

Policy and Guidelines for Disclosure of Electoral Enrolment Information by the New South Wales Electoral Commission (NSWEC)

Background – relevant arrangements and provisions

Amendments in 2006 to the ***Parliamentary Electorates and Elections Act 1912 (PE&EA)*** clarified and confirmed the basis on which NSWEC can disclose electoral enrolment information.

The electoral roll in New South Wales is a joint Commonwealth-State roll. It is maintained by the Australian Electoral Commission (AEC) under an inter-governmental arrangement known as the Joint Roll Arrangement¹. The NSWEC holds a copy of the latest printed electoral rolls used at the 2007 State election for each of the 93 electoral districts. These printed electoral rolls may be inspected at the NSWEC.

The electoral roll may be inspected at any AEC office. The *Commonwealth Electoral Act 1928* provides for many secondary uses of the enrolment information held by the AEC.

The NSWEC uses electoral roll information for the purposes of conducting State and Local Government elections and by-elections. The NSWEC may use the electoral roll information to write to electors regarding their enrolment or to provide them with information regarding an election.

Legislation

The NSWEC is subject to the *Privacy and Personal Information Protection Act 1998 (PPIPA)* which includes principles regulating the disclosure of personal information. However, the NSWEC is also subject to the more specific disclosure provisions of the *Parliamentary Electorates and Elections Act 1912 (the Act)*². These are explained in 'plain English' below.

Definitions

There is often some confusion about the meaning of 'electoral roll' and 'enrolment information' – there are different definitions in the State and Commonwealth legislation and in the Joint Roll Arrangement. For the purposes of this policy and these guidelines:

'*enrolment information*' means the information about electors under the control of the NSWEC;
and

'electoral roll' means a roll of electors entitled to vote at elections under relevant legislation.

Form of the electoral roll and enrolment information

The Act s.31A gives the NSWEC discretion as to the 'manner and form' of the provision of 'rolls and enrolment information'.

¹ Currently the joint roll arrangement dated 12 December 1995 - Clause 7 refers to "the computer records constituting the roll"

² Specifically, Part 4 Division 3A – Disclosure of enrolment information
NSWEC Disclosure Policy and Guidelines p.1

Provision of electoral information for administration purposes

The Act implicitly authorises the NSWEC to provide electors' information to certain contractors in order for the NSWEC to conduct its business. The NSWEC provides electors' information to a mail house contractor and a printer. Such contractors are required to sign a confidentiality agreement. The NSWEC may provide electors' information to the AEC in accordance with the joint roll arrangement as expressly allowed by the Act (s.31H).

Protection for silent electors

Silent electors are those who have applied successfully to have their address details suppressed on grounds of personal safety. Particulars of a silent elector's residence must not be provided or disclosed in any circumstances (s.31A(4)).

Who has access to the electoral roll and enrolment information

Public Inspection

The NSWEC must make available for public inspection, free of charge at the NSWEC offices, a copy of the roll for a district, being the roll as in force at the time of the last election (s.31B). This is expressly not the current enrolment information, and must not contain 'occupation'. Persons inspecting may take hand written notes but are not permitted to copy or record the information in any other way.

The NSWEC may provide an on-line inspection facility for individuals to check their enrolment details, subject to appropriate security (s.31G).

Electoral rolls and enrolment information to registered political parties, MPs and candidates

The NSWEC provides enrolment information to registered political parties, members of the NSW Parliament and candidates for State and Local government elections. Section 31C deals with the release of lists specifying electors for specified areas and their particulars. Detailed in s.31C are the different categories of recipients and their entitlement to electoral information for electoral purposes. There is no cost for these services.

Enrolment information to organisations for other purposes

From time to time the NSWEC receives requests from people or organisations for access to elector information. The NSWEC has a responsibility to respond to requests for 'a list of electors and their particulars' from any other persons (s.31D).

The NSWEC must identify the public interest in providing the requested information, and make a finding whether or not that public interest outweighs the public interest in protecting the privacy of personal information, in the particular circumstances. (s.31D(1)).

If the NSWEC makes a favourable finding, it may provide the list, and may charge a fee to cover the cost of provision (s.31D(2)).

The NSWEC must obtain from the person or organisation an undertaking that they will:

- (a) only use the information for the purpose for which the NSWEC agreed to provide the information; and
 - (b) not copy the information or give it to any other person; and
 - (c) return the information to the NSWEC or destroy it after use
- (s.31D(3)).

If the NSWEC provides information to a person who either conducts medical research or provides a health screening program, the NSWEC may include age range and sex of the electors (s.31D(4)).

The NSWEC must make available for public inspection, free of charge at the NSWEC offices, any finding made under (s.31D(1)), and include a summary in the Annual Report (s.31D(6)).

How enrolment information may be used

The legislation places an obligation on parties receiving enrolment information not to use it except for a 'permitted purpose' (s.31E). These purposes are expressly specified in relation to registered

parties and candidates and MPs. For other third parties the 'permitted purpose' is the purpose 'for which the Electoral Commissioner agreed to provide the information'.

Parties receiving enrolment information are expressly prohibited from making any further disclosure of information provided (other than as part of an authorised use) or from using it for 'commercial purposes' (meaning being sold or offered for sale) (s.31F).

There are penalties for any breach of these conditions.

NSWEC approach to considering requests for enrolment information

Apart from the specific reference to medical research and health screening in s.31D(4) the Act is silent as to what other purposes the Electoral Commissioner may consider as 'in the public interest' – the Electoral Commissioner has absolute discretion.

The Electoral Commissioner's approach to the exercise of this discretion is guided in part by the provisions of the *Privacy and Personal Information Protection Act 1988* (PPIPA), as supplemented by Codes of Practice and Directions under that Act. It also draws on relevant provisions and experience under other Australian privacy and electoral laws.³

Procedure and criteria

All applications will be considered and assessed regarding the public interest in releasing information in each particular circumstance.

The Electoral Commissioner is required to determine whether the enrolment information is to be provided. If the enrolment information is to be provided, the Electoral Commissioner will determine the format in which any information is provided, and any particular safeguards to be put in place, having regard to the proposed use and recipient.

In determining the public interest in providing requested information to specific types of organisations or for specific purposes, the NSWEC will have regard to the following:

Disclosure for law enforcement

For the purposes of considering the public interest in disclosure of enrolment information for law enforcement purposes, the NSWEC will apply the definition of law enforcement in the exemption at s.23 of PPIPA, which includes both criminal law enforcement, and protection of the public revenue.

This category would cover disclosures of enrolment information to NSW Police, the NSW Crime Commission and the Office of State Revenue. Commonwealth enforcement agencies should approach the AEC, and enforcement agencies in other States or Territories should make any request through a counterpart NSW agency.

Requests by any NSW public sector agency (meaning as in PPIPA s.3) 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 in circumstances where there are reasonable grounds to believe that an offence may have been, or may be, committed.

A senior officer in the context of the NSW Public Service is a deputy director-general or equivalent. In the case of the NSW Police it is a designated officer approved by the NSW Police Commissioner.

Disclosure for medical research and health screening programs

These purposes are expressly anticipated by the legislation, which allows specified additional information (age range and sex) to be released for those purposes.

³ In particular the Commonwealth *Privacy Act 1988* and the NSW *Parliamentary Electorates and Elections Act 1912* and the *Local Government Act 1993*

Medical research

When a request for information is made for a medical research program, the NSWEC will make use of the processes and criteria for disclosure of personal information for these purposes already established under PPIPA.

The Direction On Disclosures Of Information By Public Sector Agencies For Research Purposes issued under s.41 of PPIPA⁴ applies to the NSWEC.

The Direction gives agencies the discretion to disclose personal information provided that *either*:

- The agency follows guidelines or policies of the agency covering the disclosure of personal information for research purposes which were established at 1 July 2000, *or*
- The proposed research has been approved by a committee established for the purpose of giving ethical approval to research projects after such a committee has considered the privacy implications of the collection and subsequent use of such information by the researcher in the absence of express consent.

The NSWEC will seek assurances from any third party requesting information for medical research or health screening that they meet one or both of these conditions. In relation to the second condition (ethics committee approval) the NSWEC would expect that the committee would comply with the Guidelines issued by the National Health and Medical Research Council under s.95 of the federal *Privacy Act 1988*.

Annually, disclosures for medical research will be reviewed by the NSWEC's Disclosure Advisory Panel, which will advise the EC as to whether the processes and safeguards are working satisfactorily.

Health Screening

Health screening programs cannot usually comply with the full range of conditions imposed on medical research as the whole purpose is to contact individuals. Institutional ethics committees do not routinely consider screening proposals and may not be willing to do so. If the screening proposals can produce ethics committee approval then the NSWEC will accept this in the same way it does for medical research.

If an applicant in respect of health screening cannot produce ethics committee approval, the NSWEC will refer the request to its Disclosure Advisory Panel for consideration and advice.

Disclosures for health screening will be reviewed annually by the NSWEC's Disclosure Advisory Panel, which will advise the NSWEC as to whether the processes and safeguards are working satisfactorily.

Disclosure Advisory Panel

The NSWEC has established a Disclosure Advisory Panel which will have three functions:

- To consider from time to time applications for access to enrolment information for health screening programs, which are not supported by ethics committee approval, and advise the NSWEC as to whether such applications should be approved;
- To review annually disclosures for either medical research or health screening and advise the NSWEC as to whether the processes and safeguards are working satisfactorily; and
- To provide advice to the NSWEC, on request, on any other specific request for disclosure or on the general application of this Disclosure policy.

The Advisory Panel will comprise members appointed on a general representational basis who have expertise in health or medical research, privacy regulation and research ethics. The Panel will be supported by the NSWEC's Director Corporate Communications.

⁴ Current direction made 28 December 2007, valid until 31 December 2008.
NSWEC Disclosure Policy and Guidelines

While the NSWEC will consider advice from the Advisory Panel the NSWEC is not bound to accept that advice, and may depart from it if the circumstances of an individual case warrant it.

Applications will be considered having regard to the individual merits of each request.

Pursuant to section 31D of the *Parliamentary Electorates and Elections Act 1912* the decision of the Electoral Commissioner is final.

Disclosure for other purposes

Alternative sources

Some other organisations are typically attracted to electoral enrolment information not because of anything it reveals about electoral matters – but because it is a comprehensive database of up to date name and address information for most of the adult population. It is only one of a number of databases from which such information can potentially be sought – others include telephone directory databases (partially regulated by the Integrated Public Number Database (IPND) provisions of the *Telecommunications Act 1997*) and credit reference databases (regulated by Part IIIA of the *Privacy Act 1988*).

When the NSWEC receives a request for enrolment information from such an organisation it will first consider whether there is a more appropriate source of the information. Applicants will be asked why they need electoral enrolment information specifically, and what other sources of information they have considered and/or approached.

Even if the applicant can make a case for needing electoral enrolment information, it does not necessarily follow that the NSWEC will agree to provide the information.

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.

Provision of roll to Sheriff's Office

Provision of the electoral roll to the Sheriff's Office is fundamental in jury selection.

Charges

Section 31D(2) allows the NSWEC to charge a fee to cover the cost of providing information under a s.31D(1) finding.

The Director Corporate Communications will assess the cost of providing the information and provide advice to the Electoral Commissioner for determination of an appropriate charge (if any).

Undertakings

Organisations receiving enrolment information in accordance with a s.31D finding will be required to complete and lodge an undertaking using the template undertaking at Annexure 1, before any information is disclosed.

Record Keeping and Reporting

The Director Corporate Communications will have responsibility for maintaining internal records of all disclosure findings, including the reasons; and of disclosures pursuant to any such findings, as well as for ensuring that a summary is included in the NSWEC's Annual Report.

The NSWEC will periodically consult its Disclosure Advisory Panel about the overall operation of this policy and the desirability of any changes.

Annexures – Undertakings – Safeguard Agreements

Approved recipients of enrolment information will be required to complete an undertaking in the form of one of the following Safeguard Agreements before being provided with enrolment information.

Disclosures under s31C – refer to Safeguard Agreement on page 7

Registered political parties or candidates – permitted purposes as in s31E(2)

Members of the Legislative Council and Legislative Assembly - permitted purposes as in s31E(3)&(4)

Disclosures under s31D - refer to Safeguard Agreement on page 8

Law Enforcement purposes - permitted purposes as set out in NSWEC finding

Medical Research and Health Screening - permitted purposes as set out in NSWEC finding

Other purposes - permitted purposes as set out in NSWEC finding

Agreement for the Safeguard of Electoral Information

This approval is subject to agreement to the conditions hereunder:

1. The electoral enrolment information you are being given access to is provided subject to the provisions of sections 31C and 31E of the *Parliamentary Electorates and Elections Act 1912*.
2. The compact disk(s) and the electors' enrolment information will not be used for any purpose other than the approved purpose specified. The approved purpose is.....
3. The information is not to be copied, forwarded on or sold.
4. The compact disk(s) and the information contained will be kept under strict security. Only those staff with a "need to know" for the approved purpose will have access to the information.
5. Upon receipt of new monthly data the old disks and/or the data they contain will be appropriately destroyed. Information downloaded from the disks will be subject to the same conditions as if it was the information on the disks provided.
6. The recipient will meet the full cost of any computer programming required to meet the request. No help desk facility/ IT support will be available from the NSW Electoral Commission.
7. Any conversion company used by you is also bound by the above conditions. It is not to retain any information on its own systems or to make any copies for its own purposes. All information, both original and converted is to be returned to you.
8. Except as required by law, no condition or warranty is given and no representation is made by the NSWEC in relation to the quality, fitness, suitability of the data for any purpose or otherwise. Our liability, consequent upon the use of data, shall be limited to replacement of the data free of charge.
9. Records are not to be made available to any associated agencies/parties without the express approval of the NSWEC.
10. All data not necessary to the ongoing purpose is to be appropriately destroyed.

Safeguard Agreement

I _____ (Name), being _____ (Title)
of _____ (Party name or Electoral District)
_____ (Address)

understand and agree that the information is made available by the NSWEC on the aforementioned conditions.

Signed _____ Date _____

**Return completed Safeguard Agreement to:
Graham Krempin, Corporate Communications
NSW Electoral Commission, GPO Box 832, Sydney 2001.
Fax 9290 5991**

Agreement for the Safeguard of Electoral Information

This approval is subject to agreement to the conditions hereunder:

11. The electoral enrolment information you are being given access to is provided subject to the provisions of sections 31D and 31E of the *Parliamentary Electorates and Elections Act 1912*.
12. The compact disk(s) and the electors' enrolment information will not be used for any purpose other than the approved purpose specified. The approved purpose is.....
13. The information is not to be copied, forwarded on or sold.
14. The compact disk(s) and the information contained will be kept under strict security. Only those staff with a "need to know" for the approved purpose will have access to the information.
15. Upon receipt of new monthly data the old disks and/or the data they contain will be appropriately destroyed. Information downloaded from the disks will be subject to the same conditions as if it was the information on the disks provided.
16. The recipient will meet the full cost of any computer programming required to meet the request. No help desk facility/ IT support will be available from the NSW Electoral Commission.
17. Any conversion company used by you is also bound by the above conditions. It is not to retain any information on its own systems or to make any copies for its own purposes. All information, both original and converted is to be returned to you.
18. Except as required by law, no condition or warranty is given and no representation is made by the NSWEC in relation to the quality, fitness, suitability of the data for any purpose or otherwise. Our liability, consequent upon the use of data, shall be limited to replacement of the data free of charge.
19. Records are not to be made available to any associated agencies/parties without the express approval of the NSWEC.
20. All data not necessary to the ongoing purpose is to be appropriately destroyed.

Safeguard Agreement

I _____ (Name), being _____ (Title)

of _____ (Agency or organisation name)

_____ (Address)

understand and agree that the information is made available by the NSWEC on the aforementioned conditions.

Signed _____ Date _____

**Return completed Safeguard Agreement to:
Graham Krempin, Corporate Communications
NSW Electoral Commission, GPO Box 832, Sydney 2001.
Fax 9290 5991**