

Disclosure of Enrolment, Electoral and Election Information Policy

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1. Abbreviations and definitions

Abbreviations

AEC	Australian Electoral Commission
CSO	Crown Solicitor's Office
EFED Act	<i>Election Funding, Expenditure and Disclosures Act 1981</i>
GIPA Act	<i>Government Information (Public Access) Act 2009</i>
NSWEC	New South Wales Electoral Commission Staff Agency
PE&E Act	<i>Parliamentary Electorates and Elections Act 1912</i>
PPIP Act	<i>Privacy and Personal Information Protection Act 1998</i>
LG Act	<i>Local Government Act 1993</i>
LG Regulation	Local Government (General) Regulation 2005
The Commission	New South Wales Electoral Commission
The Commissioner	New South Wales Electoral Commissioner

Definitions

Election information – the information required to be collected from state and local government elections. For state elections the information includes:

- the names and addresses of electors who voted (other than silent electors and itinerant electors);
- whether the elector voted personally or by post;
- whether the elector voted at a polling place or pre-poll voting place; and
- the location of the polling place or pre-poll voting place.

For local government elections the election information required to be collected includes:

- the names and addresses of those who voted (other than silent voters);
- whether the elector voted personally or by post; and
- if the elector vote in person, the location of the polling place in the ward or area they voted.

Electoral information – the information required to be collected for the purpose of determining whether the address for which the person is enrolled is the person's real place of living. If the person is not enrolled, information collected to determine whether the person is entitled to be enrolled for any district. Electoral information may include a person's:

- telephone number;
- email;
- contact details; and
- any other information or code used to identify the person.

Electoral roll – a roll the Commissioner is required to keep and maintain for each state district of NSW of persons who are entitled to be enrolled for that district.

Enrolment information – the information required to be on the rolls for each state district is collectively referred to as enrolment information. For each elector this information includes the elector's:

- surname
- given name or names

- date of birth
- occupation
- sex
- residence (except in relation to a silent elector, an eligible overseas elector or an itinerant elector)

Non-residential roll – a roll that local councils are responsible for preparing.¹ The non-residential roll is to include the names of non-resident owners of rateable land who:

- have applied, at any time, for the inclusion of their names in any such roll; and
- who, in the opinion of the general manager, are qualified for inclusion in the roll.

New South Wales Electoral Commission – the three member Commission constituted by section 21A of the *Parliamentary Electorates and Elections Act 1912*.

New South Wales Electoral Commission Staff Agency – the Commissioner led agency employed to enable the Electoral Commission and Electoral Commissioner to exercise their functions.

Residential roll – a roll the Commissioner is required to keep for each local council area of persons entitled to be enrolled as electors because they are residents of the area. The Commissioner may use the roll prepared for a state district or for Commonwealth elections as a basis for the residential roll.

Roll of occupiers and ratepaying lessees – a roll that local councils are responsible for preparing. The roll of occupiers and ratepaying lessees is to include the names of occupiers and ratepaying lessees who:

- have applied, at any time, for the inclusion of their names in any such roll; and
- who, in the opinion of the general manager, are qualified for inclusion in the roll.

Silent electors – a person who has applied successfully to have his or her residential address not shown on any roll on the grounds of personal safety. The Commissioner will ensure that the address of the person is not disclosed. However, if someone is granted silent enrolment for the address where they are already enrolled, that address will continue to appear on electoral rolls that are already in the public domain but will not appear on any future electoral rolls.

2. Introduction

2.1 The New South Wales Electoral Commissioner (the Commissioner) is responsible for collecting and maintaining enrolment, electoral and election information.

2.2 The *Parliamentary Electorates and Elections Act 1912* (PE&E Act), the *Local Government Act 1993* (LG Act) and other relevant legislative instruments regulate the disclosure of enrolment, electoral and election information. As enrolment, electoral and election information contains personal information, the *Privacy and Personal Information Protection Act 1998* (PPIP Act) also applies.

Information Protection Principles

2.3 The New South Wales Electoral Commission Staff Agency (NSWEC) is committed to protecting the privacy of all personal information it collects, manages and stores in accordance with the information protection principles in the PPIP Act. The NSWEC ensures that enrolment, electoral and election information is protected by taking such security safeguards as are

¹ The *City of Sydney Act 1988* places a number of additional obligations on the General Manager of City of Sydney with regard to the preparation and maintenance of the roll of non-resident owners of rateable land and the roll of occupiers and ratepaying lessees. Section 18B(1) of the *City of Sydney Act* requires the general manager to send a copy of both the rolls to the Electoral Commissioner for review. Section 18D also requires the General Manager to maintain a non-residential roll electoral information register.

reasonable in the circumstances against loss and unauthorised access, use, modification or disclosure. The NSWEC will not disclose such information unless authorised or required under the PPIP Act, the PE&E Act and other relevant laws.

Government Information (Public Access) Act 2009

- 2.4 Access to enrolment, electoral and election information is not available under the *Government Information (Public Access) Act 2009* (GIPA Act).
- 2.5 An access application under the GIPA Act for enrolment information will not be granted for a number of reasons, one being that there are already means under the PE&E Act and the LG Act by which individuals may apply to access that information.²
- 2.6 An access application under the GIPA Act for electoral information will not be granted on the basis that there is a conclusive presumption of overriding public interest against disclosure of that information.³
- 2.7 An access application under the GIPA Act for election information will not be granted on the basis that there is an overriding public interest against disclosure of that information. For example, disclosure could reasonably be expected to reveal an individual's personal information or contravene a principle outlined in the PPIP Act.⁴

3. Purpose

- 3.1 This policy outlines the most common or likely circumstances in which the NSWEC is required or authorised to disclose enrolment, electoral and election information.

4. Scope

- 4.1 This policy is a guide as to how the NSWEC manages its responsibilities for collecting and maintaining enrolment, electoral and election information. It is a guide for how the NSWEC may deal with:
 - the disclosure of enrolment, electoral and election information for administrative purposes;
 - the disclosure of enrolment, electoral and election information to government agencies or bodies;
 - responding to subpoenas and notices to produce; and
 - public access to rolls.
- 4.2 This policy is intended to act as a guide and any questions concerning the disclosure of enrolment, electoral or election information may be directed to the NSWEC.

5. Disclosure of enrolment information

Disclosure of enrolment information for administrative purposes

- 5.1 The PPIP Act, PE&E Act and the LG Act implicitly authorise the NSWEC to disclose enrolment information to relevant staff, contractors and service providers to enable the NSWEC to properly exercise its functions under the PE&E Act, the LG Act and the *Election Funding, Expenditure and Disclosures Act 1981* (EFED Act).
- 5.2 For example, the NSWEC may provide enrolment information to a mailing house or printer or a returning officer or other election official in order to conduct its business. The business of the

² *Government Information (Public Access) Act 2009*, section 59

³ *Government Information (Public Access) Act 2009*, schedule 1(1)

⁴ *Government Information (Public Access) Act 2009*, section 14

NSWEC includes the administration of state and local government elections and the exercise of its enforcement functions in respect of compulsory voting and funding and disclosures.

- 5.3 The NSWEC requires all staff and contractors to sign a Code of Conduct Acknowledgment or Confidentiality Agreement. The NSWEC's *Privacy Management Plan* sets out in detail what training is available to staff to ensure compliance with the PPIP Act and other relevant legislation.

Disclosure of enrolment information to government agencies or bodies

Australian Electoral Commission

- 5.4 The Commissioner may provide enrolment information to the Australian Electoral Commission (AEC) in accordance with the joint roll arrangement as authorised by the PE&E Act.⁵ The AEC keeps and maintains an electoral roll for each state and territory that is available for public inspection at any AEC office. Questions concerning access to the Commonwealth electoral roll should be directed to the AEC.

Sheriff's Office

- 5.5 The Commissioner must provide the Office of Sheriff NSW the latest available copies of the rolls of electors for such electoral districts as requested by the Sheriff's Office for the purpose of preparing jury rolls.⁶

Crown Solicitor's Office

- 5.6 The NSWEC may seek advice from the NSW Crown Solicitor's Office (CSO) or another legal service provider when exercising its functions. For example, in fulfilling its enforcement functions in respect of compulsory enrolment, voting and funding and disclosure, the NSWEC will provide briefs of evidence or instructions to CSO that may include enrolment information.

Local Councils

- 5.7 Section 296 of the LG Act enables a local council to enter into an arrangement with the Commissioner for the Commissioner to administer its elections, referendums and polls. In instances where a council elects to administer its own elections, that council will require access to relevant enrolment information held by the Commissioner.
- 5.8 Section 41 of the PE&E Act provides a process by which a council conducting its own elections may request access to enrolment information. Enrolment information is an integral component to the conduct of local government elections, which is a significant public interest consideration for providing the required information during an election period.
- 5.9 The returning officer and/or general manager of a council conducting its own elections must provide the Commissioner an undertaking that ensures the safeguarding of enrolment information.⁷

Other government agencies or bodies

- 5.10 There are a number of ways other government agencies or bodies may obtain enrolment information, however, in each instance, disclosure of enrolment information is only available in limited circumstances.
- 5.11 Section 18 of the PPIP Act contains exemptions to the general prohibition on disclosing personal information. In accordance with s 18, the NSWEC may disclose personal information (which may include enrolment information) to other agencies or bodies in instances where:
- the disclosure is directly related to the purpose for which the information was collected, and the agency disclosing the information has no reason to believe that the individual concerned would object to the disclosure; or

⁵ *Parliamentary Electorates and Elections Act 1912*, section 49

⁶ *Jury Act 1977*, section 11

⁷ *Parliamentary Electorates and Elections Act 1912*, section 41(3)

- the individual concerned is reasonable likely to have been aware, or has been made aware when the information was collected, that information of that kind is usually disclosed to that other person or body; or
- the NSWEC believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person.⁸

5.12 Further, s 23(5) of the PPIP Act provides that a public sector agency (whether or not a law enforcement agency) is not required to comply with s 18 of the PPIP Act if the disclosure of the information concerned:

- is made in connection with proceedings for an offence or for law enforcement purposes; or
- is to a law enforcement agency (or such other person or organisation as may be prescribed by the regulations) for the purposes of ascertaining the whereabouts of an individual who has been reported to a police officer as a missing person; or
- is authorised or required by subpoena or by search warrant or other statutory instrument; or
- is reasonably necessary:
 - for the protection of the public revenue; or
 - in order to investigate an offence where there are reasonable grounds to believe that an offence may have been committed.

5.13 Section 25 of the PPIP Act provides that an agency is not required to comply with particular information principles in the PPIP Act where non-compliance is lawfully authorised or required or where non-compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law. For example, under section 41 of the PE&E Act, the Commissioner may disclose enrolment information to other government agencies or bodies in instances where the Commissioner makes a finding that the public interest in providing the requested information outweighs the public interest in protecting the privacy of personal information in the particular circumstances.

5.14 Examples of government agencies or bodies that may be given access to enrolment information in the public interest include the NSW Police Force, the NSW Office of State Revenue, NSW Fair Trading, NSW Registry of Births, Deaths and Marriages and the NSW Crime Commission.

Subpoenas and notices to produce

5.15 The NSWEC will on occasion receive subpoenas, summons or notices to produce from various courts or tribunals, for example, the NSW Civil and Administrative Tribunal, the Supreme Court of NSW, the Children's Court of NSW or local courts for the production of enrolment information in relation to a particular person or persons.

5.16 The NSWEC must comply with the subpoena or notice to produce by providing the enrolment information requested. Failure to comply with a subpoena without a lawful excuse is a contempt of court and may lead to a fine or arrest.

5.17 It is noted that some government agencies or bodies may in accordance with the governing legislation compel (without court order) the NSWEC to produce enrolment information about a particular person or persons. Such agencies include: Centrelink;⁹ the Independent Commission Against Corruption;¹⁰ Child Support;¹¹ and Housing NSW.¹²

⁸ *Privacy and Personal Information Protection Act 1998*, section 18(1)(a)-(c)

⁹ *Social Security (Administration) Act 1999* (CTH), section 196

¹⁰ *Independent Commission Against Corruption Act 1988* (NSW), section 22

¹¹ *Child Support (Registration and Collection) Act 1988* (CTH), section 120

¹² *Housing Act 2001*, section 69 C(1).

5.18 For further information see *Guidelines – Responding to Subpoenas, Summonses and Notices to Produce*.

On-line enrolment verification facility

5.19 The PE&E Act enables the Commissioner to provide internet on-line access information contained in the roll for a district for the purpose of allowing an individual to check whether they are enrolled and that their enrolment details are correct.¹³ The enrolment verification facility can be accessed from the NSWEC website.

Public access to rolls

Public inspection

5.20 The Commissioner is required, pursuant to the PE&E Act, to make available for public inspection a copy of the electoral roll for a district that was in force at the time of the last election.¹⁴ A copy of a roll available for inspection will not contain any particulars relating to a person's occupation. Inspection is free of charge and at the offices of the NSW Electoral Commission.

5.21 The Commissioner is also required, pursuant to the LG Act, to make available for public inspection the latest copy of the residential roll for public inspection at any reasonable time during office hours at the office of the NSWEC.¹⁵

5.22 The non-residential roll and the roll of occupiers and rate paying lessees for local government election purposes are made available for public inspection during office hours at the relevant council. Individuals will need to consult with the relevant councils to ascertain when those rolls will be available.¹⁶

Electoral purpose

5.23 An electoral roll is a public register within the meaning of the PPIP Act. Section 57 of the PPIP Act provides that:

The public sector agency responsible for keeping a public register must not disclose any personal information kept in the register unless the agency is satisfied that it is to be used for a purpose relating to the purpose of the register or the Act under which the register is kept.

5.24 The PE&E Act enables the Commissioner to determine the manner and form of access to rolls and enrolment information; this includes the manner in which a copy of a roll will be made available for public inspection.¹⁷

5.25 In order to satisfy its obligations under the PPIP Act, the NSWEC has implemented a procedure, recommended in guidelines issued by the Privacy Commissioner, that requires any person attending for inspection of a roll to complete an application form confirming that inspection is for a purpose relating to the purpose of the roll or the Act under which the roll is kept.

5.26 The NSWEC will refuse access to the roll if an applicant fails to complete the application form, provide photo ID or fails to indicate an appropriate reason for inspecting the roll.

5.27 The purpose of public inspection of a roll is to ensure a degree of public transparency and accountability in terms of accuracy of enrolment information and to guard against electoral fraud.

5.28 Purposes that are not considered valid for inspecting the roll may include:

- obtaining addresses to send persons unsolicited mail;

¹³ *Parliamentary Electorate and Elections Act 1912*, section 44

¹⁴ *Parliamentary Electorate and Elections Act 1912*, section 39

¹⁵ *Local Government Act 1993*, section 302(1)

¹⁶ *Local Government Act 1993*, section 302(2)

¹⁷ *Parliamentary Electorates and Elections Act 1912*, sections 38 and 39(2)

- seeking the addresses of acquaintances and/or relatives in order to renew contact;
- seeking details in order to undertake research into a person's antecedents,
- solicitors seeking information for the completion of probate processes; or
- local councils seeking to augment their mailing lists.

5.29 A person inspecting an electoral roll may take hand written notes but are not permitted to copy or record the information in any other way.¹⁸

Disclosure of enrolment information to parties, members and candidates

5.30 The PE&E Act requires the Commissioner, in limited circumstances, to provide enrolment information to registered parties, members of parliament and candidates for state elections.¹⁹ In addition, the Local Government (General) Regulation 2005 (LG Regulation) requires the Commissioner, in limited circumstances, to provide enrolment information to candidates for local government election.²⁰ The purpose of these disclosure provisions is to assist candidates, civic office holders and registered parties in their representative duties and in communications with electors as part of the democratic process.

5.31 The PE&E Act, the LG Regulation and the PPIP Act, provide for the protection of personal information by prescribing limitations and restrictions on the use and disclosure of enrolment information to registered parties, members and candidates. A registered party, member and candidate must not use or disclose enrolment information that is provided by the Commissioner except for a purpose in connection with an election. Use of enrolment information for a commercial purpose is strictly prohibited.²¹

5.32 Recipients of enrolment information will be required to enter into a written agreement with the Commissioner for the provisions of enrolment information.

5.33 Those in receipt of enrolment information who do not comply with the relevant provisions of the PE&E Act, the LG Act or the PPIP Act could face serious penalties or could be required to pay monetary compensation to affected persons. For example, section 42 of the PE&E Act (which is also applicable under the LG Regulation) limits the use and disclosure of enrolment information and prescribes a maximum penalty of 1,000 penalty units.

5.34 The Commissioner is required to provide enrolment information to parties, members and candidates free of charge.²² The PE&E Act and the LG Regulations enable the Commissioner to determine the manner and form of access to enrolment information; this includes the manner in which a copy of a roll or list of electors will be made available. For example, the Commissioner may determine that the information is to be provided electronically or in electronic form.²³

Registered state parties

5.35 The Commissioner is required, in accordance with the PE&E Act, to provide each State registered party a list specifying electors and their particulars:

- once every 4 years; and
- as soon as practicable after the redistribution of the State into districts; and
- on receiving a request from the registered officer of the party.²⁴

¹⁸ *Parliamentary Electorates and Elections Act 1912*, section 39(4)

¹⁹ *Parliamentary Electorates and Elections Act 1912*, section 40

²⁰ *Local Government (General) Regulation 2005* cl 284A

²¹ *Parliamentary Electorates and Elections Act 1912*, sections 42 – 43; *Local Government (General) Regulation 2005* cl 284B

²² *Parliamentary Electorates and Elections Act 1912*, section 40; *Local Government (General) Regulation 2005* cl 284A

²³ *Parliamentary Electorates and Elections Act 1912*, section 38(2); *Local Government (General) Regulation 2005* cl 284A

²⁴ *Parliamentary Electorates and Elections Act 1912*, section 40(1)

Members of Legislative Council

5.36 The Commissioner is required, in accordance with the PE&E Act, to provide each member of the Legislative Council a list specifying electors and their particulars:

- once every 4 years; and
- as soon as practicable after the redistribution of the State into districts; and
- on receiving a request from the member but not more than once a year.²⁵

Members of the Legislative Assembly

5.37 The Commissioner is required, in accordance with the PE&E Act, to provide each member of the Assembly a list specifying electors and their particulars for the district for which the member was elected:

- once every 4 years; and
- as soon as practicable after the redistribution of the State into districts; and
- on receiving a request from the member but not more than once each year.²⁶

5.38 In relation to a redistribution of the State into districts, the Commissioner must provide to each member of the Assembly a list specifying electors (and their particulars) for the district for which the member was elected, and a list specifying electors (and their particulars) for the district whose name and area, in the opinion of the Commissioner, most resemble the district for which the member was elected.²⁷

5.39 The Commissioner must also provide at the request of a member of the Assembly, but not more than 6 times each year, a list specifying electors (and their particulars) who are no longer enrolled and who are newly enrolled in the district represented by the member.²⁸

Candidates for Legislative Council

5.40 At the request of any candidate for a periodic Council election, the Commissioner must provide to the candidate a list of electors and their particulars in a form determined by the Commissioner.²⁹

Candidates for Legislative Assembly

5.41 At the request of any candidate for an Assembly general election or by-election, the Commissioner must provide to the candidate a list of electors for the district for which the candidate is seeking election and their particulars in a form determined by the Commissioner.³⁰

Candidates for local government elections

5.42 The Commissioner is required, in accordance with the Local Government (General) Regulation 2005, to provide a local government candidate enrolment information as appearing in the roll of electors consisting of a list of electors for the candidate's ward or, if the area is not divided into wards, a list of electors for the candidate's area and their particulars.³¹

Disclosure of enrolment information to other persons

5.43 From time to time the Commissioner receives requests from people, organisations or other government agencies for access to enrolment information. These requests are dealt with in accordance with section 41 of the PE&E Act.

²⁵ *Parliamentary Electorates and Elections Act 1912*, section 40(2)

²⁶ *Parliamentary Electorates and Elections Act 1912*, section 40(3)

²⁷ *Parliamentary Electorates and Elections Act 1912*, section 40(4)

²⁸ *Parliamentary Electorates and Elections Act 1912*, section 40(5)

²⁹ *Parliamentary Electorates and Elections Act 1912*, section 40(6)

³⁰ *Parliamentary Electorates and Elections Act 1912*, section 40(7)

³¹ Local Government (General) Regulation 2005 cl 284A

5.44 Requests made under section 41 must be in writing and addressed to the Commissioner. They must contain sufficient information to enable the Commissioner to undertake the prescribed public interest test specified in section 41.

5.45 Each request must specify the following:

- details of the particular enrolment information sought;
- why this information is sought;
- how the information will be used;
- sources other than the NSWEC that may hold the information sought;
- other organisations/agencies approached for provision of the information;
- why the applicant considers that the NSWEC is the most appropriate source of the information; and
- how, in the applicant's view, the public interest in providing enrolment information to the applicant outweighs the public interest in protecting the privacy of persons affected (see below for details on the public interest test).

5.46 The Commissioner will consider the merits of each request.

The public interest test

5.47 The Commissioner is not permitted to disclose enrolment information to other persons or organisations (for purposes unrelated to electoral administration or the democratic process) unless the public interest in disclosure outweighs the public interest in protecting the privacy of personal information.³²

5.48 In making this assessment, the Commissioner must ensure:

- that the exercise of this function promotes the objects of the PE&E Act; and
- that privacy protection principles under the PPIP Act and Codes of Practice and Directions are observed.

5.49 The Commissioner will generally not accede to requests for enrolment information unless disclosure is for one of the following purposes:

- public health and safety;
- criminal law enforcement by authorised agencies; and
- protection of the public revenue.

5.50 As custodian of personal information of approximately 5.2 million electors, the NSWEC takes its responsibilities to protect the privacy of personal information very seriously and NSW electors have a right to expect that the disclosure and use of their personal information is restricted.

Public health and safety

5.51 When considering the public interest in disclosure of enrolment information for public health and safety purposes, the Commissioner may have regard to the PPIP Act. For example, the disclosure of personal information will generally not apply if an agency believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person.³³

³² *Parliamentary Electorates and Elections Act 1912*, section 41(1)

³³ *Privacy and Personal Information Protection Act 1998*, section 18(1)(c)

5.52 Disclosure of enrolment information for medical research and health screening programs are expressly anticipated in section 41 of the PE&E Act.³⁴ However, just because an applicant is undertaking medical research or facilitating a health screening program, it does not automatically follow that the Commissioner will provide the information requested. Section 29B of the PPIP Act provides an exemption for research purposes and the Commissioner will consider the request against in light of this section.

Law enforcement

5.53 When considering the public interest in disclosure of enrolment information for criminal law enforcement purposes, the Commissioner may have regard to section 23 of the PPIP Act for guidance. Section 23 provides an exemption from information protection principles if, inter alia, the disclosure of the information concerned:

- is made in connection with proceedings for an offence or for law enforcement purposes (including the exercising of functions under or in connection with the *Confiscation of Proceeds of Crimes Act 1989* or the *Criminal Assets Recovery Act 1992*); or
- is to a law enforcement agency for the purposes of ascertaining the whereabouts of an individual who has been reported to the police as a missing person; or
- is reasonably necessary for the protection of the public revenue, or in order to investigate an offence where there are reasonable grounds to believe that an offence may have been committed.

5.54 Enforcement agencies from the Commonwealth and other States or territories should approach the Australian Electoral Commission (AEC).

5.55 Requests by any NSW public sector agency for release of enrolment information for law enforcement purposes should be made in writing signed by a senior officer, certifying that the information is reasonably necessary for the purposes of law enforcement.

Protection of the public revenue

5.56 When considering the public interest in disclosure of enrolment information for the protection of public revenue purposes, the Commissioner may have regard to established privacy principles. Public revenue indicates a function of collecting income on behalf of the government not merely saving expenditure. The Commissioner will consider any legislative basis for the request including any penalty provisions that may be relevant in order to determine whether the legislation is regarded as legislation that makes provision for the protection of the public revenue.³⁵

Alternative sources

5.57 The NSWEC recognises that some people and organisations are typically attracted to enrolment information not because of anything it reveals about electoral matters (being the purpose for which information was collected) but, rather, because it is a comprehensive and convenient database of name and address information which might be used to promote the objects of that person or organisation.

5.58 The electoral roll is only one of a number of databases from which such information can be sought. Others include telephone directory databases and credit reference databases. Applicants must indicate why they need enrolment information specifically, and what other sources of information they have considered and/or approached.

5.59 Even if the applicant can make a case for needing enrolment information, it does not automatically follow that the Commissioner will provide the information requested. The Commissioner must first apply the public interest test.

³⁴ *Parliamentary Electorates and Elections Act 1912*, section 41(4). The PE&E Act permits additional information (age range and sex) to be released for medical research and the conduct of health screening programs.

³⁵ *Re Rana and Military Rehabilitation and Compensation Commission* (2009) 109 ALD 217 at 91

5.60 If the requesting agency is a Commonwealth agency, or the request is for enrolment information for more than one jurisdiction, the obvious source agency would be the AEC, which has an extensive range of permitted disclosures and established procedures for handling access requests.

Assessments in favour of disclosure

Changes and form of access

5.61 If the Commissioner makes an assessment that the public interest in providing the requested information outweighs the public interest in protecting the privacy of personal information, the Commissioner may:

- provide the person or organisation a list specifying electors and their particulars, and
- charge a fee to cover the cost of providing the list.³⁶

5.62 If the Commissioner provides information to a person or organisation that conducts medical research or provides a health screening program, the Commissioner may include age range and sex of electors as part of the list.³⁷

5.63 It is noted that the PE&E Act enables the Commissioner to determine the manner and form of access to enrolment information; this includes the manner in which a list of electors will be made available.³⁸

Undertakings

5.64 If the Commissioner has made an assessment in favour of disclosure, the Commissioner must obtain from the person or organisation and undertaking that they will:

- only use the information for the purpose for which the NSWEC agreed to provide the information; and
- not copy the information or give it to any other person; and
- return the information to the NSWEC or destroy it after use.³⁹

5.65 Applicants will be asked to complete a written undertaking before any enrolment information is disclosed.

Offences under the PE&E Act and PPIP Act

5.66 The PE&E Act and the PPIP Act provide for the protection of personal information and impose limitations and restrictions on the use and disclosure of enrolment information provided under section 41 of the PE&E Act. Those in receipt of enrolment information who do not comply with the relevant provisions of the PE & E Act or the PPIP Act may face serious penalties including fines up to \$110 000, imprisonment and/or the payment of monetary compensation to affected persons.⁴⁰

Record keeping and reporting

5.67 The Commissioner must make available for public inspection at the office of the NSWEC, any assessment it has made in respect of section 41 of the PE&E Act. This information may include the details of the applicant. A summary of any assessment will also be made available in the NSWEC's annual report.⁴¹

³⁶ *Parliamentary Electorates and Elections Act 1912*, section 41(2)

³⁷ *Parliamentary Electorates and Elections Act 1912*, section 41(4)

³⁸ *Parliamentary Electorates and Elections Act 1912*, section 38(5)(b)

³⁹ *Parliamentary Electorates and Elections Act 1912*, section 41(3)

⁴⁰ See, for example: *Parliamentary Electorates and Elections Act 1912*, sections 42(1) and 43; *Privacy and Personal Information Protection Act 1998* sections 55(2) and 62

⁴¹ *Parliamentary Electorates and Elections Act 1912* section 41(5)-(6)

5.68 The NSWEC is permitted to report an alleged breach of the PE&E Act, the PPIP Act and/or any other relevant laws by a recipient of enrolment information to relevant authorities such as the NSW Police Force and/or the NSW Information and Privacy Commission.

6. Disclosure of electoral information

Disclosure of electoral information for administration purposes

- 6.1 The Commissioner is authorised to collect information, referred to as Electoral Information, for the purpose of preparing, maintaining and revising state district rolls (the Commissioner may use state district rolls as a basis for local government residential rolls).⁴² The Commissioner collects this information as part of its obligations under the automatic enrolment provisions of the PE&E Act.⁴³
- 6.2 The Commissioner (and officers acting under the directions of the Commissioner) are exempt from any requirements of the PPIP Act relating to the collection, use or disclosure of personal information to the extent that personal information is collected, used or disclosed for the purposes of or in connection with the collection and maintenance of electoral information by the Commissioner.⁴⁴
- 6.3 A NSWEC officer must not directly or indirectly make a record of electoral information or divulge electoral information to another person unless exercising his or her functions under Division 6 of Part 4 of the PE&E Act (being the provision that deals with the collection and maintenance of electoral information). Non-compliance with this requirement is an offence with a maximum penalty of \$5 500 and may also result in disciplinary action including dismissal.⁴⁵

Disclosure of electoral information to other persons

- 6.4 Despite the general prohibition on disclosing electoral information to other persons, the NSWEC is authorised to divulge electoral information to a person or persons:
 - if the Commissioner certifies that it is necessary in the public interest that the information be divulged; or
 - a person to whom the information relates has expressly authorised it to be disclosed.⁴⁶
- 6.5 The disclosure of electoral information to third parties is very limited and strictly controlled. The provisions for collection and maintenance of electoral information were introduced by legislative amendment to the PE&E Act on the basis that electoral information will be subject to enhanced privacy protections.⁴⁷
- 6.6 Examples of instances when disclosure of electoral information may be considered necessary in the public interest include:
 - to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person;
 - to assist with emergency notification procedures undertaken by federal or state law enforcement agencies or fire and rescue services during an emergency; or
 - for law enforcement purposes undertaken by a federal or state law enforcement agencies.

⁴² *Parliamentary Electorates and Elections Act 1912*, section 46(1); *Local Government Act 1993*, section 298

⁴³ *Parliamentary Electorates and Elections Act 1912*, section 29. The NSWEC's automatic enrolment process is known as SmartRoll.

⁴⁴ *Parliamentary Electorates and Elections Act 1912*, section 46(3) and 47(6)

⁴⁵ *Parliamentary Electorates and Elections Act 1912*, section 48(1). All staff members are required to comply with the NSWEC Code of Conduct and related policies, guidelines and legislation. The NSWEC will take action against breaches of the NSWEC Code of Conduct that may result in the imposition of sanctions, up to and including, termination of employment.

⁴⁶ *Parliamentary Electorates and Elections Act 1912*, section 48(2)

⁴⁷ New South Wales, *Parliamentary Debates*, Legislative Chamber, 12 November 2009, p19517 (the Hon Penny Sharpe MLC)

- 6.7 Any certification of the Commissioner will be included in the NSWEC's Annual Report.⁴⁸
- 6.8 Recipients of electoral information will be required to enter into a written agreement with the Commissioner for the provisions of electoral information.
- 6.9 Further, it is an offence for any person or body (and a person or employee under the control of that person or body) to directly or indirectly make a record of electoral information or divulge electoral information to another person; maximum penalty being 50 penalty units.⁴⁹

Subpoenas and notices to produce

- 6.10 A person cannot be required to produce or divulge electoral information to any court, tribunal or authority or person having power to require the production of documents or the answering of questions unless:
- the Commissioner certifies that it is necessary in the public interest to do so; or
 - a person to whom the information related has expressly authorised the information to be produced or divulged.⁵⁰
- 6.11 The Commissioner will only certify that it is necessary in the public interest to produce or divulge electoral information in response to a notice to produce or attend in very limited circumstances, for example, if the notice is at the behest of a state or federal law enforcement agency.
- 6.12 Any certification of the Commissioner will be included in the NSWEC's Annual Report.⁵¹

7. Disclosure of election information

Disclosure of election information to state registered parties and independent members

- 7.1 After a state election, each state registered party and independent Member of Parliament (in respect of the member's district) may seek access to election information held by the Commission.
- 7.2 Recipients of election information will be required to enter into a written agreement with the Commission for the provision of election information.
- 7.3 Election information contains:
- the names and the addresses of electors who voted (other than silent electors and itinerant electors); and
 - whether they voted personally or by post and, if they voted at a polling place or pre-poll voting place for the district for which the electors were enrolled, the location of that polling place or pre-poll voting place.⁵²
- 7.4 Election information provided under the PE&E Act must only be used in connection with an election. It is an offence for any person to use, or cause or permit the use of, election information provided by the Commission for any purpose other than in connection with an election.

⁴⁸ *Parliamentary Electorates and Elections Act 1912*, section 48(7)

⁴⁹ *Parliamentary Electorates and Elections Act 1912*, section 48(5)

⁵⁰ *Parliamentary Electorates and Elections Act 1912*, section 48(3)-(4)

⁵¹ *Parliamentary Electorates and Elections Act 1912*, section 48(7)

⁵² *Parliamentary Electorates and Elections Act 1912*, sections 138(2)-(2A)

Disclosure of election information to local government registered parties and independent councillors and mayors

- 7.5 After a local government election, each registered party and independent councillor and mayor (in respect of the councillor's and mayor's ward or area) may seek access to election information held by the Commission.⁵³
- 7.6 Recipients of election information will be required to enter into a written agreement with the Commission for the provision of election information.
- 7.7 Election information contains:
- the names and the addresses of electors who voted (other than silent electors); and
 - whether they voted personally or by post and, if they voted at a polling place for the ward or area for which the electors were enrolled, the location of that polling place.
- 7.8 The offence provisions in the PE&E Act in respect of election information are adopted in connection with election information provided under the LG Regulation.⁵⁴

8. Roles and responsibilities

- 8.1 The following table outlines the nature of the commitment expected from staff and the way that commitment should be implemented:

Who	Commitment	How
Executive Director, Elections	Maintain the currency of this Policy. Ensure all NSWEC staff are made aware of their obligations when responding to requests to access enrolment, electoral and election information.	Monitor and revise this Policy as required. Disseminate the Policy to all existing and new NSWEC staff.
Director, Customer Service and Relationship Management	Understand and comply with the law and this Policy when responding to requests to access enrolment, electoral and election information.	Be aware of this Policy and the legislative requirements. Respond to requests for enrolment, electoral and election information in accordance with this Policy and relevant legislation.
NSWEC staff	Understand and comply with the law and this Policy when responding to requests to access enrolment, electoral and election information.	Be aware of this Policy and the legislative requirements.

⁵³ Local Government (General) Regulation 2005 cl 393(1)

⁵⁴ Local Government (General) Regulation 2005 cl 393(2)-(4)

9. Monitoring, evaluation and review

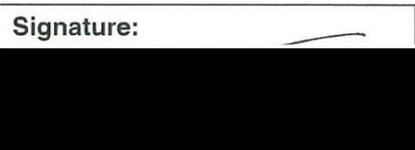
- 9.1 Elections Branch will monitor and review this Policy and update when necessary. There will be a review in three years from the anniversary of approval of this Policy. The monitoring, reviewing and updating of this Policy will be the responsibility of the Director, Customer Service and Relationship Management.

10. Relevant legislation

- *Election Funding, Expenditure and Disclosures Act 1981*
- *Government Information (Public Access) Act 2009*
- *Local Government Act 1993*
- *Parliamentary Electorates and Elections Act 1912*
- *Privacy and Personal Information Protection Act 1998*

11. Document control

Document management

Approved by: John Schmidt Electoral Commissioner	Signature: 	Date approved: 3/7/17
Executive Director Review: Simon Kwok Executive Director Elections	Signature: 	Date approved: 3-7-2017
Director Review: Terrie Roberts A/Director Legal & Governance	Signature: 	Date approved: 3 July 2017

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