

# Submission to Procedures Committee (NSW Parliament) Consultation on Highly Contentious Bills

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Thank you for the invitation to respond to the Committee's Inquiry exploring potential innovation in how highly contentious bills are handled by the Parliament.

This paper will provide an overview of how deliberative processes – commonly known as Citizens' Juries or Citizens' Assemblies (though numerous models exist) – can be integrated into the work of the committees as a **complementary informed public voice on contentious issues** alongside members' existing reading and deliberation, and as an extension of the improved Green/White Paper process.

As a rule of thumb, while the Green Paper/ White Paper process is likely beneficial for all highly contentious bills, we suggest the use of deliberative processes will be most valuable to the parliament for the small subset of the most acute issues.

This paper will therefore only address the second of the Terms of Reference relating to the role for deliberative processes.

**This paper argues that deliberative processes have proven themselves to be successful in helping governments reach more trusted long-term public decisions: the exemplar emerging from Ireland when that parliament addressed abortion law reform.**

**Deliberative processes enable 'sharing the decision': having people from all walks of life share the task of explaining a contentious trade-off in the media rather than leaving it solely to people in elected office. This gives a meaningful role to those outside Parliament which we suggest benefits elected representatives.**

**At its core, we hope that the Inquiry notes our position is that a key goal is for parliaments to overcome *public opinion* challenges by using processes which generate *public judgment*. (The difference between anyone's two-minute view, and their view on the same issue after 30-40 hours immersion.)**

**We suggest the most difficult point for the Committee and the Parliament to agree upon is *when* this method warrants the time and cost involved (what trigger should apply). As a guide, it should not be imposed: if a government is resistant to the need, then this will impact the ability to recruit a representative cross-section of the community and their willingness to commit the necessary time. It is simply a tool available when time and cost warrant it.**

**The difference that members are asked to accept is that parliaments (and government departments) currently consult and engage in ways that solely target active, interested voices. There is a reason criminal juries use a form of random selection (civic lottery), and that reasoning applies equally well to government engagement.**

## PART A – Objectives

### *Why do this?*

Our contention is that the pervasive challenges faced by all elected representatives throughout all democratic structures are that:

- a. Contributions to Parliament have a natural skew towards the **most polarised**. They are not necessarily reflective of the wider community. Rather, they are often the ones with the most at stake. Elected representatives need to hear from both insisted and invited voices, and let any differences between the two groups be a complementary factor informing their final judgment.
- b. Our system has a bias toward **public opinion rather than public judgment**. Views on a matter before Parliament – especially through the megaphone of social media – are based on too few or zero primary sources. Where sources are drawn upon, *all of us* have a bias to preferencing those that reinforce our existing opinion, rather than using diverse sources as the basis for our views. A citizen voice to parliament must shift the emphasis from opinion to judgment, and involve the use of multiple competing sources.
- c. Over the years, parliamentarians on all sides have expressed an interest in knowing what the views of everyday citizens (beyond the regular correspondents!) are agreeing with our contention in point ‘a’ that there is a major skew in voice. **Rebalancing** this helps all representatives do their jobs better.
- d. Citizens who have been involved in a deliberation with an open question and sufficient time are willing to “share the decision” and **stand alongside members** of parliament to explain to the wider community what they have learned. In addressing contentious decisions this is the most fundamental reason to undertake this process. A wide array of trust surveys (e.g. Edelman Trust Barometer) note that we are most willing to listen to people similar to ourselves: the use of a 40-50 person jury is appropriate in an era when a meaningful proportion of the population is cynical toward politics and politicians.

We would note early that we are not proposing anything that looks like opinion polling or focus groups. Both methods capture what people think *when they haven’t had time to think*. Potential models will simply build in greater time and breadth of information to deliver an additional input for Committee members and the Parliament to consider, and in each instance to have it based on information and collective judgment, not raw opinion.

## A.1 Summary of Three Project Examples for Reference Discussion.

	Difference
<b>NSW Planning Reforms</b>	<p>Engagement entirely focused on active interests with incentives <u>not</u> to find agreement. No meaningful role for everyday citizens.</p> <p>In many ways a high quality process (time, depth of information) but the engagement did not reach everyday citizens. “The community” and “community groups” are two very different entities – and had the former had a voice it would serve to disarm some of the more extreme positions.</p>
<b>Safe &amp; Vibrant Nightlife (NSW)</b>	<p>The 2013 report by citizens is one of the strongest proof points we can offer the Committee. The project was jointly commissioned by Premier O’Farrell and Lord Mayor Clover Moore. It is worth noting the report is written entirely by a pool of 43 citizens (not consultants; and with no editing)  <a href="https://www.newdemocracy.com.au/2013/09/17/city-of-sydney-safe-vibrant-nightlife/">https://www.newdemocracy.com.au/2013/09/17/city-of-sydney-safe-vibrant-nightlife/</a></p> <p>We draw your attention to recommendations 21 and 22 and suggest a more trusted and actionable recommendation was reached by this group than was achieved by the Parliament.</p> <p><i>“21. The Jury supports the independent statutory review of the effectiveness of the lockout and trading controls in terms of the social, economic, health and crime impacts and recommends that it be conducted in 12 months rather than the proposed 24 months. The outcomes of this review are to be publicly available.</i></p> <p><i>22. The Jury recommends that exemptions be available for venues to the “lock-out” and other trading restrictions, based on good behaviour, no incidents, and proven lower risk to public safety. This makes it financially favourable for the venue to police itself.”</i></p> <p>This provides a direct “live” comparison of how an informed group of citizens could potentially have both stood alongside a government for a decision which is challenging to raw public opinion, and also for how they could have improved the law before implementation.</p>
<b>Ireland – Eighth Amendment to the Constitution</b>	<p>In Ireland, abortion was prohibited within the Constitution and the service unavailable. This makes any reform process substantively more difficult than the recent experience in NSW.</p> <p>The Irish Taoiseach (Prime Minister) referred the issue to a Citizens’ Assembly which returned recommendations no party thought were possible given the nature of public opinion.</p> <p>The referendum passed 68-32 which reflected the support for certain key reforms within the Assembly.</p> <p>We note that a cross-party delegation of MPs (organised by the Speaker of the Assembly, Jonathan O’Dea, and including Upper House member The Hon. Scott Farlow) had the opportunity to meet the organisers during a recent study tour and their perspectives may assist the inquiry.</p>

## PART B – Deliberative Principles

There is no single model for a Citizens' Jury process. Most projects are bespoke designs matched to the complexity of the question at hand.

If the Inquiry were to respond favourably to the proposal, newDemocracy (and potentially a number of universities) could propose **2-3 reference designs** as part of a response to a specification set by the Committee (i.e. time available; budget; estimate of projects per year; any technical mandatorys).

Smaller, faster models (such as Deliberative Polls for example) can be used with the simple caveat that the elected representatives understand this is not a 'like for like' substitution with the larger, more open designs (as with Citizens' Juries). A simple way to envisage this is the difference between a multiple choice question and a free text response question: *they will generate different answers, with the latter format adding reasoning and nuance.*

A starting point for understanding any deliberative process design are these five principles. They centre on creating the environment for the consideration of the **broadest range of sources while giving participants an equal share of voice**. While seemingly obvious we find they are rarely applied.

1. **Clear Remit (task):** A clear, plain-English challenge or question is placed before a group. This neutrally-phrased question goes to the core of the issue and provides a strong platform for discussion about the trade-offs.

A short 'closed' process *tests an answer* (or shifts in preferences for answers as more sources are considered); in contrast, the longer formats simply *pose an open question*.

Example –

*“Should we raise the Medicare levy to x%?” (closed question; limited solutions; can be explored rapidly); vs*

*“How can we pay for the health system we want?” (open question; free response with rationale; extended time formats required)*

Contextual Example (State Development Committee) –

*“Should we remove the current prohibition on the mining of uranium and the operation of nuclear reactors in NSW?”*

*(closed question; limited solutions; can be explored rapidly in a Deliberative Poll); vs*

*“How can NSW best meet its energy needs?”*

*(open question; free response with rationale; extended Citizens' Jury format req'd)*

2. **Information:** Detailed, in-depth information is provided to the participants to help them understand the dilemmas/ tradeoffs involved. The key principle is to ensure sufficient time to expose citizens to a **diversity** of sources (rather than attempting to be a single ‘font of truth’ and trying to verify every piece of information).

By doing this the group can move beyond opinion to an informed and more balanced view. Not all participants read everything, but collectively an enormous amount is read, understood and shared in the conversations and decisions. Citizens will also spend extensive time asking questions and identifying sources **they** trust for the information they need, helping the group range beyond the advocated voices that are pressing to be heard.

Estimated complexity of sources and range of perspectives directly affects the time required for a process.

Key decision point: if expert positions are likely to be distrusted, then building in extra time to draw in sources of the citizens’ choice (rather than those actively seeking to be heard or proffered by an active interest) becomes a mandatory design element.

3. **Representative:** A stratified random sample of the community is actively recruited to participate via a civic lottery.

Most engagement by government does not hear from a representative cross-section of the community, with incentives to participants geared to those with the most acute interest. The lottery provides a counterbalance.

Simple demographic filters (age, gender, location and owner/renter as an effective surrogate indicator of education and income level) matched to the Census profile are used to help stratify this sample to represent broader demographics.

Where large numbers are seen as important, then deliberation can be individualised (rather than reporting a shared group position and allocating time for common ground exercises as a group the citizen’s contribution is a single vote – not a group statement). A Deliberative Poll can involve hundreds of people.

Where finding a single point of common ground is the main objective, then numbers are reduced and the deliberation is as a group. A Citizens’ Jury is optimally around 35-43 people.

The use of random selection via civic lottery is common to all models.

4. **Extended Time:** The processes are built to ensure maximum involvement from all participants: equal access to information and equal share of voice. After a basic level of critical skills and biases training (generic, not tailored to an individual issue – this avoids perception of an organiser bias) the process develops thinking from individuals, to smaller groups, then to the whole group. Issues are weighed up and discussed in various exercises, aimed at approaching the problem from different angles, and given plenty of time before final recommendations are made. Time is a crucial factor for the deliberation, it is at the

core of arriving at considered public judgement which moves beyond motherhood statements to be specific, measurable and actionable.

The key uses of time are (a) education and immersion in a topic and (b) to enable us to move from an individual position to a common-ground position across the sample. Where time is constrained a Deliberative Poll can capture mass individual positions. Our strong recommendation is that there is greatest value to elected representatives from a common-ground position after citizens holding different views report to the Parliament what they are able to agree on. (Dissenting views held by ~10% of the room or more are captured as minority reports.)

5. **Influential:** the only way we can recruit a genuinely representative group – and expect them to read and think to the depth required (often 40-60 hours) is by being able to make a clear public statement that the process is worth their time. Central to this is a commitment of what will happen as a result of their deliberations.

A commitment to make the citizens' findings public immediately engenders trust. A commitment to respond in writing (~45 days) and in person is a sufficient commitment to make projects work effectively.

Use of the NSW Parliament building on Macquarie Street would also contribute to the perceived weight and consequence for citizens contributing their time. While we are aware weekend access has never before been possible, ideally this is a problem solvable over time.

## **PART C – How can this be integrated with the Committee inquiry process?**

### Complementary aspects –

- a. *Issues Papers (Green Papers)*: any deliberative process starts with a background paper to provide a basic factual and contextual grounding in the issue (in essence, the focus of the design is simply to provide incentives for everyday people to read, think critically and pose questions based on this starting point). The production of these materials is highly useful.
- b. *Submissions*: diversity of sources is a key design principle, so the act of encouraging submissions is actually a virtuous circle – with a new audience for submissions beyond just the elected representatives, the incentives for submitters are increased. Equally, the variable quality of submissions (and occasional sense of grievance at not being called to appear before a Committee) is mitigated when it is a mix of fellow citizens forming that view rather than an elected official where they can ascribe a negative motivation.
- c. *Committee Response*: ‘authority’ is another key design principle, and this commitment to respond and table this publicly is sufficient to enable the recruitment of a diverse, representative group.

### Challenging aspects –

- d. *Time*: a guideline for operating a Citizens’ Jury is three months to prepare and 3-4 months to operate.

Within this timing the key guideline is ~45 days for recruitment and nine weeks for information preparation (concurrent). Some of this is shortened by the Upper House Committees having existing papers and the existing Submissions process.

Guidance from the Committees regarding the operating window of time that could be made available is needed: within that window of time we design the scale of the task to fit. (To illustrate: you can’t explore Brexit in four meeting days, but you can focus on one decision component such as free movement of people, or trade regulation.)

We also propose a variant of a Deliberative Poll method be used when time and budget are constrained.

- e. *Terms of Reference*: in a previous trial with the NSW Parliament we used one of the Terms of Reference verbatim and the citizens opened their report by rejecting the narrowness of the question and then explained to the Committee how they chose to approach the question.

This is both a validation of the depth of engagement/ understanding of the citizens and a design issue we would prefer to address. The example in Part B.1 above illustrates how we would seek to position questions.

One solution may be to return to the Committee for approval, and to openly and publicly note in materials that it is Parliamentary Library staff who have framed the question to avoid concerns of bias.

### Aspects of No Impact

- f. *Parliamentary Privilege*: citizens recruited via civic lottery have no expectation of privilege, and concerns over legal issues have not arisen in any demonstration project operated by newDemocracy or are even known to us through our network.



## PART D – Options for Implementation

**Time, issue complexity, level of citizen ‘ownership’ of recommendations and budget** are the four key design variables, which inform the list of options below.

Across all issues, the stratification variable of **‘location’** (ask: who is the community?) will mean that the process may need to be run in Sydney and a regional location concurrently (or people provided with travel allowances). An obvious trade-off is to limit regional participation to areas within driving distance of Sydney but this will be undesirable for a major issue or where regional, rural and metropolitan views will likely be different.

As noted earlier, if the Procedures Committee sees merit in our logic in the vignettes below, then a next step is the provision of three complete ‘turnkey’ (ready to operate Users’ Guide) reference designs for your review. This is a ~5-7 week piece of work.

**Problem:** a “standard design” Citizens’ Jury with 43 people being given 5-6 meetings to explore a topic over 4 months with a professional facilitation costs ~\$225,000 to deliver per location – and in a large state covering major issues *at least three* locations would be important to hear from for most topics (Sydney, a regional centre, a rural/remote view). The Committees of the NSW Parliament require a lower cost, faster solution which preserves the core ideal of a representative group of people offering informed input into the Committee’s – and the Parliament’s – decision making.

In addition, the use of 43 people allows for excellent descriptive (not statistical) representation: for example, in a topic on public housing there might be one-third public housing tenants, one-third people on public housing waiting lists and one-third wider community (taxpayers). Reducing the numbers below 30 will have adverse effects when it comes to successfully recruiting a diversity of perspectives.

**Recommendation:** the Committees should be given control to select a model and in so doing accept a given design’s limitations/constraints.

We also note that many departments have extensive engagement activities that appear disconnected from assisting members of the Parliament: creating a tighter connection here can solve much of the budget and staff resourcing issue.

*[section continues overleaf]*

Preferred Approach	Citizens' "Ownership" of Recommendation	Complexity of Issue	Detail
<p><b>Citizens' jury</b></p> <p><i>High cost, so likely once every year or funded in conjunction with Department's engagement budget.</i></p>	<p>High ownership</p> <p>--posed a question with no draft answer – free creation of recommendations.</p>	<p>High complexity</p> <p>--extensive list of speakers/ sources, incl. many picked by citizens</p>	<p>~35-43 people per location</p> <p><i>\$140k-\$225k cost per location</i></p>
<p><b>Deliberative Poll – modified format</b></p> <p><i>Allowing for modification from the (large scale) James Fishkin Stanford model, this would offer an effective set of strict instructions for the Committees to offer a 2-day format.</i></p> <p><i>Highly effective for closed questions.</i></p>	<p>"Informed citizen"</p> <p>--curated list of speakers chosen by Committee to represent 'both sides' of an issue.</p> <p>– question posed with 3-4 draft solutions.</p> <p>--vote at beginning and end: Committee guided by relative change in positions.</p>	<p>Moderate complexity</p>	<p>100-300 people</p> <p><i>\$75-125k per project.</i></p>
<p><b>'Digital Town Hall' -</b></p> <p>~150 people from around the state.</p> <p><i>Option: can be scaled by distribution of content through major newspapers (a new role for media).</i></p>	<p>Low ownership</p> <p>--citizens read ~10 sources in a 16pp booklet</p> <p>--citizens are prompted to report questions they want resolved to make an informed recommendation</p> <p>--still uses civic lottery to invite participants.</p> <p>State-wide reach --the need to have people engaged in numerous regional locations would be a primary reason to use this.</p>	<p>Low complexity</p>	<p>150 to several thousand participants.</p> <p>Negligible marginal and third party costs.</p>

## **PART E – Members’ Role**

These projects have worked best when the role of members is closely integrated.

Members’ participation can be thought of in three main areas:

### *(i) Active Participation*

Successful major national projects in Ireland on highly contentious issues (abortion laws and marriage equality; both required constitutional amendment) used a blended model where MPs and randomly-selected citizens worked together for the duration of the process. This engendered a mutual increase in trust which citizens shared through the media.

### *(ii) Authorising and Responding*

Attending in person and offering an opening statement sharing why the decision is complex and why/where the citizens’ role is of most value is critical to having citizens see this as worth their time. In practice, if the issue is contentious this means representatives holding different viewpoints (i.e. from different parties) need to commit to do this or citizens will view their task as being of minimal value as one side is not listening.

### *(iii) As an Expert Source*

Members will have a blend of knowledge based on career experience, synthesis of what they have learned from Committee submissions and discussions, and also bring together a summary of questions which come to them from citizens. Members are encouraged to present this information in written form for citizens to deliberate upon.

## **PART F – Recommendation and Next Steps**

We appreciate that the processes outlined here are a step change from current committee inquiry processes.

A single issue trial can be an appropriate way for a mix of members to see and experience a process, and for Committee members to make an informed decision with regard to its value.

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