

**Ministerial Expert Committee
Western Australian Electoral Reform**

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Hon. Malcolm McCusker QC AO

Dear Committee Chair

Term of Reference 1: requires your recommendations as to “how electoral equality might be achieved for all citizens entitled to vote for the Legislative Council”. The following submission is for your consideration and urges that you make the following recommendation to the WA Government:

Recommendation: to enhance opportunities for electoral equality to be achieved *for ALL citizens entitled to vote* for the Legislative Council - a suite of initiatives, legislative and administrative, be advanced and adopted by government and by parliament to advance full electoral enrolment for all Western Australians who are obliged or entitled to be on the electoral roll. Included amongst those initiatives should be the following:

- relevant databases be required to be available to inform the administrators of the WA electoral rolls, so that wherever possible changes to an address on any one database will - where appropriate - trigger correcting the address details for electoral roll entitlement;
- application forms for licences, utilities, government services etc be harmonised to include the information and the declarations that are necessary to effect correct electoral enrolment;
- administrative or legislative impediments that prevent or discourage the effective use of such data for triggering electoral enrolment address updates be removed and replaced with concordant statutory and administrative requirements when it comes to providing residential address so that the data can be appropriately shared to improve the accuracy of the shared data; and to more easily effect and maintain correct electoral enrolment;
- the Federal government be invited to improve and extend their current arrangements and to adopt similar initiatives to those proposed here for the state, by drawing on all of their own relevant data bases; for instance beyond those that relate to taxation; social security; Medicare; superannuation etc; and to abandon the restrictions on the application of the Federal Direct Enrolment and Update and ensure that it is more widely applied and adapted and adopted, including within the mail exclusion areas;
- Re-establish a state equivalent of the now abolished but highly regarded Australian Electoral Commission’s Aboriginal and Torres Strait Islander Electoral Information Service (ATSIEIS).

Proposition: In a situation where it is necessary for electoral reform to tackle the mal-apportionment that applies to regional and remote regions in the state parliament, that necessary adjustment can be done fairly if the enrolment of those areas is corrected to approach as near as possible full enrolment.

My view of the current situation is that the failure to deliver full electoral enrolment in regional WA, especially amongst the Aboriginal population, is akin to accepting, or

applying, a deliberate voter suppression strategy that strips away the involvement of Aboriginal people especially from the electoral processes in WA.

A legitimate response to the legitimately expressed concern about the need for the voice of regional, rural and remote Western Australians to be heard would be to ensure that ALL persons entitled to vote across regional, rural and remote WA are enrolled and have every reasonable opportunity available to them for access to election processes.

Background: there has been an historical unhealthy preoccupation with the administration of the electoral act in WA which has led to regular “roll cleansing” activities; this has resulted in the removal from the rolls of the names of persons whom the WA Electoral commission advise they have been unable to confirm as being at the address at which they were enrolled. This pre-occupation has NOT been matched by any commensurate focus on establishing the correct electoral address at which these persons were obliged to be enrolled nor the taking of sufficient steps to re-enrol those persons at their correct address.

Large-scale un-enrolment of Aboriginal people is especially evident across regional WA. It was again widely self-evident at the most recent state elections across regional and remote W.A. It was obvious at the polling stations; it was commented upon before, during and after the elections. And yet little has been done to effectively correct the situation that is crying out to be fixed.

Some limited progress was made with in “2012 through S103B of the Commonwealth Electoral Act which entitled ‘Enrolling unenrolled person without claim or notice from the person’. Known administratively as Federal Direct Enrolment and Update (FDEU), this allows the AEC to use information from other government sources to automatically enrol persons who they believe are eligible by age and other criteria, and are resident at an address in the ‘relevant Subdivision’”.¹ Regrettably the AEC has been very conservative in the use of this provision and restricted its use of data to:-

“Centrelink/the Department of Human Services, the Australian Taxation Office and the National Exchange of Vehicle and Driver Information Service. Also the AEC has chosen not to use FDEU in ‘mail exclusion areas’, where mail delivery is to a single community address rather than individualised street addresses. The AEC rationale for this approach relates to the requirement under S103B (6) to give notice to FDEU enrollees, which it argues may not always be timely or direct enough in mail exclusion areas”. Mail exclusion areas are precisely those areas where electoral un-enrolment and non-voting rates have now spiralled.”²

Drawing upon the paper by W Sanders we find the following:

“The Northern Territory Electoral Commissioner responsible for NTLA elections has recently expressed concerns about what is happening to enrolment and turnout in remote areas now that the AEC is moving to a more digital age approach elsewhere. A year out from the 2020 NTLA election he argued that 25,000 people were missing from the Electoral Roll in the Northern Territory, 16,000 of whom were Aboriginal. While ‘voter apathy’ was his first target of

¹ ELECTORAL ADMINISTRATION AND ABORIGINAL VOTING POWER IN THE NORTHERN TERRITORY: REALITY AND POTENTIAL VIEWED FROM THE 2019 FEDERAL ELECTION W SANDERS CAEPR WORKING PAPER 132/2019 p. 12

² Ibid

criticism, a second was the AEC's FDEU system which 'works well in urban areas but doesn't operate in rural and remote areas'.³

What has been bureaucratically encourage to develop across regional and remote Western Australia, and Australia more generally, is a permissive "voluntary voting regime" which does not reflect the black-letter law of the Western Australian electoral act and its provisions requiring enrolment and voting for all eligible citizens. This submission seeks recommendations from your Committee coming forward to rectify this situation that has been allowed to develop over time and which has now delivered a comprehensive pattern of voter suppression that impacts adversely on what could otherwise be full Aboriginal electoral participation specifically, and regional and remote participation more generally.

There are accessible tools - administrative and legislative - that can readily be deployed to correct this situation.

For instance, the WA state government has available so many databases that could and should be cross-referenced to more readily trigger correct electoral enrolment. Some very limited reform was undertaken in the past at both a federal and state level to improve on this situation, but clearly so much more can be done by ensuring that a full range of appropriate WA databases are deployed to more simply trigger electoral enrolment and to correct electoral enrolment when an eligible person changes residential address.

With a cross-referencing of such databases, significant improvement of the electoral roll's accuracy could be achieved and significant steps towards full enrolment could be taken.

The data systems that could be usefully cross referenced to trigger automatic correction and updates include:

Licences:

1. Motor vehicle drivers licences;
2. Vehicle registration;
3. Boat licenses;
4. Gun licences;
5. Fishing licences.

Utilities:

1. Public housing leases and tenancies;
2. Power bills;
3. Water bills.

Seniors cards

Identity cards (proof of identity).

³ Ibid p. 13

Membership lists for Charitable Trusts.

Memberships of Native Title Prescribed body corporates.

Directorships or membership of organisations and charities, including Aboriginal organisations.

Lists of Apprenticeships and traineeships.

Government programs that deliver benefits and grants to individuals.

Contact with government departments: like health and community services etc

For instance, the state provides public housing and has tenancy requirements in reference to abiding by the law; however, at present there is no requirement for tenants to abide by the electoral law requirements in reference to enrolment; in my submission, there could be and there should be.

Again, when people are being released from prison: there is an opportunity to assist such persons, at release or while on parole, in becoming compliant with the WA statute book, including the requirement to go on the electoral roll.

There is in place a statutory requirement in WA that requires Australian citizens over the age of 18 to be electorally enrolled; however, a permissive bureaucratic culture has emerged where no obvious effort is made to ensure that relevant databases are used to either trigger or encourage electoral enrolment.

The absence of literally thousands of people from the electoral roll has an adverse impact on electoral equality that might otherwise be achieved for all citizens entitled to vote. Incidentally, it has other consequences as well: as it reshapes the jury lists, for starters; and can be the star of a slippery slope that leads too easily to a disrespect for legal obligation. It is reprehensible that administrative systems do not automatically insist on evidence of people's electoral enrolment when they are accessing publicly funded services or entitlements.

Achieving as far as possible full electoral enrolment is an important first step to ensuring that the voice of regional Western Australians is not unnecessarily reduced in the electoral process.

Simultaneously, recognising that in regional and remote areas, the percentage of enrolled electors not voting is higher than elsewhere, additional provisions could be usefully applied to regional and remote area voting provisions to enhance electoral participation.

For instance:

- increasing the availability of pre-polling centres to make it easier to access this convenient accessible feature of voting across metropolitan WA; for instance, offices at schools and libraries and tele-centres and health centres and shire offices and community administration offices and centres and other appropriate facilities could be tasked with providing pre-poll / early voting; these pre-polling facilities should be available for the same pre-poll / early voting period that is currently available in metropolitan areas, and not just for some short fly-in/fly-out mobile poll; over reliance on mobile polling runs the risk of missing the

- many people who are absent from any given location for the limited hours of a mobile polling booth;
- extended opening hours for pre-poll / early voting across regional areas should be on offer in location where shift workers are not able to go to the polling centre during normal government business-hours;
- Postal voting could be offered automatically across regional and remote WA;
- Online voting technology could be made available to regional and remote residents

Such changes need to have within them a natural preoccupation with protecting the integrity of the voting system. However, given the existing tolerance and acceptance of current levels of wholesale un-enrolment and of significant levels of not-voting, it is important to state that the current situation has already itself built within it a significantly reduced “integrity” to our democratic process.

Re-establishing a state equivalent of the now abolished but highly regarded Australian Electoral Commission’s Aboriginal and Torres Strait Islander Electoral Information Service (ATSIEIS) could ensure that alongside the increased electoral enrolment in the Aboriginal community came an increased understanding of the electoral processes and opportunities, as well as supporting an improvement in the voting participation rates of this population at the polls.

We have on the statute books requirements to enrol and to vote. We view the results of our elections to be expressing the will of the people. However, clearly the results don’t do that when significant numbers of people are either not enrolled or not voting. The margin that determines electoral outcomes in either House is normally much smaller than the number of people who were not on the roll or who did not vote or who voted informally.

Term of reference 2: seeks recommendations for the distribution of preferences in the Legislative Council’s proportional representation system.

Enhancing electoral equality for all citizens entitled to vote must also involve bringing forward provisions that reduces unintended informal voting; formal voting must not be weighted in favour of the literate, the numerate, or the well-educated or the affluent.

1. Replacing the exhaustive preferential requirement that necessitates correctly numbering all candidates below the line with a requirement for a smaller minimum number of preferences as the pre-requisite for delivering a valid vote; this will lift levels of vote formality and remove the discriminatory “numeracy” test that has been built in to the WA upper house voting requirements.

2. Given that candidate “how to vote cards” are an important aide for many voters, polling officials should not be prevented nor discouraged from making these cards available to voters, particularly in locations where candidates and parties are otherwise unable to provide this material for those voters. On the contrary, a standardised authorised HTV card for each candidate could usefully be included in the material on display at the entry to a polling place and in proximity to each polling booth. In that way voters who have not otherwise been able to access a HTV card but who need one, could more easily avail themselves of these; and – where they are wanting the assistance of a polling official in the casting of their vote – that HTV card should be available so that it can be proffered as the voters instruction as to how they wish to vote and how their ballot paper is to be completed on their behalf.