Submission to the Inquiry into the conduct of the 2018 Victorian State Election

We thank the Electoral Matters Committee for the invitation to make a submission.

Around the world, confidence in representative 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.

Within that global context, Australia is relatively unscathed: we live in a good place and the sky is not falling. However, our electoral models have flaws which contribute to the cynicism which are the ones we should prioritise reforming.

The overall ambition of this submission is to encourage <u>trials</u> of innovations in democracy. Small format trials are a low-cost, low-risk way to see what earns public trust.

Below are six recommendations emerging from the conduct of the 2018 Victorian State Election. We would welcome the chance to appear before the Committee to discuss these in greater depth.

1. <u>Conduct this election review with everyday citizens</u>

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 criteria for whether they are effective is whether the wider community views them as fair.

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.

Any (entirely valid and well intentioned) change to an electoral system anywhere will benefit one party over another in some small way. As a result, we suggest giving a significant role to a group of citizens outside the party political system.

Overall, the Committee has a thankless task.

WE invite the Committee to learn from the example of the Irish Parliament. Ireland's Citizens' Assembly gave a blended group of everyday people picked through a Civic Lottery (66) and members of the Parliament (33) the opportunity to learn and deliberate together on a vexed public decision before making considered common ground recommendations back to Parliament.

These citizens made recommendations on abortion law reform, marriage equality, fixed term parliaments and their aging population.

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, while MPs were able to witness first-hand the ability of everyday people to think critically and find common ground.

Recommendation:

The Committee should open the question of inquiry into the conduct of the 2018 Victorian State Election to a jury of every day 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 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) .."**

Included in this information should be <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 a paper handed out <u>with</u> the ballot, the Committee should actively consider a trial of distributing donation details for each candidate proactively as a way to build trust and confidence. It would simply note the total of 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.

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.

Recommendation:

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

3. **Advertising reform and disclosure**

Governments around the world are all doing their best to keep up with innovations in misinformation, social-media and the changing way in which people access information.

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 such as flyers or 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 who. This ensures that content and disclosure can be adequately checked and enforced.

Recommendations:

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

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 where the circumstances are uncontroversial.

Beyond that, it is worth noting that local government elections should be a forum for trials of innovations rather than pursuing a tightly regulated single electoral solution where few citizens would mourn its loss.

In particular, the Victorian 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 media (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.
  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 systems which demonstrate 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).

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

5. Address increasing informal votes in the Legislative Assembly

Fewer candidates ran for the Legislative Assembly in 2018. Typically, this makes it easier for people to avoid mistakes with their voting and lowers the informality rate. In 2018, the informality number and percentage *rose* for votes in the Assembly.

Election	Total Votes	Informal Votes	Informal %
2014 (Lower)	3,540,545	184,838	5.22%
2018 (Lower)	3,732,066	217,592	5.83%
2018 (Upper)	3,731,191	147,713	3.96%

A voting system ought to make it as easy as possible for all voices to contribute to the functioning of our democratic systems. This means it should account for incomplete or imperfect ballots in a way that increases their likelihood of contributing to the result.

Optional Preferential Voting (OPV) has been used in New South Wales since 1981 and has demonstrably decreased informal votes. This is also clear when comparing Upper and Lower house informality rates from the Victorian election.

Recommendation: That the Commission recommends the introduction of Optional Preferential Voting in the Lower House for the upcoming 2022 State Election.

6. Reform of Legislative Council voting

Any decision we make around how we elect our Parliament should be based on the principle that voters are all given the best opportunity to decide who should represent them. The ballot translates the voters' intent.

Group Ticket Voting (GTV) for the Victorian Legislative Council does not pass this test.

This is because even before a single vote has been cast the shape of the Legislative Council has gone a long way to being decided.

Preference deal arrangements relating to flows can decide up to at least 8 seats in the chamber. This opaque system takes power away from voters and into the hands of those in the business of preference dealing. It is comically antithetical to all democratic principles.

GTV makes it more important that a candidate negotiate the right preference deal than that they campaign and connect with more voters. This is wrong.

Recommendation:

That, at a minimum, the Committee recommend the Parliament move to Optional Preferential Voting for the Legislative Council in place of Group Ticket Voting.

Aspirationally, that the Committee consider sharing this decision for what should replace GTV via the citizens' deliberation mechanism outlined in our opening point.

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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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