

Undertaking to the NSW Electoral Commissioner for the provision of enrolment information

Subsection 48(4) of the *Electoral Act 2017*

This Undertaking is given to the Electoral Commissioner by:

Candidate details

FULL NAME

Candidate (please tick as applicable):

Legislative Council OR Legislative Assembly

ELECTORAL DISTRICT

Date of election: DD / MM / YYYY

ADDRESS

1. Background

- 1.1 Enrolment information is otherwise known as protected information and is provided to the Candidate under section 49 of the Electoral Act. The Electoral Act and the PPIP Act, provide for the protection of Personal Information by prescribing limitations and restrictions on the use and disclosure of Enrolment Information.
- 1.2 Under subsection 48(4) of the Electoral Act the Electoral Commissioner may, before providing a person with Enrolment Information, require that the person provide the Electoral Commissioner with an undertaking that the person or body’s systems and procedures are adequate to preserve the security of that information.

2. Interpretation

- 2.1 In this Undertaking, except where the context otherwise requires:
 - Candidate** means the person identified as such in this Undertaking who receives Enrolment Information from the Electoral Commissioner.
 - Candidate Request Form** means the form completed by the Candidate requesting enrolment information pursuant to section 49 of the Electoral Act.
 - Commercial Purpose** has the same meaning as set out in section 52 of the Electoral Act.
 - Election** means the election of any member or members of the Legislative Assembly or the periodic Legislative Council election in New South Wales on the date identified in this Undertaking.
 - Electoral Act** means the *Electoral Act 2017* (NSW).
 - Electoral Commissioner** means the Electoral Commissioner for New South Wales who is appointed under section 11 of the Electoral Act.
 - Enrolment Information** means the enrolment information provided by the Electoral Commissioner to the Candidate in accordance with section 49 of the Electoral Act.
 - NSWEC** means the New South Wales Electoral Commission.
 - Permitted Purposes** means the permitted purposes relevant to the Candidate as set out in section 51 of the Electoral Act and as detailed in Item 3.1(d) of this Undertaking.
 - Personal Information** has the meaning provided in the PPIP Act.
 - PPIP Act** means *Privacy and Personal Information Protection Act 1998* (NSW).
 - Undertaking** means this undertaking and includes any Annexures to this undertaking, as varied from time to time in accordance with this undertaking.

- 2.2 Except where the context otherwise requires:
- a. reference to a document includes all amendments or supplements to that document.
 - b. reference to legislation is a reference to that legislation as amended, consolidated, re-enacted or replaced, and includes any subordinate legislation.
 - c. where a word or phrase is defined in this Undertaking, any other grammatical form of the word or phrase has a corresponding meaning.
 - d. a reference to an item, form, annexure or attachment is a reference to an item, form, annexure or attachment to this Undertaking.
 - e. references to 'person' or 'persons' will be taken to include any natural or legal person or other entity.

3. Undertakings

- 3.1 Pursuant to subsection 48(4) of the Electoral Act, the Candidate undertakes the following:
- a. The Candidate's systems and procedures are adequate to preserve the security of Enrolment Information;
 - b. The Candidate's systems and procedures referred to in Item 3.1(a) of this Undertaking will at a minimum comply with Annexure A;
 - c. The Candidate will take all necessary precautions to prevent loss, unauthorised access to, unauthorised copying, misuse, modification or disclosure of the Enrolment Information;
 - d. The Candidate will not use Enrolment Information for any purpose other than, a purpose in connection with the Election and monitoring the accuracy of the Enrolment Information kept and maintained by the Electoral Commissioner (Permitted Purposes);
 - e. The Candidate will not use Enrolment Information for a Commercial Purpose, or any other prohibited purposes including those examples set out in Annexure C;
 - f. The Candidate will not permit the Enrolment Information to be copied, reproduced or otherwise dealt with, except to the extent reasonably necessary for the Permitted Purposes;
 - g. Only the Candidate will have access to Enrolment Information for the Permitted Purposes and will not disclose this information to any other person (this includes other candidates);
 - h. Despite Item 3.1(g), if the Candidate provides Enrolment Information to a contracted service provider such as a mailing house, this will only occur if the disclosure would be a use of the information for a Permitted Purpose. In addition, the Candidate will ensure that any contract entered into with that service provider prohibits the provider from making any copies of the Enrolment Information for their own purpose and ensures that the provider has adequate systems and procedures in place to preserve the security of Enrolment Information. Any Enrolment Information provided to that service provider will be returned to the Candidate for destruction at the completion of the contracted service;
 - i. The Candidate will return or cause to be returned to the Electoral Commissioner or destroy or cause to be destroyed (in such a manner as to prevent its retrieval) all documents, records and materials (electronic or otherwise) containing, recording or referring to the Enrolment Information which are in the possession, custody, power or control of the Candidate and any contract service provider referred to in Item 3.1(h):
 - i. upon completion of the Permitted Purposes; or
 - ii. immediately upon request of the Electoral Commissioner; or
 - iii. immediately following the declaration of the results of the Election, whichever occurs first;
 - j. The Candidate will provide a written confirmation to the Electoral Commissioner that all such records (including any copies) have been returned or destroyed, in accordance with Item 3.1(i);
 - k. The Candidate will immediately notify the Electoral Commissioner in writing upon becoming aware of, or if the Candidate suspects that there has been, any breach of this Undertaking and will take all reasonable steps to stop the breach and/or further breaches;
 - l. The Candidate will comply immediately with any directions given by the Electoral Commissioner about the safekeeping, return, storage and destruction of the Enrolment Information; and
 - m. The Candidate accepts all responsibilities in regards to Enrolment Information under sections 48, 49, 51 and 52 of the Electoral Act and any other laws or regulations concerning the collection, use, disclosure and security of Personal Information.

4. Acknowledgements



- 4.1 In making this Undertaking the Candidate acknowledges that:
- All Enrolment Information is protected information and is provided by the Electoral Commissioner subject to sections 48, 49, 51 and 52 of the Electoral Act;
 - Failure to comply with a protected information provision is an offence under the Electoral Act which may result in significant monetary penalties;
 - In accordance with section 48 of the Electoral Act, the Electoral Commissioner will determine the manner and form in which Enrolment Information is provided to the Candidate. The current manner and form is set out in Annexure B;
 - The Candidate must meet the full cost of any computer systems and/or programming required in the storage and/or use of the Electoral Information. The NSW Electoral Commission will not provide any technical/IT support or data manipulation assistance;
 - The Electoral Commissioner may provide the Candidate updated Annexures at any time, and any revised Annexures will continue to form part of this Undertaking;
 - The Electoral Commissioner provides the Enrolment Information on an “as is” basis without warranty of any kind, including in respect of its accuracy or completeness;
 - The Electoral Commissioner may from time to time seek additional information from the Candidate with respect to the Candidate’s obligations detailed in this Undertaking;
 - The Electoral Commissioner may refuse to provide Enrolment Information to the Candidate if the Electoral Commissioner is of the opinion that the Candidate’s systems and procedures are inadequate to preserve the security of Enrolment Information;
 - The Electoral Commissioner may refuse to provide Enrolment Information to the Candidate if he is of the opinion that the Candidate has failed to comply with the provisions of the Electoral Act and other relevant legislation concerning the security and protection of Enrolment Information;
 - This Undertaking in no way derogates from the rights and remedies available to the Electoral Commissioner and other persons under the Electoral Act and/or other relevant legislation in response to any actions or omissions by the Candidate with respect to the Enrolment Information;
 - The Personal Information in this Undertaking will be used by the NSW Electoral Commission to undertake its functions under the Electoral Act and other legislation. The Electoral Commissioner may from time to time make public reference to this Undertaking and the Candidate, including in news media statements and in response to concerns or questions raised by relevant stakeholders, such as electors who may make complaints to the Electoral Commissioner about the Candidate’s use of the Enrolment Information. The Candidate’s Personal Information may also be disclosed to other government agencies such as the Australian Electoral Commission (with which the NSW Electoral Commission has a joint roll arrangement pursuant to section 56 of the Electoral Act) and as otherwise authorised or required by law; and
 - If any Item of this Undertaking is prohibited, void, voidable, illegal or unenforceable, that part is severed from this Undertaking and the remainder of the Undertaking will retain its full force and effect.

5. Commencement of this Undertaking

- 5.1 This Undertaking comes into effect when:
- the Undertaking is signed by the Candidate; and
 - the Electoral Commissioner receives the signed Undertaking from the Candidate.

6. Contact details

- 6.1 The contact details for the Candidate are detailed at the start of this Undertaking and on the Candidate Request Form.

This undertaking and form SE.220 must be signed and returned to enrolmentsupport@elections.nsw.gov.au		
Signed as an undertaking by the candidate in the presence of:		
		<input type="text" value="DD / MM / YYYY"/>
SIGNATURE OF WITNESS	SIGNATURE OF CANDIDATE	DATE
<input type="text"/>	<input type="text"/>	
PRINT NAME OF WITNESS	WITNESS TELEPHONE NUMBER	
<input type="text"/>		
WITNESS ADDRESS		

Annexure A – Minimum system and procedure requirements

The Candidate's systems and procedures must be adequate at all times to preserve the security of Enrolment Information.

The Candidate's systems and procedures must, at a minimum, adopt the following security measures:

1. The Candidate must only download or access Enrolment Information using an electronic device belonging to the Candidate – downloading of Enrolment Information from a public computer (such as a computer belonging to an internet café) is strictly prohibited.
2. Ideally, the Candidate's electronic device should only be used for the Permitted Purposes. If this is not possible, the Candidate must be vigilant in relation to cyber security for the device and take appropriate security measures to protect Enrolment Information. These measures include ensuring applications and web browsers on the device are configured for maximum security, so as to prevent access to malicious websites that may download malware designed to steal data stored on the Candidate's electronic devices.
3. The Candidate's electronic device used to access or download Enrolment Information must not be connected to an insecure or publicly available internet connection. Public WiFi services sometimes offered for free in shops or hotels, are not a secure internet connection.
4. The Candidate's device must have an appropriate log-in setup/configuration to prevent unauthorised access to the Candidate's device.
5. The Candidate's device and login credentials must only be used by the Candidate and must not be shared with any other persons unless it is a device that authenticates individual users and the other users cannot access the Enrolment Information downloaded by the Candidate.
6. The Candidate's device must authorise automatic security updates and the Candidate must regularly check that such updates have successfully installed onto the device.
7. The Candidate's device must have a reputable antivirus solution with latest definitions installed.
8. The Candidate must adopt commonly accepted cyber security measures such as locking electronic devices when not in use and strong passwords for log-ins (including multi-factor authentication).
9. The Candidate must ensure that all other devices that may be connected to the Candidate's shared network are secure by following common security measures.
10. The Candidate must regularly monitor the operation and effectiveness of the Candidate's security measures to ensure that they remain responsive to changing threats and vulnerabilities and other issues that may impact the security of Enrolment Information.
11. The Candidate must keep secure and must not share any security codes required to access Enrolment Information.
12. In addition to item 3.1(i) of the Undertaking, any USB provided by the NSWEC to the Candidate must be returned by the Candidate to the NSWEC within one month (or as otherwise directed by the NSWEC) of any event in 3.1(i)-(iii) occurring. The USB must be returned by registered post or in person to the Director Customer Service & Relationship Management at the Office of the NSWEC (postage costs are the responsibility of the Recipient).
13. As part of the Candidate's compliance with item 3.1(i) of the Undertaking, the Recipient must, amongst other things consider all possible devices that have been used to access Enrolment Information and all possible ways in which Enrolment Information may have been saved and/or transmitted (for example software applications, databases, emails, local/cloud archives and backups) to ensure all Enrolment Information is appropriately deleted in such a manner as to prevent its retrieval.

Annexure B – Manner and form in which enrolment information will be provided

1. The completed Candidate Request Form and Undertaking is to be signed and returned to enrolmentsupport@elections.nsw.gov.au.
2. Candidates for the Legislative Assembly will only receive Enrolment Information for the electoral district for which the candidate is seeking election.
3. The Enrolment Information will be provided by USB as indicated on the Candidate Request Form.
4. The Enrolment Information will be provided to the Election Manager's Office or to their registered party for forwarding to them, as indicated on the Candidate Request Form.
5. Candidates must provide their mobile telephone number in order to receive their security code to open the encrypted zipped file on the USB.
6. The NSW Electoral Commission will not provide any technical/ IT support or data manipulation assistance.
7. If a candidate who is a member of a registered party seeks a list of enrolled persons and their particulars, that candidate must still first accurately complete, sign and then send this Undertaking to the Electoral Commissioner as set out in this Annexure.

Annexure C – Important information about the use of Enrolment Information

Purpose

This Annexure provides guidance to candidates in general terms about the use of Enrolment Information. It does not limit the rights and remedies available to the Electoral Commissioner and other persons under relevant legislation in response to any actions or omissions by a candidate with respect to a candidate's use of Enrolment Information.

What uses of Enrolment Information are prohibited?

The use of Enrolment Information that is not solely for a Permitted Purpose is prohibited.

In relation to candidates for the Legislative Assembly, the Permitted Purposes must be further confined to the electoral district for which the candidate is nominated.

For example, using Enrolment Information for the following purposes is **strictly prohibited** (below is not an exhaustive list):

- ascertaining the personal details of individuals who make public statements in support of or in opposition to particular candidates or political parties on social media;
- any purpose after the declaration of the Election;
- undertaking functions pertaining to a member of parliament, councillor or other appointment/s;
- contacting family, friends and/or lost acquaintances;
- curiosity;
- sharing information with other persons or entities including other candidates and/or party members;
- financial gain;
- employment purposes;
- Commercial Purposes;
- to sell or offer to sell Enrolment Information;
- augmenting mailing lists;
- sending birthday cards or any other messages not relevant to the Election in which they are a Candidate.

Candidates must immediately cease using Enrolment Information as soon as the election for which they are nominated is declared, whether or not their nomination as a candidate is successful.

The prohibitions with respect to the use of enrolment information apply to all types of candidates, irrespective of whether a candidate is also a member of a registered political party.

Are there additional prohibitions and criminal offences that impact the use of enrolment information?

In addition to the penalty provisions in the Electoral Act, there are other laws concerning the collection, use, disclosure and security of personal information that may apply to candidates. These can be found in (but are not limited to) the *Privacy and Personal Information Protection Act 1998*, the *Crimes Act 1900* and the *Independent Commission Against Corruption Act 1988*. Failure to comply with relevant legislative provisions under these other Acts may also result in significant monetary penalties and/or terms of imprisonment for candidates.

What happens if there are specific questions about a candidate's circumstances?

Although the NSWEC cannot discuss matters subject to an investigation or provide legal advice it may be able to provide further information in general terms about the issues discussed in this annexure. Candidates may contact the Director Customer Service & Relationship Management by phone 1300 135 736 or by email enrolmentsupport@elections.nsw.gov.au

Accessing further information

If you are deaf, or have a hearing impairment or speech impairment, contact the NSWEC through the National Relay Service. TTY users – phone 133 677 then ask for 1300 135 736. Speak and Listen users – phone 1300 555 727 then ask for 1300 135 736. Internet relay users – connect to the National Relay Service then ask for 1300 135 736. If you need an interpreter, call TIS National on 131 450 and ask them to call the Electoral Commission on 1300 135 736. Business hours are 9am to 5pm, Monday to Friday.