

Hello, please find attached my submission to the Ministerial Expert Committee on Electoral Reform the system used for the election of members to the Western Australian Legislative Council. Acknowledgement of receipt of my emailed submission is appreciated, by return email at your earliest convenience. Thank you.

Regards

Dr Kelvin Matthews

The Chair - Hon. Malcolm McCusker QC AO
Members - Professor John Phillimore, Professor Martin Drum
and Dr Sarah Murray
Expert Committee on Electoral Reform to Review the
Electoral System for the WA Legislative Council
Parliament House - Western Australia

27 May 2021

Dear Committee Members

SUBMISSION TO THE EXPERT PANEL COMMITTEE ON ELECTORAL REFORM TO REVIEW THE ELECTORAL SYSTEM FOR THE WA LEGISLATIVE COUNCIL

Thank you for the opportunity of providing my submission to the Expert Committee on Electoral Reform to Review the Electoral System for the WA Legislative Council. I make this submission as an individual holding academic qualifications from Notre Dame University (PHD), Deakin University (MA), Murdoch University (PG Dip and BA), as well as current membership of the Australasian Parliamentary Study Group (ASPG) WA Chapter. My qualifications are supported by over thirty years practical professional experience in local government senior management roles.

Introduction and Background

I preface my submission in the context of representative democracy and where I consider that the franchise of representative democracy is central to the idea of representational outcomes. That is, my submission is intended to reinforce the principles of representative democracy to the committee when reviewing the current electoral system of the WA Legislative Council. My submission addresses the Terms of Reference where the terms of reference are noted in *italic* with my submission response to each of the terms. In doing so, it appears obvious that the intention of the inquiry by the Expert Panel is to explore alternative methods of voting for the Legislative Council to the current system. This is supported by the WA Electoral Affairs Minister, the Hon John Quigley MLA whereby "It is a fundamental tenet of democracy that all citizens be treated equally under the law, and it is obvious that the Legislative Council voting system is failing in that basic duty to the electorate" when initiating the Ministerial Expert Committee on Electoral Reform to review the Legislative Council electoral system. Further, the Legislative Council is divided into six geographical regions with significantly different populations and at the last State election, complex and opaque preference deals resulted in a Daylight Saving Party candidate being elected to represent the Mining and Pastoral Region on just 98 first preference votes - equivalent to 0.2 per cent of the total vote in the region. In contrast, the Greens in the North Metropolitan Region received 27,077 first preference votes or 7.4 per cent of all formal votes in that region but did not win a seat. The Nationals received a similar number of votes in the Agricultural Region - 22,999 - and won two seats. Yet the

Liberal Party in the South Metropolitan Region picked up only one seat despite polling 67,000 primary votes¹.

The current (WA Legislative Council) voting system is based on the Group Voting Ticket (GVT) where party preferences reach an electoral quota that allows for a collaborative undertaking of small (or minor) political parties with the aim being the election of "alliance" candidates to Australian Upper Houses of Parliament. The GVT option was introduced to permit voters to choose one party or group and all the remaining squares were deemed to be filled in according to a registered party ticket.

This is based upon the accumulation of their primary votes and the registered "above-the-line" or GVT party preferences to reach an electoral quota. As a result, the use of GVT has led to the establishment of a multitude of minor (alliance) parties and the creation of 'preference swapping', or 'preference harvesting' arrangements and how the executive officers of these micro parties come together to enter into agreements to direct GVT preferences to each other².

This electoral malapportionment is predicted to get worse over time unless addressed noting that most other States have removed this feature from their electoral systems. For example, Nick Economou notes with regard to the 1990 NSW Legislative Council elections that "A plethora of so-called 'micro parties' created a ballot paper the size of a tablecloth with 264 candidates and 81 groups across 3 rows. Despite finishing 29th on the primary vote, Malcolm Jones from the Outdoor Recreation Party stormed to victory with just 0.2 per cent of the vote, or 0.04 of the quota. Jones harvested preferences from 21 other parties, including 8 that had achieved a higher primary count"³. The GVT method has also been abolished in South Australia. However Western Australia and Victoria continue to use the GVT methodology for their Upper House elections.

The GVT process was also evident in the Australian Senate elections from 1984 to 2013 as Economou notes when the Commonwealth Electoral Act (1918) was overhauled as a result of the Joint Standing Committee on Electoral Matters (JSCEM) in 1983⁴. The electoral reform was aimed primarily at reducing the number of informal votes, however this has been overshadowed by the controversies associated with the representational outcomes it has delivered. This is particularly the case where GVTs are at the centre of contentious representational outcomes, the most common being where a person was elected to the Senate despite winning only a very small share of the primary vote, or where the major parties used their GVTs to try and 'freeze out' a competitor minor party⁵. The GVT methodology for the Australian Senate elections was reformed prior to the 2016 federal election following recommendations from the JSCEM in 2014 to allow for optional preferential voting above and below the line and the abolition of group and individual voting tickets noting that the findings and recommendations in the report are

a direct result of deep community concern at some of the outcomes of the 2013 federal election⁶. However I do not believe optional preferential voting, as introduced to Senate elections, fully addresses the issue of community understanding and confusion in the election process or achieves a complete and satisfactory result of fair representational outcomes.

Accordingly, using the GVT methodology greatly increases the potential for tactical and strategic voting by parties because the voters are not usually aware of how a party's preferences are directed. As seen in the recent WA 2021 elections where the Daylight Saving Party candidate was elected in the Legislative Council Mining and Pastoral Region, the GVT process allows for minor parties with low support in the community to be elected almost exclusively on the preferences of other parties. The danger then should this not be addressed, is that voters become disengaged in the GVT voting system when election results reveal the anomalies of the GVT methodology with the election of minor parties that have minimal primary votes, and ironically informal votes potentially rise.

Conversely under the FPTP system, the voter casts a single vote for the candidate of their choice. The candidate who receives the most votes is elected. FPTP is an easy (and least confusing) voting method, as voters only need to choose their first preference and can be used to elect candidates to two or more vacancies. The candidate with the most votes is elected to the first vacancy while the candidate with the second-most votes fills the next vacancy, and so on until all vacancies are filled by this method.

From Federation in 1901 until 1917, Australia used the first-past-the-post voting system which was inherited from the United Kingdom. This system is still used in many overseas countries today including the United States, Canada and India, but no longer used in Australia.

Terms of Reference

1. *Recommendations as to how electoral equality might be achieved for all citizens to vote for the Legislative Council.*

As noted above in my Introduction and Background, my response is provided in the context of representative democracy and achieving electoral representational outcomes. In this regard I support the removal of the GVT from the Legislative Council that will eliminate preference harvesting and the allocation of preferences that subsequently eventuates in the proliferation of minor parties. I am recommending to the Expert Panel that they consider replacing the GVT process with 'First Past The Post' (FPTP) as a means of achieving electoral equality in the Legislative Council. My recommendation is based upon having been employed in local government senior management for more than 30 years and where I have been 'Returning Officer' in at least 15 local government elections during my career. Local

government elections (in WA) have practiced FPTP elections, and apart from the 2007 local government elections, it continues to use the FPTP system of voting. Part 4, Division 9, subdivision(s) 6, 7 and 8 of the Local Government Act 1995 prescribe the FPTP voting system for local government elections. That is, where 6 or more vacancies are to be filled at the election (such as in the Mining and Pastoral Region), an elector is to cast his or her vote by marking the ballot paper so as to indicate the candidate or candidates named on the ballot paper whom the elector wishes to be elected but is not to mark votes for more candidates than the number of offices to be filled⁷. Schedule 4.1 of the Local Government Act 1995 prescribe how the votes are to be counted and the result of the election ascertained as follows:

1. The number of votes given for each candidate is to be ascertained.
2. If the election is to fill the office of mayor or president, the candidate who receives the greater or greatest number of votes is elected.
3. If the election is to fill one office of councillor, the candidate who receives the greater or greatest number of votes is elected.
4. If the election is to fill 2 or more offices of councillor, the candidates elected are —
 - (a) the candidate who receives the greatest number of votes; and
 - (b) the candidate who receives the next highest number of votes; and
 - (c) the candidate who receives the next highest number of votes, and so on up to the number of offices to be filled.
5. If 2 or more candidates receive the same number of votes so that clause 2, 3 or 4 cannot be applied, the returning officer is to draw lots in accordance with regulations to determine which candidate is elected⁸.

In regard to clause 5 above, the Local Government (Elections) Regulations 1997 prescribe the method by which the Returning Officer is to deal with tied candidates whereby the 'drawing of lots' shall be used to determine the successful candidate(s)⁹. The treatment of 'tied candidates' under section 144 (2) (g) of the WA Electoral Act (1907) is the same or similar to the provisions of the Local Government Act 1995 and the Local Government (Elections) Regulations 1997, and therefore no amendment would be required¹⁰.

Putting the above description into the context of Legislative Council vacancies x 6 for the Mining and Pastoral Region, only 6 candidates would be selected by the voter, irrespective of the number of candidates. FPTP allows the voter to identify and vote for the candidate and party of their choice, or the candidate only if the candidate is an independent. For example, for the Mining and Pastoral Region of the Legislative Council (6 members), the Labor Party may select 6 candidates and they would all be listed on the ballot paper, being clearly identifiable as 'Name and

Party' or similarly for other major parties. Smaller registered parties could equally list their candidates name and party on the ballot paper, and while not necessarily having 6 candidates to select, they would still have representation on the ballot paper. It would then be the choice of the voter as to which 6 boxes (candidates) only that they marked to cast their legitimate vote. Presuming that the major parties would be well represented on the ballot paper, it is therefore fair to assume that the possibility of minor micro party candidates being elected is minimal.

The FPTP system represents the primary vote only and not any proportional representation by GVT or SVT preferential allocations. That is, the primary vote solely determines the number of candidates each party elects with the full (and complete) quotas with no preferences being relevant or applicable for distribution. The FPTP system therefore removes incentives for tactical voting and ensures the winning candidate(s) has the support of the majority of the people in the electoral region that voted. In the FPTP method of voting, the voter can still vote for the party (or independent) of their choice – it just does so in an understandable and transparent manner which reflects representational outcomes and upholds the principle of representative democracy.

Recommendation: That the Expert Panel consider replacing the GVT process with 'First Past The Post' (FPTP) as a means of achieving electoral equality in the Legislative Council.

2. *Recommendations for the distribution of preferences in the Legislative Council's proportional representation system.*

This presumes that the Legislative Council proportional representation system should be retained, or a change to optional preferential voting similar to the Australian Senate elections. I do not agree and propose consideration of 'First Past the Post' system that is widely used in other systems of voting, either overseas examples such as Canada, India or the United States, or Australian examples such as currently in WA local government elections. Given the FPTP system was used in Australian elections from Federation in 1901 until circa 1917, perhaps it is time to re-visit the possibility of re-introducing the system for WA Legislative Council elections?

Recommendation: That the Expert Panel consider the distribution of preferences in the Legislative Council's proportional representation system of voting be discontinued and replaced with the with 'First Past The Post' (FPTP) as a means of achieving electoral equality in the Legislative Council.

Dr Kelvin J Matthews

References

1. Minister for Electoral Affairs, the Hon John Quigley MLA (2021) – ‘Minister’s Opinion – Electoral Reform’, Media Statement - *The West Australian newspaper*, Perth - 3 May 2021.
2. Green, A. (2005) ‘Above or below the line? Managing preference votes’
<http://www.onlieopinion.com.au/>
3. Economou, N. (2016) - ‘Electoral Reform and Party System Volatility: The Consequences of the Group Vote Ticket on Australian Senate Elections’, *Australian Parliamentary Review Journal*, Vol. 31 No. 1, page 127.
4. *Ibid*, page 117.
5. *Ibid*, page 123.
6. Commonwealth of Australia (2014) – ‘Joint Standing Committee on Electoral Matters – Interim Report on the Inquiry into the conduct of the 2013 Federal Election’ – Canberra, pages 53 and 54.
7. State Law Publisher WA (2021) – ‘Sections 4.69 and 4.74 - Local Government Act 1995’ – Perth, pages 121 and 124.
8. State Law Publisher WA (2021) – ‘Schedule 4.1 - Local Government Act 1995’ – Perth, page 416.
9. State Law Publisher WA (2021) – ‘Clause 80A – Local Government (Elections) Regulations 1997’ – Perth, page 62.
10. State Law Publisher WA (2021) – ‘Section 144 (2) (g) – WA Electoral Act 1907’ – Perth, page 177.

Thank you for considering my submission.
