

**Submission to Ministerial Expert Committee to advise Government on  
electoral reform for the WA Legislative Council**

**Hon. Malcolm McCusker AC CVO QC, Professor John Phillimore, Professor  
Sarah Murray and Associate Professor Martin Drum.**

**Dear Panel**

Please accept my attached submission to your panel.

Thank you to Minister Quigley for the opportunity to contribute.

Publication OK.

Yours sincerely

Graham Hawkes

# **Submission to Ministerial Expert Committee to advise Government on electoral reform for the WA Legislative Council**

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**Dear Panel**

## **Web page**

I have a web page about the 2 issues your panel is tasked to review. Much of the material in this submission exists on those web pages but there is more including a draft Bill for Proposal B. Your panel may find this resource useful.

<http://members.iinet.net.au/~maggra/electoral.html>

There is more than enough evidence of unacceptable electoral matters contained in the 30th April media statement from the Minister and in his article in The West Australian [p66 3/5/2021]. More evidence is in the web page above and therefore these facts are taken as the starting point for this submission.

**The concept of each citizen being equally important in elections is fundamental to our culture. Clearest expression is a referendum.**

## **WHY VOTES SHOULD BE EQUAL**

### **Equal dignity**

Every citizen has a right to dignity, an equal claim to freedom and an equal right to look after his or her own interests. This requires as much influence in elections as any other citizen.

### **Consent**

The United States Declaration of Independence of 1776 states a timeless truth for democracy; "governments are instituted amongst men, deriving their just powers from the consent of the governed." The only just way to decide whether the people have given their consent to a government is to rely on majority rule where, "everybody is to count for one, nobody for more than one."

### **Equal before the law**

Parliament makes laws which are equally binding on us all. Since all are equally compelled to obey the laws, all must therefore have an equal opportunity to choose the representatives who make the laws. Laws made by a minority should not be legitimate in a democracy.

### **Faith in elections**

Democratic majority rule with equal votes gives legitimacy to government. By definition most of the people accept the election result.

## **SOME HISTORY**

- Vote weighting has always been a feature of electoral arrangements for the Legislative Council [LC]. Until the 2021 election the reliable and different pattern of voting between metro and country electors had maintained conservative control of the House.
- For most of the history of WA, Members of the LC were elected from provinces for 6 year terms. Half the LC was elected with one of the 2 Members for each province retiring in May at each 3 year election. For example, in 1986 there were 17 provinces each composed of a group of districts.

- A Bill in the 1980s proposing the entire State as one electorate with half the Members [i.e. 17] to retire at each 3 year election failed in the LC.
- In 1987 Parliament agreed to major reform affecting both Houses when Hon Malcolm Bryce was the Minister. Worst distortions in representation were removed but vote weighting remained, 4 year terms applied to all Members, regions were created and proportional representation applied for LC elections.
- In 2005 when Hon Jim McGinty was the Minister, Parliament agreed to substantially remove vote weighting among LA districts. To achieve this required acceptance of increased vote weighting in the LC and the further imbalance of an unequal number of Members in each region.

## **BROAD CONCEPT**

**Provided one vote, one value exists and unequal numbers of Members represent each region**, most alternative structures of representation would produce a fair reflection of voters' intentions. In view of this fact other considerations become relevant. 3 concepts are marked as essential including the 2 here and this is re-stated in items below.

## **Other considerations**

### **No bias in election results from equal enrolments**

Following the 2005 reform which created near to equal enrolments among Legislative Assembly [LA] districts, election outcomes demonstrate there is no bias between parties. Liberal and Labor governments have been elected as have Nationals representatives in areas where they have support. Likewise the changing fortunes of parties in the equal enrolment Federal divisions. A fair system for the LC will have the same efficacy.

### **Minor parties**

In the single Member districts of the LA the 50% threshold reduces the prospect of election of minor party candidates but the LC proportional system makes possible their representation which can fulfill the wishes of some voters. Balance is required. The 2.7% quota for election is too low if all 36 Members were elected from the whole State as one electorate. A more substantial quota is required, still making possible representation of significant minority interests and a regional structure can make that possible.

The nature of the reformed LC electoral system should guarantee representation to all in proportion to support from voters.

### **Disruption**

Change from the exiting structure of representation will be disruptive and your panel needs to consider this. No change in the number of Members is proposed so opportunity will continue.

Those opposed to ending vote weighting are likely to re-voice many arguments. Special provisions already exist to assist electors and Members in large districts. Research assistance is likely to be more beneficial to Members of a House of Review than manipulation of enrolments. Your panel should keep in mind that the WA LC remains the only one in Australia where vote weighting exists.

### **Metropolitan boundary - essential removal or alteration of status**

Parliament adopted this artificial and divisive boundary for political reasons which should never apply and development has rendered it redundant. It is the parameter on which vote weighting rests for the LC. Current law gives the WA

Electoral Distribution Commissioners an invidious choice where in order to restore equity among district enrolments, abolishing a district in the country and creating a replacement in the metro area would exaggerate already gross imbalance between city and country enrolments in the LC. This path taken in 2015 but not in 2019.

WA Electoral Distribution Commissioners must have flexibility with respect to this boundary if it stands at all in relation to electoral boundaries.

### **Large District Allowance [LDA]**

The LDA was part of the significant reform of 2005. It reduces enrolment in large districts and applies a greater toleration of deviance. Queensland has similar legislation. This vote weighting concession in districts automatically applies when these districts are grouped into regions for the LC.

This concession is sufficient. It appears to be accepted for the LA and should be retained.

Section 16G (3) & (4)

*[If a district exceeds 100,000 square kms in area at the time of a redistribution, a number equal to 1.5% of its area will be added to artificially increase the number of electors so that the total may fall within a tolerance from 20% below to 10% above the State average district enrolment. The LDA is a device used only for the purpose of re-distribution by adding just above 36,000 to 6 districts.]*

### **Names for regions**

Names of existing regions are vague geographical and land use indicators and that could be changed. Electoral Distribution Commissioners could choose names such as; regional, Aboriginal, notable Western Australians or others as happens for Federal electoral divisions if suggestions to that effect were permitted under Section 16F. Change like this may assist transition to the new arrangement.

### **Re-distribution**

Current law requires a re-distribution of boundaries to commence in March 2023.

## **NOTES ON PROPOSALS**

I have allocated preference stars among the 5 proposed structures of representation in this submission, top rating to Proposal B.

### **Balance in representation among regions - essential**

There is no instruction to the Electoral Distribution Commissioners in Section 16H about how many districts to place in each region, only that the 3 metro regions have approximately equal numbers. They are free to allocate districts among [the defined 6] regions as they see fit.

With 59 MsLA and 36 MsLC no equal mathematical relationship exists between the number of MsLC and districts per region. To get round this problem the WA Electoral Distribution Commissioners need some flexibility in grouping districts into regions, flexibility to err above or below the ideal of equality per MLC in relation to each region.

**Formula** A formula can achieve this objective.

*In a region the number of districts will match, as nearly as practicable, the product of the number of Members to serve in the Council in that region and the ratio between the total number of members in the Assembly and the total number of members in the Council.*

An example - in a region of 5 MsLC

$5 \times 59 \text{ MsLA} / 36 \text{ MsLC} = 8.19$  so either 8 or 9 districts in that region.

## **Uneven numbers to be elected - essential**

This principle is essential to guarantee that a majority of votes will win in a multi-member election. Currently with 6 MsLC in each region to win a majority of 4 elected Members requires 57.14% of the vote! A group receiving from a losing 43% to a winning 57% of the votes would win 3 of the 6 seats. These facts show how remarkable the 2021 election was.

Even in an election for 36 MsLC 51.35% is required to win a majority of 19 seats.

Until the 1980s we elected 5 Senators at each Federal election and in the period 1987-2005 LC regions were represented by 7 or 5 MsLC.

## **Regional representation**

Electoral arrangements for the LC have always been regional. Mostly that was provinces and since 1987, regions. This concept is valued by electors in the country and doing away with the concept will create animosity. Proposals like a whole State electorate or 4 regions each electing 9 MsLC will invoke this response.

My political judgement is to preserve the regional concept. Ending vote weighting will provoke animosity and simultaneously ending regional representation would add. Policy should seek to ameliorate animosity in this major reform initiative.

## **Maps**

You could request that Minister Quigley ask the WA Electoral Commission to quickly prepare maps grouping the existing districts into regions according to proposed structures. Your panel may find these maps useful but the caveat is the control the Metro boundary had when these districts were created.

## **Info on proposals**

There is more info on the proposals in the web page referred to above.

### **Proposal A \*\***

#### **3 regions x 9 MsLC and 3 regions x 3MsLC:**

Retains existing number of regions and the basic metro/country division with representation adjusted in proportion. A 10% quota eases way for minor parties in the 3 Metro regions. Since the metro regions would be larger [all 15 districts] the SW region would have 2 fewer predominantly urban districts. Quotas; 9=10%, 3=25%.

### **Proposal B \*\*\*\*\***

#### **6 regions x 5 MsLC and 2 regions x 3 MsLC**

Metro regions would contain 8 or 9 districts - less than current 14 or 15. This proposal retains the concept of a metro/country or urban/country division with representation adjusted in proportion.

The 3 regions outside the metro area would remain much the same as now. South West region with 8 districts and the 2 regions with 3 MsLC each would each contain about 4 districts as they do now. The urban/metro area would contain 5 regions instead of current 3. [See note about flexibility in relation to the Metro boundary.]

Significant interests would gain representation as they did from 1987 to 2005 when 4 of the 6 regions each had 5 MsLC. The quota would be raised from the current 14.29% to; 5 MsLC=16.67%, 3 MsLC =25%.

### **Proposal C \*\*\*\***

#### **4 regions x 7 MsLC, one region of 5 MsLC and one region of 3 MsLC**

Retains existing number of regions. A "South & West" region would include about 7 currently metro districts South of Armadale and about 4 districts from South West region down to Bunbury. Thus the 4x7 grouping would better represent more populated areas rather than referencing the current metro boundary. Quotas are; 7=12.5%, 5=16.67%, 3=25%.

### **Proposal D \***

#### **Whole State**

Problematic because 2.7% quota can facilitate election of micro single issue parties. 36 to be elected creates an absurdly large ballot paper and a whole State electorate wipes the concept of regional representation. 51.35% required to win a majority of 19 seats. Measures seeking to have this proposal work would be significant departures from established practice, e.g. automatic exclusion below a vote threshold and/or further simplifying voting to parties only and ending voting for individual candidates.

### **Proposal E \***

#### **4 regions x 9 MsLC**

10% quota eases way for minor parties. With 3 metro regions each of 15 districts a huge country region would be created with 14 districts, 2 fewer than the combined total of South West, Agricultural and Mining and Pastoral regions, i.e. about 355,000 on the roll. Distribution of regions is correct in ratio to enrolment but amalgamation of 3 existing country regions into one degrades the concept of regional representation.

In negotiations in 1986 The Nationals proposed 3 country regions and 1 metro region, bias which Minister Bryce could not accept. 3 metro and 3 country regions was the compromise.

### **TICKET VOTE**

The ticket vote system has proved to be faulty for well documented reasons. It is wrong that payments have been made to arrange preference harvesting and election of candidates with miniscule support.

#### **The system should ensure;**

- voting is made uncomplicated to assist voters with large ballot papers typical in multi-member elections,
- exhausted votes are rare exceptions,
- that votes are capable of re-use to fill a casual vacancy,
- end of the silly compulsory ranking of all candidates and
- corrupting the system with arcane preference deals is made really difficult.

Federal Parliament adopted a practical solution which combines the ticket vote concept with options available to voters. In Senate elections now voters have to mark 6 party preferences above the line and 12 preferences below the line for individual candidates. Ticket votes apply only within a party list. This approach would be good for the WA LC and it's helpful to keep things consistent if possible.

Yours sincerely

Thank you Minister Quigley for the opportunity to contribute.

Graham Hawkes