The Hon Peter Primrose MLC
Committee Chair
Joint Standing Committee on Electoral Matters
August 2024

To the Hon Peter Primrose MLC,

Submission to the inquiry into proposals to increase voter engagement, participation and confidence

I write to thank each of the eleven members of the Joint Standing Committee on Electoral Matters for initiating and supporting this important inquiry. Thank you also, for inviting Democracy Matters to make a submission to this inquiry into voter trust in, and engagement with, electoral processes in NSW. It is a topic that affects all of us.

This submission is made by Democracy Matters, a non-partisan organisation using the power of education and training to strengthen the functioning of our system of democracy. This submission makes specific comments regarding Terms of Reference a to d.

A. Maintaining confidence in the integrity of electoral processes

Australian electoral processes are the envy of other liberal democracies. Mandatory voting, independent electoral commissions, community members recruited and trained to deliver elections, positive voter experiences at polling places - each of these aspects combine to generate high levels of community trust in our electoral processes.

To maintain the strengths, particularly the integrity, it is necessary therefore, to ask two questions on a regular basis - 'Are our electoral processes fit for purpose?' and 'How might we address any threats to community confidence?'

What do informal votes tell us about the electoral process?

The number of informal votes at both local and state elections indicates that something about our electoral process is not fit for purpose.

Table 1 shows the number of votes that could not be counted at state and local elections in NSW:

Local Government election 2021	Votes cast: 4,042,642	Informal votes: 221,034	5.47% informality rate
NSW election 2023* Legislative Assembly	Votes cast: 4,861,148	Informal votes: 159,218	3.28% informality rate
NSW election 2023 Legislative Council	Votes cast: 4,895,335	Informal votes: 278,477	5.69% informality rate

Table 1. Informal votes in most recent state and local elections in NSW.
*Enrolment at close of rolls: 5,521,688
** Enrolment at close of rolls: 4,838,137
Source: https://elections.nsw.gov.au/elections/past-results

There are likely to be multiple factors driving the number of informal votes. Two factors I'd like to consider in this submission are voter education and training of electoral staff workers.

While voting is mandatory in Australia, democracy (civics) education for new voters - young people (18 - 25 years) and new citizens (adult migrants from countries with different electoral processes) - is very uneven across NSW.

Primary and secondary teachers do not universally receive democracy education during their tertiary teacher training, so many lack the knowledge, skills and confidence to deliver democracy education to equip students to be well informed voters. Further, because they didn't receive democracy education in their own school years, they don't have this base to operate from either.

Another reason teachers may be uncomfortable about raising electoral issues in their classrooms is because democracy education has been politicised by political parties, government departments, lobby groups and 'shock jock' media outlets. The politicisation makes educators (including local government librarians, youth workers and community groups) wary and uncertain about delivering civics education because they fear being the target of a public controversy. In 2023, the NSW Department of Education circulated information about the referendum under its Controversial Issues Policy. As a result, the management in some public schools directed teachers not to talk about the referendum in their classrooms. This is inappropriate and counterproductive to the goals of education - students need role modeling on how to participate respectfully in discussions about the big issues being considered by a referendum, plebiscite or election. Especially in a world saturated by divisive political rhetoric, young people need safe places where they can learn how to listen deeply to different points of view, understand how to 'agree to disagree' and have the skills to make sense of big collective discussions, such as referendums.

Local councils hold citizenship ceremonies frequently in cooperation with electoral commissions. At some of these ceremonies, the AEC are in attendance to enrol new citizens. But connecting these new voters with the electoral process stops there. While many migrant service organisations offer voter education, not all do and not all new citizens are connected to migrant services. This is a missed opportunity to offer education that could reduce the number of informal votes. One of the motivations for some people migrating to Australia is to leave a dysfunctional system of democracy for one that is stable and effective. From my work delivering grass roots, non-partisan voter education, there is an appetite for

non adversarial sessions where an overview of our electoral system is provided and participants can ask questions and get trustworthy answers. Not only could this reduce the number of informal votes, it could also strengthen community trust in the people and organisations delivering our elections. Electoral commissions also need bilingual speakers to work in polling places - community education could assist with this requirement by demystifying electoral processes.

The practices of polling place workers could be another contributing factor to the number of informal votes. It is very frustrating for a voter who does everything right but the actions of an electoral official prevents their vote from being counted, eg if declaration voting envelopes aren't completed properly. I have participated in multiple training sessions as a result of being recruited to work in state and local government elections. I've come to the conclusion that the training of electoral officials would be enhanced by applying UX (user experience) design principles. Put simply, this means that the order of the training material follows a voter's journey through a polling place (the voter is the user of the service). UX based training presents material in the sequence of the voter's journey, from the moment they walk into a polling place through to placing their vote in the most appropriate ballot box. A holistic overview of the voter's journey would help polling place officials understand the contribution each role makes to electoral integrity and to customer service.

My experience of NSW Electoral Commission training is that it covers discrete parts of the process, eg issuing votes, without providing a holistic sense of the entire voting process. Sometimes declaration votes are covered first in training followed by ordinary votes, even though the majority of voters lodge ordinary votes. It would be more effective to present ordinary votes first, as they are more common as well as being straightforward, followed by declaration votes which are more complicated but build on many of the principles of issuing an ordinary vote. My hypothesis is that polling place officials filling in declaration vote envelopes incorrectly is one cause of informal votes that could be avoided. This may go some way to explaining rates of informal votes in state elections.

Informal voting patterns, at both state and local levels, are worthy of qualitative analysis to understand the causes and the most effective solutions, given the significant number of voters that are being disenfranchised.

Addressing threats to community confidence in electoral processes

All elected representatives should be concerned by the findings of the Governance Institute of Australia's Ethics Index.[1] In the 2023 ethics index, politicians were located in the bottom five occupations in the survey for a consecutive year. Local councillors were above state MPs, who in turn were above federal

[1] https://www.governanceinstitute.com.au/ethics-index/ has been running for eight years.

MPs. This shows however that the 'ethical expectation deficit' - the gap between high public expectations and a perception of poor behaviour of elected representatives - is wide. This deficit can undermine community confidence in electoral processes - if voters perceive the quality of candidates and incumbents is poor, voters are less motivated to engage. The next section deals with some of the underlying causes of the deficit and ways to address them.

The necessity of respecting the office of 'elected representative'

Unethical behaviour, such as normalising pork barrelling, uncivil behaviour (including bullying and harassment), predictable patterns of voting along party lines - in voters' eyes, each of these 'habits' shows disrespect for the office of local or state government. There is a social contract between voters and elected representatives. Voters give their vote in return for good governance - open minded, transparent and accountable decision making - and professional behaviour in council meetings and state parliament. They also expect candidates to 'play the ball, not the player' during election campaigns. Increasingly voters feel the contract is being broken by candidates who choose to act unethically and elected representatives who do not meet administrative law requirements by bringing an open mind to formal decision making processes.

GIA's Ethics Index reminds us that '*Ethics is at the base of all decision-making and good governance is decision-making within a sound ethical framework*.'

According to Judith Brett, Emeritus Professor of politics at La Trobe University:

'...the adversarial form at the heart (of our democratic system)… (is) viewed as a barrier rather than an aid to co-operative action and good decision making… people in contemporary society are looking for more flexible and cooperative ways to solve community and national problems.'[2]

The majority of elected representatives want to be ethical however, many enter adversarial workplaces where they are told explicitly, and implicitly, that they must conform to a 'way of doing business' that fails to meet community expectations. Why do we think it's ok for state parliamentarians to work in a 'bear pit'? Why is it that many councillors, in particular women, leave after only one term on council? The majority of candidates standing at election genuinely desire to be effective representatives but the collective 'legacy' experience is often far below their expectations too.

This is where a culture of professional development for local and state representatives can help to enable norms around respectful and ethical behaviour. Elected representatives have one of the steepest professional learning curves, yet we accept they can get by with only minimal, procedural training. How

[2] Judith Brett, (2021) Chapter 4 'Meetings, bloody meetings and the decline of trust in our parliaments' in '*Doing politics'*, page 180

might we increase their capacity for consensual decision making, listening deeply to communities, understanding and articulating tradeoffs, working with expert opinions and negotiating the best possible solution that addresses the diversity of interests, values and opinions in contemporary Australia? Reflective training enabling elected representatives to step back from day to day concerns to consider the stewardship dimensions of their role is a missing dimension of support for elected represntatives at the moment. The majority of elected representatives want to invites them to leave their level of government in a better place, but they have to do this in a contested environment. Practising what they would say and do in situations that challenge their personal and organisational values increases their chance of making ethical decisions.

Philosopher John Dewey reminds us that we should never assume that '*democratic conditions automatically maintain themselves, or that they can be (served by)... prescriptions laid down in a constitution… For what is actually going on may be the formation of conditions that are hostile to any kind of democratic liberties.*'[3]

If we accept that maintaining community confidence in the electoral process, including a perception that candidates and elected representatives are ethical, is vital then it is reasonable to ask if the professional development offered is fit for purpose. How might we move on from the 'bear pit' culture? How might we attract and retain more diverse candidates for local government? Democracy is only as strong as the men and women who inhabit it'[4] and it is reasonable to offer them professional workplaces and training that equips them with the skills and confidence to face the ethical challenges and uphold any codes of conduct.

B: Strengthen the security and integrity of the electoral system

I submit that the following actions are necessary for ensuring the highest standard of electoral security and integrity:

Fit for purpose funding for the NSW Electoral Commission

Independenet electoral commissions are the back bone of our highly regarded electoral processes. The annual budget of the NSW Electoral Commission should be adjusted annually to meet the increasing challenges in an environment of increasing misinformation, disinformation and cyber security risks.

The process of determining and administering annual funding for the NSW Electoral Commission should comply with the recommendations made in a 2020 report by the NSW Auditor General *The effectiveness of the financial arrangement and management practices of four integrity agencies* which found government based funding practices presents a threat to the Electoral Commission's independent status.

[3] John Dewey (1939) 'Freedom and culture'

[4] https://www.bostonreview.net/articles/melvin-rogers-democracy-is-a-habit/

Then Auditor-General for New South Wales, Margaret Crawford, released the report examining the effectiveness of the financial arrangements and management practices of four integrity agencies: the Independent Commission Against Corruption, the NSW Electoral Commission, the NSW Ombudsman, and the Law Enforcement Conduct Commission. The audit also included NSW Treasury and the Department of Premier and Cabinet (DPC) because both departments are involved in the processes that lead to decisions about funding for the integrity agencies and managing access to this funding.

The following finding is important background information for the Joint Standing Committee on Electoral Matters:

> *The approach used by NSW Treasury and DPC is consistent with the legislative and Constitutional framework for financial management in New South Wales, but it does not sufficiently recognise that the roles and functions of the integrity agencies that are the focus of this audit are different to other departments and agencies. Specific mechanisms that present threats to the independence of the integrity agencies include the absence of transparency in decisions about funding for the integrity agencies, the means of applying efficiency dividends and budget savings and reform measures, the process of providing additional funding from DPC to the integrity agencies, and requests for the integrity agencies to report to DPC on their activities and outcomes.* [5]

I acknowledge the NSW Government's support for the Auditor General's recommendations[6] and that implementation has been led by the Public Accounts Committee[7]. Tracking the implementation of the Auditor General's consequential recommendations isn't an easy task, however. It is difficult for a member of the public to determine if all recommendations have been fully implemented. I recommend that updates be made available on the Auditor General's website for public accountability.

Further, the requirement for the NSW Government to respond to reports to parliament by the four integrity bodies (Independent Commission Against Corruption, the NSW Electoral Commission, the NSW Ombudsman, and the Law Enforcement Conduct Commission) should be included in the relevant legislation, if not already.

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[5] https://www.audit.nsw.gov.au/our-work/reports/the-effectiveness-of-the-financial-arrangements-and-management-practices-in-four-integrity-agencies

[6] There should be structured oversight by Parliament of the performance and financial management of the integrity agencies.

- Parliament's role in the budget process should be expanded to ensure Cabinet is provided with more independent advice on the funding requirements for the integrity agencies.
- There should be transparency to Parliament and the relevant agency for decisions made about funding for the integrity agencies.
- The integrity agencies should be required to demonstrate their accountability as prudent managers of their financial resources.

[7] chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.parliament.nsw.gov.au/ladocs/inquiries/2901/Government%20Response%20to%20the%20Quadrennial%20Review%20Report.pdf

Reviewing the use of private providers for local government elections

I urge the JSCEM to recommend to NSW Parliament that the use of private providers for local government elections as permitted in Sections 296AA, 296A of the NSW Local Government Act 1993 be reconsidered.

This is an integrity risk for the following reasons:

- Voters will not always distinguish who is running a polling place and could attribute any dissatisfaction to the NSW EC or the AEC, thereby undermining their credibility and reputation.
- The Act does not require a council to notify residents, to provide a public statement about why they are not using the NSW EC or to conduct community consultation about engaging a private provider.
- Section 296A permits council employees to be election officials. This could create the perception of a conflict of interest in a voter's mind, complicating trust in the council elected and undermining the apolitical status of a council employee.
- A possibility exists of incumbent councillors involving themselves in the private provider managed electoral process, given it begins 18 months ahead of a local election.
- There is nothing in the Act explaining how providers are to be vetted.
- Private providers do not have to give any formal assurance they will maintain the integrity of electoral rolls.

In the interest of maintaining integrity of NSW local government elections, I recommend Sections 296AA and 296A the Local Government Act 1993 be reviewed to determine whether the private provider option is fit for purpose in an increasingly challenging security context for electoral providers.

Strengthen the security of electoral processes by protecting the privacy of local government candidates

Taking security more broadly, in January 2024, the Australian Local Government Women's Association (ALGWA) NSW released a report 'Results of Survey of Bullying Harassment & Intimidation in NSW Local Government'. It highlighted the discomfort women candidates feel about personal information required of them by the NSW Electoral Commission. The report also highlighted harassment that women candidates pre-election and during pre polling/on election day. I encourage the JSCEM to contact ALGWA NSW[8] to discuss the issues that emerged in the survey and ways to make electoral processes safer for women candidates and also women voters.

C. Reduce barriers to participation, in particular for voters with disabilities and voters from groups with historically lower enrolment and turnout rates

[8] https://algwa.org.au/ January 2024, 'Survey Report - Bullying, Harassment and Intimidation in NSW Local Government'

I encourage the JSCEM to go beyond written submissions and directly canvas voters in groups with historically lower engagement. JCSEM needs to accurately understand the problem - why aren't voters participating? - before recommending solutions. Without a thorough discussion and exploration of the experiences of voters with disabilities, new citizens, young voters, Indigenous voters and homeless people, any solution is likely to be based on assumptions or unconscious bias. Human centred design principles can help to identify and interrogate the most significant barriers to participation. It's also vital that members of groups with historically lower engagement help to co-design, test and refine solutions - otherwise they will fail to last.

A resilient democracy is a bi-directional process. A genuinely respectful exchange between elected representatives, electoral commissions and voters from groups with historically lower enrolment/turnout rates sits at the heart of finding long term solutions to better voter engagement.

Electoral commissions must respond to significant demographic changes in voter groups. For example 25% of Australian voters (1.34 million people) are aged 18-35.[9] If we lift the age to under-40s, then young voters make up 51 per cent of NSW voter population.[10] Taiwan offers an excellent case study of collaborating with young voters to modernise electoral and democratic processes to keep them fit for purpose. Maintaining a strong relationship between elected representatives and marginalised groups also helps to combat the impact of political polarisation which can atomise some community members, making them more prone to disinformation and potentially radicalisation.

Audrey Tang, Taiwan's first Minister for Digital Affairs trialed ways to align technology with democratic outcomes. By using technology such as menti real time surveys, government sponsored hackathons, or encouraging civic community groups to create a collaborative fact checking ecosystem delivers a democratically competent society inoculated against disinformation and AI designed to undermine community confidence in electoral processes. Leveraging the technological skills of young Australian voters can be a way of bringing this voter cohort into a constructive dialogue about elections and the democratic processes between elections as well.

Challenges, like low voter turnout in some sections of the community, can be opportunities for innovation and creativity which can make our democratic ecosystem more vibrant, future focused and resilient.

D. Implement options for technology assisted voting (TAV) as set out in the NSW Electoral Commission's November 2023 report on TAV

[9] https://theconversation.com/what-will-young-australians-do-with-their-vote-are-we-about-to-see-a-youthquake-180883
[10] https://www.abc.net.au/news/2023-03-13/nsw-votes-young-outnumber-baby-boomers-could-hold-key-election/102082094

I support the finding by the NSW Electoral Commissioner in the final review of TAV report *"...that there is no sound basis on which to contemplate a large-scale program of TAV in New South Wales in the short term. The systems to control risks to electoral integrity from the broad use of TAV – particularly internet voting – are not sufficiently mature or proven to an acceptable standard. The existing paper ballot voting system is more secure and better understood and trusted by electors. It should continue to be offered as the primary voting channel."*[11]

I don't believe TAV is a permanent option in the long term either. TAV eliminates the person-to-person, relational aspect of Australian elections which is one of our democratic strengths:

'Most polling places are in community, school and church halls, with schools particularly favoured. Here, where children learn the rudiments of their future adult civic responsibilities, they see them enacted in a familiar community setting.'[12] There is a festive sense on election day, with cake stalls, democracy sausages and community fundraising. This is a human experience, an enjoyable pathway into our complex system of democracy. Paper ballots and the opportunity for community members to work at elections, seeing the many checks and balances before, during and after polling, solidifies the integrity of Australian electoral processes, administered by independent electoral commissions, in the minds of community members.

Putting TAV and cost saving ahead of the communality of in-person voting would diminish voter engagement. It would also threaten the integrity of the electoral process through increased cyber risks, as outlined by the NSW Electoral Commissioner's November 2023 TAV report.

TAV also introduces more complicated identity requirements than the current threshold of being on the electoral roll and not having to show any personal identification when voting. Any additional identification requirements would erode participation by groups with low voter enrolment and turn out.

Concluding comments about the link between leadership choices, social cohesion and increasing voter engagement, participation and confidence

The annual Scanlon Foundation Social Cohesion report reminds us of the nexus between the choices our elected leaders make and social cohesion:

'Trust in government and the political system is an important component of social cohesion. This component stems in turn from the importance of government leadership in maintaining our social connections and social fabric, ensuring opportunities for community, economic and democratic participation across society and addressing disadvantage and discrimination.'

[11] November 2023, Page 2, https://elections.nsw.gov.au/technology-assisted-voting-review/review-papers
[12] Judith Brett, (2021) 'We are good at elections' in '*Doing politics'*, page 189

The way that state and local government elections are conducted impacts on social cohesion in NSW. The behaviours of elected leaders and political parties *between* elections can either increase or erode social cohesion. Choices by elected representatives about how to behave in council meetings or parliament, whether to use the power that comes with being an elected representative to enable or disable effective decision making, and how to engage on complex issues of community concern, like housing, managing the energy transition and the quality of public services (education, health, justice) have a cumulative effect on social cohesion.

'People who distrust government report lower levels of social cohesion in several other areas. People who trust the Federal Government only some of the time or never are significantly and substantially less likely to believe that people generally can be trusted, less likely to take great pride in the Australian way of life and culture, less likely to have a great sense of belonging in Australia and less likely to believe migrant diversity makes Australia stronger. Trust in government therefore is at the heart of our social cohesion, intersecting with multiple aspects of Australian society and culture.'[13]

While the quote above refers to the Federal Government, it's worth recalling that local and state governments didn't rate highly on the GIA's Ethics Index. Trust is a critical resource for governments - it makes it possible for local and state governments to pursue their election commitments. Voter engagement, participation and confidence is also a function of trust.

The JSCEM has good reason to be optimistic because:

'(The electorate)... remain(s) engaged in and committed to democracy though, suggesting that reforms to deepen and strengthen our democracy may provide a path to instilling greater confidence in government and our political system.'[14]

Yours sincerely

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About Democracy Matters
Democracy Matters is a non partisan education and training service. We use the power of education to make democracy grow between elections. Democracy is a skill and it is possible for all of us to be better informed and more confident to participate in democratic opportunities.

Voting is mandatory in Australia yet electoral education tends to end in upper primary/early high school years. To fill this gap, Democracy Matters offering education and professional development to three key groups in the electoral ecosystem: elected representatives, new voters, and the teachers that inspire future elected representatives and voters. Giving people democratic skills builds their confidence and increases voter engagement, participation and confidence.

[13] Scanlon Foundation 'Mapping social cohesion 2023', page 8
[14] Scanlon Foundation 'Mapping social cohesion 2023', page 48