, the Council of Europe, Switzerland or the United States)?
- c) To what extent do these standards adequately address integrity features such as vote verification and resilience to threat factors such as cyber-attack?
- d) Are there any particular standards that should be prioritised over others when designing technology assisted voting systems? If so, why should those standards be prioritised?

Please respond to the questions above in the following field. The word limit in this form field is approximately 5,000 characters, if more space is required please provide additional information as an attachment to your email.

**3. The needs of electors who are blind or have low vision, and other electors with a disability, in relation to independently casting a secret and verifiable vote.**

**Questions**

- a) What forms of technology assisted voting best support the independent casting of a secret and verifiable vote for electors with accessibility requirements? Please specify the requirements alongside the preferred form of technology assisted voting.
- b) Are there advantages in having kiosks at voting centres that provide speech output through headphones and buttons to scroll through the ballot and choose candidates? These may include controls that are identifiable tactilely or have braille, user control of font size and screen contrast.
- c) Can braille ballot papers or telephone voting meet the voting needs of some electors who are blind or have low vision? If not, why not?
- d) To support planning for elections and referenda and minimise performance risks, should eligible electors be required to pre-register for technology assisted voting ahead of election day? When should the registration deadline be (for example, one week before the election)? Should the voting period for these eligible electors close before election day (for example, one day or earlier before election day)?
- e) If legally permitted, would it be appropriate for the Commissioner to verify eligibility of persons claiming to fall within a technology assisted voting elector class with external agencies or organisations?
- f) What stages in the design and development of technology assisted voting systems should involve representatives of electors who are blind or have low vision, or who have a disability?

Please respond to the questions above in the following field. The word limit in this form field is approximately 4,700 characters, if more space is required please provide additional information as an attachment to your email.

**4. The circumstances and requirements for electors located overseas, outside New South Wales or in rural and remote areas.**

**Questions**

- a) Noting that being outside New South Wales on election day is a lawful reason to be excused from voting, should technology assisted voting options be provided to these electors? If yes, what forms of technology assisted voting and why? What other options could be considered?
- b) Noting that an elector in a remote location in New South Wales (more than 20km from a voting centre) has the option for a postal vote, should technology assisted voting options be provided to these electors? If yes, what forms of technology assisted voting and why?
- c) To support contingency planning ahead of elections and referenda, should there be a requirement for pre-registration for these eligible electors to use technology assisted voting (for example, registration closes one week before the election day)? Should the voting period for these eligible electors close before election day (for example, one day or earlier before election day)?
- d) If legally permitted, is it appropriate for the Commissioner to verify eligibility of these elector classes, for example by geolocation data such as and IP address or telephone caller location information? Do you have any further suggestions of how this information could be verified (beyond what has been suggested above)?
- e) Should government or other digital identity credentials, such as a myGovID or an ACT Digital Account, be used as an elector verification channel for technology assisted voting?

Please respond to the questions above in the following field. The word limit in this form field is approximately 5,000 characters, if more space is required please provide additional information as an attachment to your email.

**5. The risks and benefits of technology assisted voting to the integrity of the New South Wales electoral system, including the impact of technology assisted voting at different scales on the level of risk of technical error and on the rates of participation in New South Wales elections.**

**Questions**

- a) Do you agree with the existing eligible elector classes in Section 152 of the Electoral Act? Do you have any further refinements to existing classes or additions of classes (please provide supporting evidence)?
- b) Do you have verifiable estimates of the potential number of eligible electors in the existing (and potential other) classes?
- c) Should there be a statutory formula for the assessment of materiality arising from technical error, for example the approach adopted by the Supreme Court in *Commissioner v Kempsey Shire Council (No 2)* [2022] NSWSC 282?
- d) What is the optimal method to balance risks and benefits of technology assisted voting, taking into account the different classes of eligible electors and the varying characteristics of elected forums, roles or decisions in New South Wales such as:
  - Legislative Council is a single electorate with 42 members elected by proportional representation for eight-year terms. Electors choose half the Legislative Council at each State General election. Electors may choose between above-the-line group vote or below-the-line votes for individual candidates.
  - Legislative Assembly has 93 members, each elected to represent an electorate via an optional preferential system.
  - Referendums require a binary yes/no response to each question
  - Local government arrangements vary by council according to the number of vacancies to be filled. An optional preferential system is used where only one councillor is to be elected. A proportional voting system is used if 2 or more councillors are elected. Where mayors are elected by electors (as opposed to councillors), an optional preferential system is used.
- e) Does technology assisted voting improve the enfranchisement (that is enrolment and voting of citizens in New South Wales) of particular classes of electors or in general?

Please respond to the questions above in the following field. The word limit in this form field is approximately 4,500 characters, if more space is required please provide additional information as an attachment to your email.

**6. The feasibility of making technology assisted voting available through personal networked devices at the 2027 State election and subsequent state and local government elections.**

**Question**

- a) Taking into account the ECANZ Eleven Essential Principles, are there any specific criteria that should be considered in the design of a technology assisted voting system for the 2027 election?

Please respond to the question above in the following field. The word limit in this form field is approximately 6,800 characters, if more space is required please provide additional information as an attachment to your email.



**7. The suitability of current legislation to support technology assisted voting and whether it should provide for special arrangements in the event of a technical failure (including, in appropriate circumstances, that the unavailability of technology assisted voting does not invalidate the result of an election).**

**Question**

- a) Is legislative reform required in New South Wales to support the reintroduction of technology assisted voting in 2027?
- b) Should technical detail concerning vote verifiability be specified in legislation (for example software system design, computation and protection protocols in regulations)?
- c) Could, and if so how, additional scrutineering by election participants for technology assisted voting (and counting) be specified in legislation?
- d) Should legislation provide that performance issues with technology assisted voting during an election not be material to the validity of that election?
- e) If yes to (d), would a proportion of the eligible electors in the specific contest be an appropriate threshold where a statutory 'invalidity waiver' was in place?
- f) Should there be an overall cap on the proportion of electors eligible for technology assisted voting?

Please respond to the questions above in the following field. The word limit in this form field is approximately 5,200 characters, if more space is required please provide additional information as an attachment to your email.

Australian Election Company, from its extensive electronic and election experience makes the following recommendations for improvement to the current NSWEC system and processes for technologically assisted voting:

Ensure reference to technology assisted voting is generic to accurately describe the function.

It would be inappropriate to refer to electronic voting products/brands specifically as "I-Vote " or " I-Voting " in any " future " NSW State Elections Act (or Local Government (LG) legislation) or LG Regulations. The references simply should be to "an approved form of electronic voting", "technology-based voting", or similar. It is critical to understand that the utilisation of generic terminology in legislation, regulatory frameworks and guiding documents ensures the delivery and performance of the function, rather than an application of a product.

Presently, the language used within the current applicable State Act is somewhat NSWEC specific and reflective of NSWEC iVote methodology and procedural detail. This has the effect of mitigating opportunities for private, professional, electronic voting providers to become involved in the delivery of contemporary electronic voting processes.

Remove conditional application for technology assisted voting and broaden its accessibility to all eligible enrolled electors.

Enhance the process and application of the technology to remove the archaic requirement for the production of a ballot paper image and printing of the electronic image.

The secrecy of the elector's vote under the current system appears questionable and promotes the perception of inadequate secrecy, separating the elector's ID from their vote cast.

That the technology used has the demonstrated capability to provide the accurate tabulation of results, within hours of the close of the poll.

The effective utilisation of an accurate and appropriate electronic voting system and processes will result in significant cost savings across the logistical aspects including polling official staffing costs, premise hire and printing costs.

**8. Technology-related developments in electoral administrations in similar jurisdictions.**

**Question**

- a) Should any specific features be adopted from other jurisdictions to improve the framework for ensuring voter and system integrity in New South Wales?

Please respond to the question above in the following field. The word limit in this form field is approximately 7,000 characters, if more space is required please provide additional information as an attachment to your email.

**9. Mechanisms for national coordination of technology assisted voting policies and systems for the States, Territories, and the Commonwealth.**

**Questions**

- a) Should a national approach be adopted to provide an Australian-wide capacity to offer technology assisted voting?
- b) If yes, what governance model should apply to it?
- c) How might it be funded?

Please respond to the questions above in the following field. The word limit in this form field is approximately 6,500 characters, if more space is required please provide additional information as an attachment to your email.

**10. Are there any other matters you wish to raise in the review?**

Please submit any other matters you wish to raise in the following field. The word limit in this form field is approximately 7,000 characters, if more space is required please provide additional information as an attachment to your email.

Total number of attachments included with this document