

## **Ministerial Expert Committee on Electoral Reform: Discussion Paper**

### **Introduction**

The Ministerial Expert Committee on Electoral Reform invites the public to make submissions on issues on which it has been asked to make recommendations, and has produced this Discussion Paper for that purpose.

Submissions can be made by 5pm, 8 June 2021 at: [submissions@waelectoralreform.wa.gov.au](mailto:submissions@waelectoralreform.wa.gov.au) or by post to the attention of the Committee to 11th Floor Dumas House 2 Havelock Street WEST PERTH WA 6005.

Those who have already made a submission are welcome to amend or add to their existing submission.

### **Terms of Reference**

The Committee's Terms of Reference (**attached as Appendix 1**) ask it to review the electoral system for the Legislative Council and to provide recommendations on two matters:

1. How electoral equality might be achieved for all citizens entitled to vote for the Legislative Council; and
2. The distribution of preferences in the Legislative Council's proportional representation system.

It is important that it be understood that the Committee's role is defined by and limited to the Terms of Reference. The Committee is not asked to recommend to the Government whether or not it is desirable to achieve electoral equality for Legislative Council elections. That is not in the Terms of Reference. The Committee's task is to recommend how "electoral equality" might be best achieved. Nor is the Committee asked to consider either abolition of the Legislative Council (as happened in Queensland in 1922) or a reduction in its membership (each of which would require a referendum).

### **Structure of the Discussion Paper**

The structure of the Discussion Paper is as follows. Section 1 provides the background and context for the proportional voting system used to elect members to the Western Australian Legislative Council. Section 2 outlines the number of electors enrolled in the different regions within the Legislative Council, and how these numbers have changed since the regions were established in 1987. Section 3 looks at voter preferences. Section 4 outlines the various upper house models in use across other State jurisdictions in Australia.

#### **1. The electoral system for the Western Australian Legislative Council**

##### **A brief history**

The Western Australian Legislative Council was established in 1832. It became a wholly elected chamber in 1894, but with the franchise limited to landowners and those of a prescribed level of income. Universal suffrage was finally introduced in 1962, and the Council consisted of a series of 2-member electorates (called provinces), with half the members (or MLCs) being elected at each

election for a 6 year term. There were from the outset significant differences in the number of electors per province, both between metropolitan and non-metropolitan provinces, and between different non-metropolitan provinces.

In 1987, a new system of multi member electorates (called regions), elected by proportional representation, was introduced. Six regions were established. All MLCs now have 4 year terms, and face electors at each election rather than the former situation of only half the Council being replaced each election. Three regions – North, South and East Metropolitan – were established in the metropolitan area with 7, 5 and 5 MLCs each respectively; and 3 regions in the non-metropolitan area – South West, Agricultural, and Mining and Pastoral – with 7, 5 and 5 MLCs respectively. Significant enrolment variation between the non-metropolitan and metropolitan regions persisted, although to a lesser extent than before.

The metropolitan area of Perth was specified in the legislation, with the 3 metropolitan regions fitting within that boundary and the other 3 regions outside it. An independent Electoral Distribution Commission was established to determine the boundaries for Legislative Assembly districts and Legislative Council regions after each election. Legislative Council regions were created by aggregating several Legislative Assembly districts. The Commissioners, in making their determination, must “generally” work within the context of the region scheduled in the Metropolitan Region Town Planning Scheme Act 1959 (WA) and Rottnest Island. Furthermore, land use and physical features as well as communities of interest, local government boundaries, existing regions and districts, the trend of demographic changes and means of communication, travel and distance from Perth, all guide the Commissioners in setting boundaries for the regions.

In 2005, after the election that year, changes were made to the Legislative Council’s electoral system. At the same time, one vote one value was introduced in the Legislative Assembly. The number of MLCs increased from 34 to 36, and the 6 regions each return 6 members, rather than the previous system of 2 regions having 7 MLCs and 4 having 5 MLCs. The metropolitan regions elect 18 MLCs, as do the non-metropolitan regions. The Act now stipulates that there should be approximately equal numbers of “complete and contiguous” districts in the 3 metropolitan regions. There is no such stipulation for the 3 non-metropolitan regions. Maps of the Legislative Council regions are attached in Appendix 2.

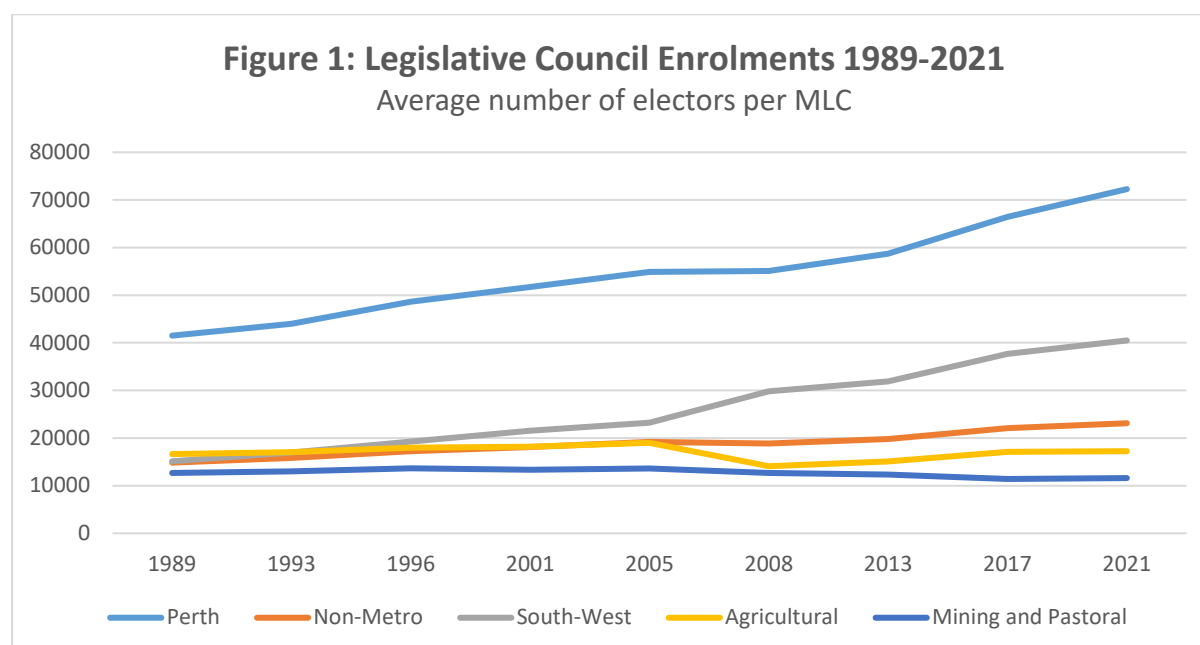
## 2. Electoral enrolment in each region under the current system

The current enrolment figures for each Legislative Council region are provided in Table 1.

**Table 1: Legislative Council enrolments, February 2021**

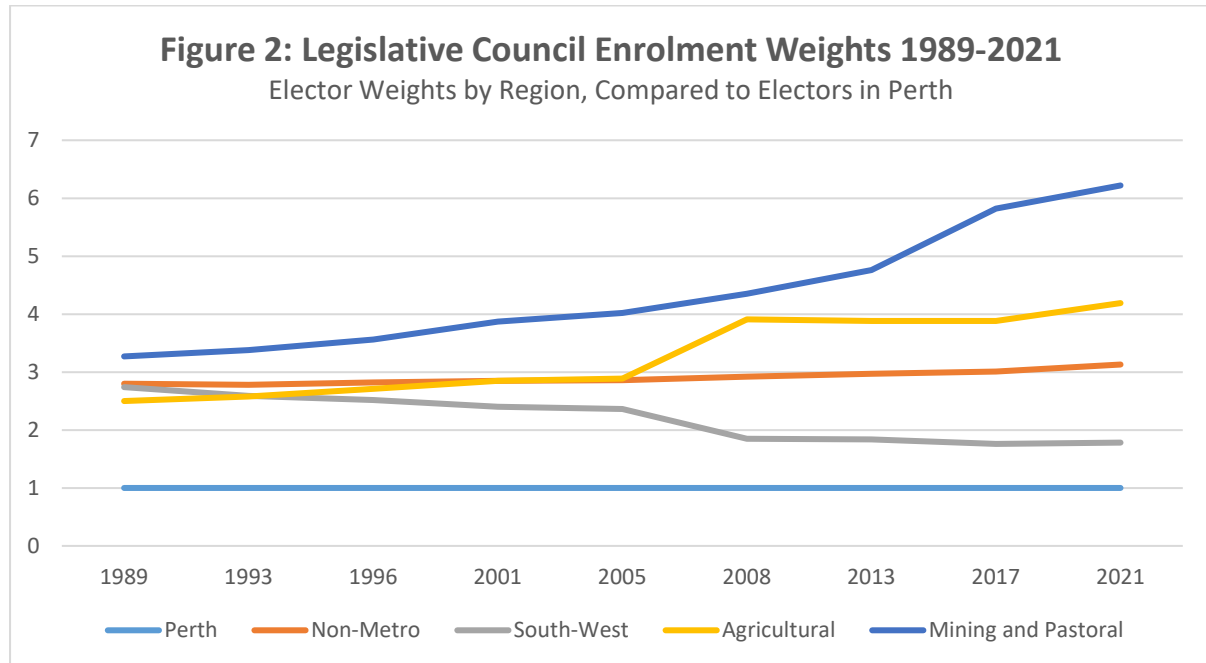
Region	Enrolment (2021)	% of Total enrolled electors	No. of MLCs	% of Total MLCs	Electors per MLC	LA Districts
Agricultural	103,378	6.02%	6	16.70%	17,230	4
East Metropolitan	423,759	24.68%	6	16.70%	70,627	14
Mining and Pastoral	69,651	4.06%	6	16.70%	11,609	4
North Metropolitan	427,779	24.92%	6	16.70%	71,297	14
South Metropolitan	449,182	26.16%	6	16.70%	74,864	15
South West	242,983	14.15%	6	16.70%	40,497	8
<b>TOTAL</b>	<b>1,716,732</b>	<b>100.00%</b>	<b>36</b>	<b>100.00%</b>	<b>47,687</b>	<b>59</b>

Table 1 shows the wide difference in enrolments per region and per MLC. The trends over time since the adoption of regions and proportional representation in the Council are shown in Figure 1.



**Figure 1:** Calculations by Antony Green based on WAEC Election Statistics, (<https://antonygreen.com.au/was-sional-electoral-system-and-the-legislative-council-reform-debate/>)

Figure 1 shows that there was a gradual increase in the disparity of enrolments per MLC between South West and the other two non-metropolitan regions between 1989 and 2005, accentuated by the changes made after the 2005 election. This growing disparity is clear in Figure 2, which is based on electoral weighting between the regions, compared to the metropolitan average (labelled Perth here).



**Figure 2:** Calculations by Antony Green based on WAEC Election Statistics, (<https://antonygreen.com.au/was-zonal-electoral-system-and-the-legislative-council-reform-debate/>)

Figure 2 shows that on average, non-metropolitan electors have about three times the voting weight of metropolitan electors in the Legislative Council. Overall, non-metropolitan as against metropolitan weighting has increased steadily from 2.8:1 in 1989 to 3.1:1 in 2021, as the proportion of the State's population living in the metropolitan area has increased. Within the non-metropolitan area, the three regions had approximately similar numbers of electors per MLC when the new system was introduced in 1989. However, as the population shifted towards the South West, this changed. By the time of the 2005 election, the ratio of electors per MLC in Agricultural region compared to South West region had increased from 0.9:1 to 1.2:1, while the ratio for Mining and Pastoral region to South West region increased even more, from 1.2:1 to 1.7:1.

The post-election 2005 changes to the Electoral Act reduced the number of MLCs for South West region from 7 to 6, and increased the number of MLCs from 5 to 6 in both Agricultural region and Mining and Pastoral region. Consequently, the weighting towards Agricultural and Mining and Pastoral regions compared to South West increased markedly, and has continued to do so, as population in the South West grows relative to the other 2 regions. At the 2021 election, South West had 40,497 enrolled electors per MLC, compared to Agricultural's 17,230 and Mining and Pastoral's 11,609. By contrast, the average metropolitan region has 72,262 enrolled electors per MLC. Agricultural now has 2.35 times the voting weight of South West, compared to 1.22 in 2005 (and 0.91 in 1989). Mining and Pastoral now has 3.49 weighting compared to South West, up from 1.70 in 2005 (1.19 in 1989).

In 2021, the two least populous regions (Agricultural, Mining and Pastoral) comprise 10.1% of the total number of electors enrolled in the state, but elect one third (33.3%) of MLCs. More than 6 times as many electors in the metropolitan region are required to elect an MLC compared to one voter in the Mining and Pastoral region. The fixed metropolitan border in the Legislative Council means there is no automatic mechanism to prevent a continuing rise in this disparity.

Legislative Council regions are currently created by aggregating Legislative Assembly districts. The number of districts in each region is listed in the right hand column in Table 1. The two least populous regions (Agricultural and Mining and Pastoral) are each made up of 4 Legislative Assembly districts, compared to 8 for South West region. Two of the three metropolitan regions contain 14 districts and one, South Metropolitan, contains 15 districts. This has occurred because there are 43 districts in the fixed metropolitan region, a number which is not divisible by 3. As a result, South Metropolitan has more enrolled electors per MLC than North Metropolitan or East Metropolitan.

### 3. Voter preferences

The changes in 1987 established a system of group voting tickets in Legislative Council elections. This means electors choose to either vote for just one group (usually a political party) ‘above the line’, or alternatively they can preference all candidates (sequentially from most to least preferred) ‘below the line’. For a ‘below the line’ vote, electors are instructed to number every square. Candidates are elected when they reach the required quota of valid votes. In the Legislative Council, with 6 MLCs to be elected per region, the quota is one-seventh, or 14.29%, of the total valid votes cast.

The vast majority of electors in WA vote for just one group ‘above the line’ (see Table 2). A group must lodge with the Electoral Commission a statement of preferences which indicates how their group votes will be distributed if the group is eliminated, or if it has a surplus (above quota) to transfer. This means that ‘above the line’ preferences between groups are decided by the group they have voted for rather than by the voter.

**TABLE 2: Above and Below the Line Voting, 2021 Election**

	ATL	BTL #1 candidate	BTL other candidates	Total Valid	% ATL	% BTL #1	% BTL other
<b>Agricultural</b>	84,509	1,503	481	86,493	97.7%	1.7%	0.6%
<b>East Metro</b>	341,280	8,128	2,765	352,173	96.9%	2.3%	0.8%
<b>Mining &amp; Pastoral</b>	48,022	747	295	49,064	97.9%	1.5%	0.6%
<b>North Metro</b>	356,731	7,040	2,458	366,229	97.4%	1.9%	0.7%
<b>South Metro</b>	371,717	6,110	2,283	380,110	97.8%	1.6%	0.6%
<b>South West</b>	200,810	3,225	1,064	205,099	97.9%	1.6%	0.5%
<b>Total</b>	<b>1,403,069</b>	<b>26,753</b>	<b>9,346</b>	<b>1,439,168</b>	<b>97.5%</b>	<b>1.9%</b>	<b>0.6%</b>

**Table 2:**

*ATL means the elector voted “1” in the one square for a group ‘above the line’.*

*BTL #1 candidate means the elector voted ‘1’ for the first listed candidate in a group, ‘below the line’.*

*BTL other candidate means the elector voted for a candidate not listed at the top of the group list.*

In the Legislative Council, voting ‘above the line’ is the dominant method. In 2021, 97.5% of electors voted ‘above the line’ in the Legislative Council. Three quarters of the 2.5% of electors who voted ‘below the line’, voted for the first-listed candidate, rather than for a candidate lower down a group list (1.9% compared to 0.6%).

As Table 3 demonstrates, the number of candidates on the ballot has increased sharply over the last two electoral cycles (2017 and 2021). This has made the task of voting ‘below the line’ more onerous.

**TABLE 3: Nomination of candidates: Western Australian Legislative Council 1989-2021**

<b>Election</b>	<b>Number of candidates</b>
1989	135
1993	126
1996	129
2001	159
2005	185
2008	170
2013	165
2017	302
2021	325

#### **4. Group voting tickets in Australia**

All state jurisdictions except Tasmania have adopted proportional representation in their upper houses, using the divided ballot and group voting tickets. Group voting tickets were first introduced in the Senate in 1984 with the aim of reducing informal voting, as before then it had been compulsory for electors to number all candidates in order of preference. The large number of candidates in multi-member Senate electorates meant informal voting rates were much higher than in the House of Representatives.

While informal voting did decline significantly as a result (and remains lower in all systems using the group voting ticket system – for example, in the 2021 state election, the informal vote was 1.9% in WA’s Legislative Council compared to 3.8% in the Legislative Assembly), over time the number of groups on the ballot increased. Using preference-swapping arrangements, some groups were successful in being elected with a tiny percentage of the vote. This, plus the growing size and complexity of the ballot paper, led to NSW abolishing group voting tickets after its 1999 state election, followed later by the Senate and South Australia (see Table 4).

**TABLE 4 – Proportional representation in Australian upper houses**

Jurisdiction	Introduction of Proportional Representation	Introduction of Divided Ballot Paper and Group Voting Tickets	Abolition of Group Voting Tickets
Senate	1949	1984	2016
New South Wales	1978	1988	2003
Victoria	2006	2006	..
Western Australia	1989	1989	..
South Australia	1975	1985	2018

**Table 4:** Antony Green, *Submission to the Victorian Parliament's Electoral Matters Committee Inquiry into the Conduct of the 2018 Victorian State Election* ([https://www.parliament.vic.gov.au/images/stories/committees/emc/2018\\_Election/Submissions/103.\\_Antony\\_Green.pdf](https://www.parliament.vic.gov.au/images/stories/committees/emc/2018_Election/Submissions/103._Antony_Green.pdf))

In the NSW, SA and Commonwealth upper houses, a system of optional preferential voting now exists. Electors indicate their own preferences between parties, either by voting for one or more parties above the line, or for a certain number of candidates below the line. Parties are no longer able to submit a list of preferences on behalf of a voter who has voted ‘above the line’.

Both WA and Victoria currently retain group voting tickets for ‘above the line’ voting. However, Victoria has reduced the minimum number of ‘below the line’ preferences required for a formal vote (electors must indicate at least 5 preferences). In WA, electors are still asked to fill all numbers, if voting below the line.

The shift in some jurisdictions away from group voting tickets and from the requirement to number all squares below the line usually means that the last few seats are filled ‘below quota’. This occurs because when an elector only indicates a small number of preferences, and all that elector’s preferred parties are eliminated from the count (or their surplus quota is distributed), then their vote is ‘exhausted’ and cannot be transferred to a remaining candidate. This does not occur in WA’s compulsory preferential system.

With a change to optional preferential voting, the number of exhausted votes increases, and the likelihood of candidates winning on less than a full quota towards the end of the count also increases, as there are insufficient votes to transfer. However, abolishing group voting tickets makes it much more difficult for parties with very few primary votes to pass (on preferences) other parties with a higher primary vote, to win one of the final seats.

## **5. Upper House Models in Australian jurisdictions**

In Australia, the Commonwealth and 5 states have upper houses of parliament. Queensland abolished its Legislative Council in 1922, while the Northern Territory and Australian Capital Territory have never had an upper house.

Most Australian upper houses have followed a similar trajectory in their electoral systems, by introducing proportional representation to elect multiple members per electorate, and adopting a divided ballot paper which enables a voter to vote for a group above the dividing line, or for individual candidates below the line.

Table 5 summarises the current situation in Australian state upper houses.

**TABLE 5: Electoral characteristics of State upper houses in Australia**

State	No. of members	Electorates	Quota for election	Largest enrolment	Smallest enrolment	Variance Largest: smallest	Length of term	Preference system
<b>NSW (2019)</b>	42 (21)	1 Whole of state electorate	4.55%	5,271,775	5,271,775	1	8 years Split terms	Semi-optional  No group voting
<b>VIC (2018)</b>	40	8 5 MLCs per region	16.67%	545,514 (West Metro)	471,221 (East Metro)	1.16	4 years Single term	Semi-optional^  Group voting
<b>WA (2021)</b>	36	6 6 MLCs per region	14.29%	449,182 (South Metro)	69,651 (Mining & Pastoral)	6.45	4 years Single term	Compulsory  Group voting
<b>SA (2018)</b>	22 (11)	1 Whole of state electorate	8.33%	1,201,775	1,201,775	1	8 years Split terms	Semi-optional  No group voting
<b>TAS* (2021)</b>	15	15 Single member electorate	50% +1 (Single member)	29,084 (McIntyre)	23,085 (Pembroke)	1.26	6 years Split terms	Semi-optional

**Table 5:**

^Hybrid system – group voting tickets above the line plus optional preferencing below the line

\*Tasmanian upper house electorates are decided on a rolling basis, so these figures are updated more frequently. The figures used here are based on the 2021 state election.

There are two basic models of upper house representation in Australia.

### Region-based models in Australia

Victoria and WA have region-based models, dividing the state into electoral regions. In Victoria, there are 8 regions, each of which elects 5 MLCs. WA has 6 regions each electing 6 members. Although each state currently has equal numbers of MLCs per region, this is not essential (as noted earlier, from 1989 to 2005, WA had two regions each with 7 MLCs and 4 regions with 5 MLCs each). The Victorian Legislative Council regions are each made up of 11 Legislative Assembly districts, and have roughly equal enrolments (no region may vary by more than 10% above or below the average enrolment per region). In WA, by contrast, there are significant variations in the number of Legislative Assembly districts that make up each Legislative Council region, and enrolments per region vary significantly.

The electoral system for the Australian Senate is also based on a regional representation model. The Senate has 76 members. The 6 states each have 12 Senators (with 6 Senators normally being

elected at each half-Senate election), and the two territories each elect 2 Senators at each election. As a result, the less populous states have significant vote weighting. Equal State representation in the Senate was a crucial precondition insisted upon by the 6 colonies before they agreed to form the Commonwealth of Australia in 1901. This arrangement is common in federations.

### **‘Whole of state’ models in Australia**

New South Wales and South Australia each have just one electorate (the whole state). Each MLC is elected by all of those eligible to vote in that state. Unlike WA or Victoria, both NSW and SA elect only half the Council at each election, with each MLC serving 8 year terms. In NSW, there are 42 MLCs, with 21 being elected at each election. South Australia has 22 MLCs (11 elected each election). The quota to elect an MLC is thus smaller – 4.55% in NSW and 8.33% in SA – than in the Victorian and WA regions (quotas of 16.67% and 14.29% respectively). The whole of state electorate model in NSW and SA ensures precise equality between electors, as they are all in the one electorate and every elector has just one vote.

#### **The Committee invites submissions on:**

- (a) which model (whole-of-state electorate or region-based) is preferable to achieve electoral equality;**
- (b) the strengths and drawbacks of each model;**
- (c) whether any other electoral model, not covered in this Discussion Paper, is better suited to achieve electoral equality, with reasons; and**
- (d) what changes (if any) should be made to the distribution of preferences in the Legislative Council’s proportional representation system, including group voting tickets.**

#### **How to make a submission:**

Submissions can be made by 5pm on the 8 June 2021 at:  
[submissions@waelectoralreform.wa.gov.au](mailto:submissions@waelectoralreform.wa.gov.au) or by post to the attention of the  
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