Submission to the Inquiry into the Administration of the 2019 NSW State Election

We thank the Joint Standing Committee on Electoral Matters (JSCEM) for the invitation to make a submission.

NSW conducted an election to the highest standards one can reasonably expect. Yet less than six months later, voters across the state are made aware of the significant scope for abuse of the rules, and the level of public trust in electoral democracy must be assessed to have fallen another notch.

While by one measure these revelations are "the system working" as the Electoral Commission of NSW was able to identify the wrongdoing, an alternate view is that had the offenders been less egregiously incompetent in their cheating these efforts could have defeated scrutiny. The wider community likely does not view this as an exceptional one-off occurrence.

This has occurred in a global news environment reporting daily that confidence in electoral democracy is under siege. Citizens are moving beyond cynicism to disengagement, and the potential for further decline is clear.

Viewed more positively, it is clear that a jurisdiction that successfully finds a way to counter this trend through innovation and reform will earn global attention.

The overall ambition of this submission is to encourage JSCEM to have a bias to innovation rather than a preference for business as usual.

We offer five recommendations for the JSCEM's consideration. We would welcome the chance to appear before the Committee to discuss these in greater depth.

1. **Conduct this election review with everyday citizens**

There is no "right" answer as to how elections should be conducted. There are many different ways to set rules around donations, advertising, candidacy etc, and the sole criterion for whether they are effective is *whether the wider community views them as fair*.

We suggest they don't. Public perception is of a broken system, and the perception needs to be fixed by allowing an independent exploration of whether (or to what extent) those perceptions are grounded, and having that review done by people who have earned the public's trust.

Making this more difficult again is that the Parliament and this Committee face a poacher and gamekeeper dilemma: the very structure of having the elected make electoral rules serves to impair the likelihood of the wider community trusting what emerges. Overall, the Committee has a thankless task.

This is not a suggestion to draw on public opinion and simple surveys – rather to draw on deliberative mechanisms which will satisfy a sceptical public. There are two deliberative mechanisms available: our suggestion is to use both, as both draw on people outside the party political system.

   a. *Royal Commission ~ Independent Inquiry*. With restoration of public trust and confidence a key goal, it makes sense to draw on our society's most trusted form of inquiry. The wider community has a great degree of trust in the depth and genuine independence of this mechanism, so this provides the chance for a 'reset' by asking an inquiry to report and make recommendations on how to improve democracy in NSW.

   b. *Citizens' Assembly*. We invite the Committee to learn from the example of the Irish Parliament. Ireland's Citizens' Assembly gave a blended group - comprising everyday people picked through a Civic Lottery (66 people) and members of the Parliament (33 MPs) - the opportunity to learn and

deliberate <u>together</u> on a vexed public decision before making considered common ground recommendations back to Parliament.

In Ireland, these citizens' processes have delivered recommendations on abortion law reform, marriage equality, fixed term parliaments and their aging population. These are hard issues where having a complementary voice alongside those of the elected representatives demonstrably added to public trust and acceptance.

By working with members of parliament, citizens and MPs had a two-way trust building exercise: citizens had more time with MPs and learned the nuance required in the decisions at hand (and could talk publicly about their experiences in a way the wider community found credible), while MPs were able to witness first-hand the ability of everyday people to think critically and find common ground.

The mechanisms are highly complementary: a simple approach would be to use a Royal Commission report as the first document to be read and considered by this type of Assembly and thus form the starting point/ baseline for their deliberations.

Recommendation:

The Committee should open the long term question of how best to deliver our democratic model to an independent commission of inquiry.

That the Committee should convene a jury of everyday citizens blended with a small group of MPs, giving them the time and information to make considered recommendations to Parliament on the rules they would like to see apply for future elections.

2. **Trial a ballot paper innovation to supercharge donation disclosure and build public trust**

In 2016, newDemocracy worked alongside Local Government Victoria to operate the *Democracy in Geelong* Citizens' Jury to respond to the Victorian Parliament's dismissal of that council. Approximately 100 people from around Geelong, selected through a Civic Lottery, found common ground around a key set of recommendations. Citizens were being asked what structures they wanted in democratic representation (council level) and a recommendation emerged which we are advocating here.

> *"To further develop Division 4 Form 2 Regulation 43 Candidate Questionnaire to include more information about each potential councillor so voters can make more informed decisions. It should also help to improve accountability of Council members. [..]* ***These responses need to be supplied to the voters with the electoral voting forms (if at all possible) .."***

We invite the Committee to consider that a group of citizens made a comparatively simple request in order to improve trust in the system: give us more Electoral Commission-provided information at the point of voting. We think this can be focused on <u>donations</u>.

Citizens distrust the role of donations in the political system. Transparency and reporting efforts are meaningless to the vast majority of people who will not attempt to navigate an electoral commission website.

Whether physically "on" the ballot paper or in a paper handed out <u>with</u> the ballot, the Committee should actively consider a trial of distributing donation disclosures for each candidate proactively <u>as a way to build trust and confidence</u>. It would simply note the total donations received and the leading 3-5 donors. Logistically, it would only require a blackout date for donations 4 weeks from a polling date in order to allow for data collation – which is not excessively complex or onerous.

Critically, this also provides a simple, proportional, binary mechanism for identifying remedies to breaches: if the breach is of sufficient size to make the "leading donor" disclosure inaccurate, then that should be grounds for a by-election. Smaller breaches would not reach this trigger.

Reflexive public opinion offers a view that our system should "ban all donations" which considered public judgment found to be unworkable in practice. This solution appears to strike a better, fairer balance.

A second measure to consider is the practice of mixing the ballot order so that the benefits of top position are evenly shared rather than accruing to a single candidate. This is recommended as part of a general fairness principle.

Recommendation:

A trial of a disclosure ballot (aka a "Geelong Ballot") to gauge usability and voter response.

A penalty for when disclosures on that ballot are found to be inaccurate.

A trial of randomly rotating ballot order to minimise the impact of ordering and resulting Donkey Vote benefit.

3. Advertising reform and disclosure

Governments around the world are all doing their best to keep up with innovations in misinformation via social media.

The nature of election campaigns involves those seeking office presenting a message most resonant to those they are speaking to, and this will change with each audience. For example, it is entirely reasonable for a single candidate to appear in the morning at a childcare centre to talk with young families about family benefits, then at lunchtime on a factory floor to talk about a policy of industry support, then in the afternoon be in a national park to discuss an environmental policy.

The challenge to address is that while a candidate can only be in one place at one time (and journalists can follow them to keep track), a digital advertising campaign lets these messages be scaled to a limitless extent. You can literally give a different message to every voter and be everywhere at the same time.

This is bad for trust in our democracy.

During election campaigns, people are routinely targeted with political advertising on social media platforms like Facebook or Instagram. **Interest groups are using Facebook to tailor political advertising to specific groups based on people's interests** – this makes use of Facebook's ad data to target specific people in combinations of numerous tiny details.

For people *not* targeted by this form of advertising it is difficult to even know that they exist. This makes it even more difficult to fact-check their content or assess if they breach laws around political advertising disclosure.

Additionally, real-time disclosure of online advertising would allow for clear and transparent documentation of what ads were placed online and by whom. This ensures that content and disclosure can be adequately checked and enforced.

Recommendations:

That the Committee mandates real-time online advertising disclosures by the two major digital publishers (Facebook & Google). This would create a single repository of the advertisements, the advertiser and the amount spent for each advertisement.

Disclosure: Google Australia has previously been a donor to nDF ($30,000)

4. Innovate during a by-election, particularly trialling online voting

The Parliament has the opportunity to implement world leading innovations in *how we do democracy.* These range from those recommended here in this document to many different examples from around the globe (and no doubt in other submissions). A trial of <u>anything</u> would demonstrate to the public that attempts are being made to do democracy better and restore public confidence.

Parliament is justifiably hesitant to experiment on whole-of-state elections, but it should trial innovative recommendations during by-elections on occasions where the circumstances are uncontroversial.

Beyond that, it is worth noting that local government elections should be a forum for trials of innovations (which, once proven, can later be adopted for State elections) rather than pursuing a tightly regulated single electoral solution (and one where few citizens would mourn its loss).

In particular, the NSW Parliament should consider a trial of online voting.

The three key benefits would be –

a. a more considered vote, as voters can more easily access more information about a number of candidates.
b. with state control of the most valuable advertising media (linked videos and text via the ballot paper), *the importance of donations declines*. Giving every candidate space for a 3 minute video and 600 words of text negates the need for many other forms of advertising. This, in turn, substantively changes the risk equation for those considering circumventing donation laws. The gain becomes orders of magnitude less.
c. we think public engagement would increase as the digital format maps better to how many people engage in all other areas of life.

We have seen the system within the Electoral Commission (iVote) which demonstrates security is a solved problem: at least to the extent that if a breach occurred, then you would know a breach occurred.

Recommendation:

That the Committee recommend the Parliament trial democratic innovations at by-elections or in local government (effectively de-regulating council elections to an agreed basic democratic standard).

That the Committee recommend a by-election or local government election trial of online voting.

5. Use Reimbursement per vote as an incentive/punitive mechanism

NSW is Australia's most generous jurisdiction, with each first preference vote being worth $4.32 for the Legislative Assembly and $3.24 for the Legislative Council.

At $7.26 per voter for 4.55m voters, this equates to a public commitment of $34.4m per election.

While public funding is to be supported, we encourage the Committee to consider using this generous funding stream as a focal carrot and stick device for the electoral behaviours being sought which will engender public trust.

The Committee could expect a very positive public reception if there were greater milestones and penalties embedded into that payment.

For discussion purposes we offer two for your consideration -

i. *Donation compliance* – it is antithetical to people's idea of justice that you can cheat the donations system, then line up for the same payment. Breaches of donation laws should yield 5-10% penalties on this reimbursement per vote. This, again, radically changes the risk equation for party officials considering breaking the rules.

ii. *Candidate diversity* – John Howard has publicly commented that the make-up of parliaments (and indeed party memberships) is not reflective of the community as a whole, and that this is a problem worth addressing. When the vast majority of those elected come from a narrow and consistent background, then it ceases to be as resonant to the wider community. Taken to extremes, a narrow political class drawn from student politicians, advisors, children of past politicians and people with minimal non-political career experience begin to appear aristocratic in nature.

A simple mechanism would be to set a ~6 year transitional time horizon after which the proportion of 'insiders' would affect the proportion of funding received. Where 50% or fewer of your candidates are 'insiders' (per loose definition above) then the full payment will continue. But if that figure remains at 90% then we contend that a lower figure is more appropriate.

Recommendations:

Use the significant and important funding attached to reimbursement per vote as major tool in building a more widely trusted political culture.

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The newDemocracy Foundation exists to solve the problem that people complain about the state of our democracy, yet comparatively little occurs in terms of testing what solutions may work to build public confidence that our mechanism for making public decisions is fundamentally fair.

We are able to design, operate and oversee any trials the Committee wishes to pursue on a "turnkey" basis.

We are happy to respond to questions and appreciate your time to consider this paper.

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