



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our ref: PuLC:CBvk210923

21 September 2023

Technology Assisted Voting review  
NSW Electoral Commission  
GPO Box 832  
SYDNEY NSW 2001

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

Dear Commissioner,

### **Technology assisted voting interim review report**

Thank you for the opportunity to review the interim report into technology assisted voting (TAV) and to provide comments. Again, we do not seek to respond to all of the issues raised in the interim review report, but only to make some comment on those issues within the Law Society's expertise.

We note that the interim report discusses savings provisions, including reference to the Law Society's position on consideration of a savings provision, if a form of online voting is found to be suitable in NSW and implemented in the future ([18], [182]).

We take this opportunity to reiterate that position, and to agree with the interim conclusions reached in respect of savings provisions set out in [12] – [15] in the interim review report in respect of protecting the validity of election results, in certain circumstances, in the event that there are technical performance issues with a TAV channel.

Further, we support the legislative reform proposals set out in [215] – [224] of the interim review report, namely:

- Lengthening the pre-election timeframes between the close of candidate nominations and subsequent ballot paper draws for Legislative Assembly and Legislative Council elections, and the commencement of the early voting period;
- Replacing the ballot sampling system for preference distributions in the NSW Legislative Council with a full count system and take full advantage of existing digital scanning and counting technology (noting that this would require amending (a schedule to) the *Constitution Act 1902*); and
- Rationalising the way parties, groups and candidates are displayed on the Legislative Council ballot paper for a digital display or for telephone voting.

We acknowledge that the second proposed reform would require amendment of the *Constitution Act 1902* (NSW) and will likely be a longer-term and more onerous reform project. However, in our view and from a future-proofing perspective, it is desirable (if not necessary) for legislation to be technologically neutral, including in respect of ballot sampling systems, and the current legislation reflects outdated technology from 1978.

Thank you once again for the opportunity to provide comments. Questions at first instance may be addressed to Vicky Kuek, Head of Social Justice and Public Law Reform, at [victoria.kuek@lawsociety.com.au](mailto:victoria.kuek@lawsociety.com.au) or 9926 0354.

Yours sincerely,

A handwritten signature in black ink that reads "CBanks". The letters are cursive and fluid, with the first letter 'C' being particularly large and prominent.

Cassandra Banks  
**President**