

**Submission
No 10**

**ADMINISTRATION OF THE 2023 NSW STATE ELECTION AND OTHER
MATTERS**

Organisation: newDemocracy

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Submission – Inquiry into the administration of the 2023 NSW state election and other matters including political donations and truth in political advertising.

We thank the Joint Standing Committee on Electoral Matters for this opportunity to contribute to the inquiry into the administration of the 2023 NSW state election and other matters, including political donations and truth in political advertising.

Reforms to the political donations and campaign financing laws in New South Wales should be made through a process that accounts for the unavoidable ‘poacher & gamekeeper’ dilemma of elected representatives.

The best political donations regime is simply the one that the wider community views as fair, transparent and honest. A model proposed by everyday people will earn much greater trust than one developed by only MPs and parties.

We ask the Committee to consider that many MPs also find the status quo unattractive. One member noted to us that *“we give up a lot of evenings, sit with people who are largely unscreened so carry all sorts of political risk, to raise not all that much money – and we get the whole community to hate us for it into the bargain”*. If that sentiment is widely shared, then bi-partisan openness to a transformative reform process can be found.

We recommend that the New South Wales Parliament establish a *Citizens’ Assembly on Political Donations and Campaign Financing*. This would ask a random sample of everyday people to find common ground on recommendations and thus provide this Committee with a de-politicised and more publicly trusted starting point for reform.

The phrase ‘political donations’ has an entirely negative connotation for the vast majority of voters. It is not associated with civic-mindedness or supporting our democracy through an act of goodwill. Good news stories on this topic are impossible to find and the current approach is a constant source of problems for governments of all persuasions. Reforms are examined through the lens of electoral advantage, not integrity.

New South Wales has arguably the country’s most stringent regime – one that would be among the world’s most well-regulated and respected. However, this earns members almost no credit from the wider community due to a steady and predictable flow of negative news stories.

Money is fundamental to running election campaigns and influence is an attractive commodity in every regime (democratic or not). Yet, there is no system that *politicians* can design that will earn them credit and trust among voters due to the clear conflict of interest in setting the rules by which they are bound.

Taking on reform is unattractive: attempts will be stymied or shaped by political benefits and constitutional barriers, all of which are overlaid with a sceptical public assuming that reforms are a ruse by which MPs want to “vote themselves more of our money”.

A circuit breaker is needed. And that circuit breaker is to share the problem with a representative ‘jury’ of everyday people and invite them to solve it. A genuine **sharing of the decision** between citizens and elected representatives would deliver a major trust dividend.

How Might This Work?

Picture such a process: A Citizens' Assembly on Political Donations and Campaign Financing would bring together 50 everyday people, chosen by democratic lottery to be representative of all parts of New South Wales, all walks of life, ages, backgrounds, and lifestyles, being brought together in Sydney over several weekends to find common ground on answers to the question:

How should we regulate political donations and campaign financing?

or

What is the political donation and campaign finance approach we can trust?

They would be provided with time and information to learn about the challenges posed by political donations and campaign financing and the range of policy options available. They would learn from Members of Parliament, political party officials, unions, stakeholders, academics, researchers, and the wider community.

Their task would be to find common ground around recommendations that address the complex trade-offs posed by political donations and campaign financing. Ultimately, presenting these recommendations to Parliament with supporting reasoning and evidence.

This process would build public trust and legitimacy. For the wider community to trust political donations and campaign financing laws, they must see that people like themselves play an influential role in deciding the laws that govern our elected leaders, rather than those with a perceived conflict of interest.

Our political system already receives independent external advice through consultative parliamentary committees such as JSCEM. This approach has the benefit of removing the conflicting political incentives from the decision by asking regular people to make recommendations on behalf of the whole community.

The unpalatable task of explaining any changes to the wider public (usually left to politicians) is shared by the members of the assembly. This means that everyone in the wider community can see someone like them involved in the process and as a result are much more likely to trust its substance.

Around the world, Parliaments are making use of citizens' assemblies to assist them in addressing complex public policy issues. French President Emmanuel Macron has held both The Citizens' Convention on the End of Life and the Citizens' Convention for the Climate. The German Bundestag President Bärbel Bas recently announced intentions to establish multiple citizens' assemblies and the Irish Oireachtas just received the recommendations from their Citizens' Assembly on Drug Use.

These processes are appealing to elected leaders because they reach reasonable conclusions and broaden the suite of policy options available beyond the usual constraints of electoral politics. This is something that can benefit the public and our elected leaders.

We are happy to respond to your questions and appear before the Committee if requested. We appreciate your time considering this submission.

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Appendix. A. Key Principles of Deliberative Democracy

It is naturally difficult for large groups of people to find agreement on complex decisions. The OECD recommends a set of *principles* that make group decision-making easier. These principles improve the deliberative quality of group work by creating an environment for the consideration of the broadest range of sources while giving participants time, and an equal share of voice and authority.

These seven principles underpin the growing wave of deliberative democracy processes around the globe:

1. **A clear remit:** A clear, plain-language challenge or question should be asked of the group. It should be a neutrally phrased question that explains the task, shares the problem, and provides a strong platform for discussion about priorities and trade-offs. The question will determine the scope of the process, setting the boundaries for what the group is considering.
2. **Diverse information:** Participants should have access to a wide range of transparently sourced, relevant, and accessible evidence and expertise, and can request additional information. Citizens should spend extensive time asking questions and identifying sources they trust for the information they need.
3. **Democratic lottery:** A stratified random sample of the community should be recruited through a democratic lottery. Simple demographic filters (age, gender, education, location) can be used to help stratify this sample to reflect the entire population. Most engagement by governments does not enable a representative cross-section of the community to be heard, instead, incentives to participate are often geared toward those with the most acute interest. The combination of random selection and a meaningful opportunity to influence a decision attracts people from all walks of life.
4. **Adequate time:** These processes develop participants' thinking on a complex issue by giving them multiple opportunities to question experts, learn from one another and find agreement on trusted sources of information. As deliberation requires adequate time for participants to learn, weigh evidence, and develop collective recommendations, the more time they are provided, the more thorough their consideration of the issue.
5. **Influence:** It is important to be clear about what impact the work of everyday citizens will have. The convening authority should publicly commit to responding to or acting on recommendations promptly. A meaningful opportunity to influence a decision must be demonstrated to participants before they commit their time.
6. **Dialogue and deliberation, not debate:** Group deliberation entails finding common ground; this requires careful and active listening, weighing, and considering multiple perspectives, every participant having an opportunity to speak, a mix of formats, and *skilled facilitation*. The task for the group is to find common ground on answers to the question, this emphasises the avoidance of simple majorities and challenges them with finding where they can agree.
7. **A free response:** A group should not be asked merely to (critically) review a government or parliamentary reform proposal. Instead, group members should be given a 'blank page' to provide their own set of recommendations with a rationale and supporting evidence that emerges from their shared learning.

Appendix. B. Why consider citizens' assemblies and deliberative democracy?

Across the globe, public authorities are increasingly using these representative deliberative processes to involve citizens more directly in solving some of the most pressing policy challenges. These processes give enough time and information to a group of randomly selected everyday people and facilitate their deliberation on an issue that leads to finding common ground on a set of recommendations.

Australia has been a pioneering, global leader in the development of this practice. OECD research¹ documents more than 48 examples of deliberative engagement practice here in Australia matched only by Germany. This suggests a national capacity to learn from experience and institutionalise these processes. The Victorian Government recently included mandatory deliberative engagement practice for local councils in its [Local Government Act 2020](#) (s55, g). The Western Australian Government's Local Government Act Review Panel also recommended in its [final report](#) the "mandate [of] deliberative community engagement in the preparation of both Community Strategies and Council Plans." (s37, d, iv).

[Evidence collected by the OECD](#)² and existing research in the field of deliberative democracy points to five key reasons why representative deliberative processes can help lead to better public decisions and enhance trust:

1. **Better policy outcomes because deliberation results in considered public judgements rather than off-the-cuff public opinions.** Most public participation exercises are *not* designed to be representative or collaborative. Consequently, they can be adversarial – a chance to air grievances rather than find solutions or common ground. Deliberative processes create spaces for learning, deliberation, and the development of informed recommendations, which are of greater use to policy and decision-makers.
2. **Greater legitimacy to make hard choices.** These processes help policymakers to better understand public priorities, and the values and reasons behind them, and to identify where consensus is and is not feasible. Evidence suggests that they are particularly useful in situations where there is a need to overcome political deadlock or make difficult trade-off decisions.
3. **Enhance public trust in government and democratic institutions by giving citizens an effective role in public decision-making.** People are more likely to trust a decision that has been influenced by the considered judgement of everyday people than one made solely by elected MPs.
4. **Make governance more inclusive by opening the door to a much more diverse group of people.** Deliberative processes, with their use of democratic lotteries and stratified sampling, bring in people proportionate to their presence in society, making the group visibly representative in terms of age, gender, disability, education, and job type.
5. **Help counteract polarisation and disinformation.** Empirical research has shown that echo chambers that focus on culture, identity reaffirmation, and polarisation do not survive in deliberative conditions, even in groups of like-minded people.

¹ OECD (2020), *Innovative Citizen Participation and New Democratic Institutions: Catching the Deliberative Wave*, OECD Publishing, Paris, <https://doi.org/10.1787/339306da-en>.

² Ibid.

Appendix. C. Background on constitutional reform and referendums in Ireland

In 2012, Ireland established a Convention on the Constitution by [resolution of both Houses of the Oireachtas](#). Its task was to consider several possible changes to the Constitution and make recommendations. The Resolution committed the Government to respond to each recommendation made by the Convention. It was comprised of 99 members, 66 of which were everyday Irish citizens chosen by democratic lottery, and 33 of which were Members of Parliament.

The Convention met over 18 months between 2012 and 2014. It discussed 10 issues in all. Several of its recommendations resulted in amendments to the Constitution made through referenda.

The Constitutional Convention used the model of deliberative democracy, in which citizens participate meaningfully in decision-making. This involves:

- A democratic lottery of ordinary citizens, who are provided with a range of information
- Expert presentations from speakers, some nominated by citizens themselves
- Facilitated small-group discussions to avoid groupthink and grandstanding
- Plenty of time to consider all the perspectives on an issue
- An emphasis on working to find common ground positions with people different to your 'bubble' rather than it being an individualised activity
- Recommendations fed into the political process are written entirely by citizens

We ask the Committee to especially note that the Convention considered the provision for same-sex marriage which required amending the Constitution by referendum. The Convention recommended such an amendment and the subsequent referendum on this proposal passed on 22 May 2015, and the [Thirty-fourth Amendment of the Constitution \(Marriage Equality\) Act 2015](#) was signed into law on 29 August 2015. **This made Ireland the first country in the world to legislate for same-sex marriage in a traditionally socially conservative country through a process that required constitutional amendment by referendum.**

| Note: We have no policy view on any issue – these examples are used to demonstrate their clear political difficulty.

Arguably, the provision for same-sex marriage would not have been put to the Irish people during the socially conservative *Fine Gael* government's tenure if not for the clear recommendation of the Convention. Including representatives of all the parties in the deliberations (33 political members came from all the parties) ensured a high degree of cross-party consensus in favour of the process — both in favour of the referendum and in favour of the Convention.

In 2016, following the success of the Convention on the Constitution, both Houses of the Oireachtas established what is known as [The Citizens' Assembly](#). The Resolution asked the Citizens' Assembly to consider several matters including the Eighth Amendment of the Constitution which prohibited abortion.

The Assembly was composed of a chairperson, appointed by the government, and 99 ordinary citizens '[randomly selected so as to be broadly representative of Irish society](#)' in terms of age, gender, social class, and regional spread.

The assembly deliberated on the Eighth Amendment throughout five sessions from November 2016 until April 2017. Members were given information on the topic, heard from 25 experts, and received 12,000 submissions from members of the public and interest groups.

The Assembly members overwhelmingly agreed that the constitutional provision on abortion was unfit for purpose and that its article should not be retained in full ([87% of members](#) agreed). The Assembly members also made a [series of recommendations](#) about what the legislation should cover and about the term limits that should apply.

As per its terms of reference, the Assembly submitted its recommendations and [final report](#) to the Oireachtas in June 2017. The Assembly's findings were reviewed by the Joint Committee of both Houses of the Oireachtas, which agreed with the need to remove the article, but advocated a [simple repeal](#) (without inserting a new provision in the Constitution). The [final Referendum Bill](#), however, accorded with the 'repeal and replace' recommendations made by the Assembly.

The Citizens' Assembly results initially faced criticism. Some commentators felt that they didn't represent the views of the public. [Opinion polls](#) at the time certainly showed a different picture. An Irish Times/Ipsos MRBI poll in May 2017 found just 23% of the public in favour of legalising abortion in all circumstances. However, once the public had had a chance to consider the matter more deeply during the referendum campaign, the results were strikingly like that of the Assembly. In the Assembly, 64% voted in favour of "terminations without restrictions". In the referendum, 66.4% voted in favour of repealing the eighth amendment, effectively legalising abortion in Ireland.

That the referendum result so closely reflects that of the Citizens' Assembly shows that the Assembly was more aligned with the national consciousness than some had thought. Notably, in exit polls approximately 40% of voters could name recommendations and insights emerging from the Citizens' Assembly process, demonstrating that it connected with the wider population.