

newDEMOCRACY

SUBMISSION TO THE QUEENSLAND GOVERNMENT REVIEW OF THE ELECTORAL ACT

Precis

The newDemocracy Foundation asks the Queensland Government to explore a range of options to restore trust in government and public decisions. Our proposals aspire to deliver government which is more representative, less adversarial and clearly deliberative. Our response is in two parts.

Firstly, in matters not explicitly raised by the discussion paper, we ask the Queensland Government to consider two major themes:

- ✓ That random selection of citizens is a proven method of improving representativeness, diversity and trust and its use should be strongly considered. The jury is a highly trusted institution: research evidence suggests that public decisions taken by elected representatives gain in public trust when supported and complemented by a jury of everyday citizens given the chance of the same detailed deliberation undertaken by MPs and policy advocates.

This model delivers more trusted outcomes with decisions less liable to outside impairments (or public perception of impairments) in judgment.

- ✓ The barriers to entry for innovation in democracy are immense and frequently insurmountable. Innovations and trials seeking ongoing improvements to democracy should be encouraged and barriers removed – most simply by allowing trials in a single local government area rather than taking an “all or nothing” approach to regulation.

Secondly, we offer comment on three areas raised by the Discussion Paper:

1. **Public funding** models can be used to deliver greater candidate diversity by applying a weighting to the reimbursement. The goal is to address a public perception of “party machine” candidates dominating parliament, and to reduce the apparent advantage of insiders in comparison with everyday citizens. Potential criteria would see an assessment made on the percentage of representatives with fewer than five years work outside government, Ministerial staffer experience, a paid party role or time in student politics. In simple terms, a ‘Diversity Rule’ is applied with party funding reduced above an agreed threshold.

2. **Truth in Advertising legislation is strongly supported.** In implementation, our courts have vast experience in judging whether a person has engaged in misleading or deceptive conduct thus is an area where the courts can and should decide. We suggest that a key advantage of this reform will be for a reduction in the hyper-adversarialism conducted by all political participants. Extreme statements that have the intent, or likely effect, to mislead or deceive would be far less prevalent in the public discourse due to the possibility that this may lead to fines or the threat of a recall election where the courts judge the breach to be substantial.
3. **Amend Compulsory Voting with a 'None of the Above' voting option.** It is suggested that the presence of an option which lets a voter disengage entirely would serve as a limiter to highly adversarial behaviour as neither party would seek to shrink the pool of available votes with its attendant funding impact. This is sometimes viewed as a 'halfway step' to non-compulsory voting as it reduces the compulsion on voting to one of attendance at a polling place.

About The newDemocracy Foundation

The newDemocracy Foundation (nDF) provide design frameworks for public deliberation and general innovation in democratic models. Our research and advocacy is focussed on identifying less adversarial and more representative public decision making processes.

During 2012 we have successfully explored some of these models with City of Canada Bay Council and the Public Accounts Committee of the NSW Parliament. Further to this work we would like to explore alternative ways of voting and democratic inclusion.

Our services are provided in a mix of pro bono and cost recovery only - consistent with our structure as a not-for-profit research Foundation. We are *not* a thinktank and hold no policy views. We also commission independent third party research which occurs in parallel to the process in order to ensure robustness and to capture the potential for improvements.

Part I – Response to Key Themes of the Discussion Paper

Public funding models can be used to deliver greater candidate diversity by applying a weighting to the reimbursement. The goal is to address a public perception of “party machine” candidates dominating government, and to reduce the apparent advantage of insiders in comparison with everyday citizens.

One unresearched concept put to the Foundation (by recently retired politicians) would aim to break the increasing trend toward “career” politicians by proportionally tying the party funding from the Electoral Commission to a sliding scale based on the proportion of representatives elected who were previously party staffers or student politicians.

To illustrate: a party would continue to earn the full amount of the re-imbusement where they had 20% or fewer of their representatives coming from that background. Beyond 20%, the re-imbusement would be scaled back proportionately down to a 'floor level' where, for example, a party with over 50% of its representatives coming from staffer or student politics background would cease to receive a re-imbusement per vote.

It is suggested that the importance of the current public funding to the parties is such that pre-selection behaviours would change radically, and the advantage gleaned from an individual potential candidate having been ‘in the system’ would be largely negated - the likely result being a more diverse pool of representatives.

The simplicity of implementation and its ongoing compliance measurement are the key advantages. If the funding laws were enacted with a five year transition window then the effects on pre-selection would be immediate. The resulting advantage in practice is one of diversity and 'representativeness' of the parliaments. As noted above, it has been retired politicians advising the Foundation as to the simplicity of introduction of this requirement.

It is noted that an argument can be made that funding like this is discriminatory against a segment of the population, and that it to some extent it fails an ideal of fair legislation by being somewhat retrospective - as an individual who was a staffer prior to the legislation being enacted would have their likelihood of pre-selection in future dramatically reduced.

Truth in Advertising legislation is strongly supported. Currently, political advertising is not required to adhere to the same guidelines as commercial advertisers under the former Trade Practices Act (now the Competition and Consumer Act) or the Privacy Act. The lack of a requirement to adhere to the TPA prohibition on actions that *"have the intent, or likely effect, to mislead or deceive"* – coupled with the scale and frequency with which the message is delivered – acts as a severe constraint to reasoned analysis.

This is suggested as having a potentially far reaching impact on the tone of political debate as extreme claims would need to be substantiated and, if found to be deceptive, would result in fines or other penalties. Facing constraints that require evidentiary support (such as those required of the

pharmaceutical industry), it is suggested the nature of political messaging would be repositioned due to the parties' focus on consistency of message.

In implementation, our courts have vast experience in judging whether a person has engaged in misleading or deceptive conduct thus is an area where the courts can and should decide.

Extreme statements that have the intent, or likely effect, to mislead or deceive would be far less prevalent in the public discourse due to the possibility that this may lead to fines or the threat of a recall election where the courts judge the breach to be substantial.

Amend Compulsory Voting with a 'None of the Above' voting option. It is notable that the initial media reporting of the conduct of this Inquiry focused on compulsory voting as a lightning rod of controversy. The newDemocracy Foundation holds the position that this is not necessarily a binary choice – a middle ground exists in 'compelling people to attend' then allowing them a simple opt out through a *none of the above* (NOTA) option.

Queensland citizens may wish to consider this as a fair option to allow a voter to accurately express their preference.

This is sometimes viewed as a 'halfway step' to non-compulsory voting as it reduces the compulsion on voting to one of attendance at a polling place.

Part II – Beyond the Ballot

Ideals of democracy are rarely discussed, and the Discussion Paper's open call for new options to improve Queensland's electoral laws is welcomed.

Electoral laws should enshrine **the ability of a citizen to rule and be ruled in turn through a fair contest of ideas**. Successive layers of regulation have actually drawn most Western democracies away from this basic goal. The barriers to entry for participation have become ever higher.

Equally, it is worth remembering that the sole purpose of a democracy is that we may organise ourselves to make trusted and accepted public decisions. Increasingly, securing community trust in a decision is impossible once a party has gone through the rigours of the electoral process. The normal, logical operation of the electoral process encourages a simplification of positions that becomes unworkable in practice, thus decisions which a citizenry could accept if they knew the detail of the situation become politically unpalatable in a vox pop news environment.

A new means of securing public trust is required, and we suggest that the mechanism to secure this is the use of jury-style random selection. We trust juries to decide on the freedom of citizens, yet demand a vote on representatives to decide issues which are arguably far more mundane.

If the principle is accepted, there are numerous ways in which a randomly selected group of citizens can be engaged in public decision making. These range from ad hoc groups drawn together for a single challenge facing the government, to simple ways to embed this in the everyday operation of 'how we do of government'.

Key tenets of a trusted decision making group from the community are:

- a. That participants be randomly selected rather than self selected, to avoid the otherwise very high likelihood of a process being skewed by interest groups.
- b. All parties have a right to submit their view and request to appear before this group.
- c. The jury-style selection should be conducted by a trusted independent agency, whether this is a Foundation, a University, the Electoral Commission or the Sheriff's Office.
- d. That participants receive a reasonable payment for their time.
- e. The community be given a **pre-agreed level of authority** for its participation, in order to encourage those without a direct interest to give up a substantial amount of their time.
- f. That the group reaches decisions by consensus, not just a simple majority.

Case Studies from the Community

Ample research evidence already confirms the **capacity** and the **desire** of citizen panels to deliberate and make recommendations about complex issues. Two of newDemocracy's most recent projects, which offer interesting insights and recommendations, are outlined below.

a. City of Canada Bay Council

In August 2012 newDemocracy undertook an engagement process for the City of Canada Bay. Invitations were sent to 1577 addresses in the local government area, inviting participants to take part in a process that would set the range and level of Council services, and decide how these services should be funded.

The response rate of around 10% offered a pool of potential participants large enough to allow for targeted random selection, choosing a group that offered an approximate match to the area's Census profile in terms of age bracket, gender and ratepayer/ tenancy status.

Thirty-one people attended the first meeting, of whom 29 were still involved at the end of the process, four months later. The panellists, representing the views of the whole community, evaluated very detailed information and considered some difficult trade-offs. The panel reached a pragmatic consensus that reflected the actual financial position of the Council. Their set of resolutions was quite different to, and arguably more considered than, results from previous methods of community engagement.

Panellists each received an allowance of \$400 (paid upon completion and full attendance).

b. NSW Public Accounts Committee

newDemocracy has completed a similar jury-style process for the Public Accounts Committee of the NSW Parliament, which has already achieved consensus recommendations in the highly complex, emotive and advocate-riven area of energy policy.

We convened 26 participants each in Tamworth (drawn from a 100km catchment radius) and the Sydney metropolitan area. Participants were not paid for their time, and were initially asked to attend four meetings. Both groups ultimately decided to devote more time to the process, and both groups delivered unanimous recommendations.

The energy inquiry also demonstrated the panels' ability to discuss, identify and agree on which expert speakers should appear before them. The complexities of energy policy can be seen as equivalent to those relating to strategic planning.

Conclusion

Given the range of options, and the negative political context ascribed to **any** change, we would suggest that the Queensland Government consider opening this topic to a deliberative process using a random selection of Queensland citizens to explore whether a consensus can be reached. We leave the review with a question,

“If you were told 150 Queenslanders looked at everything in this review and after five months to meet, discuss and hear from experts of their choosing they reached a consensus view that a, b and c should occur, would you trust that to be a fair decision and not one just helping out the government of the day?”

Innovations in democracy must restore trust and confidence to our public decisions, and we hope to be of service to the Government in achieving this.