

Ministerial Expert Committee On Electoral Reform
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Submission

Please find attached my submission to the review of the electoral system for the Legislative Council. I mainly focus on the Committee's invitation to make submissions on option (c) 'other electoral models'.

I make this submission in my personal capacity as an interested member of the public, and have no objection to my name and the contents of the submission being made public, but request that my personal contact details remain confidential.

Thank you for the opportunity to make a submission,

Yours sincerely

Bruce Baskerville
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Two responses to the Committee's discussion paper

Table 3 is somewhat misleading, implying that at the 2021 WA election each voter voting below the line had to number from 1 to 325. That was clearly not the case, as the number of candidates varied for each region (for example, I voted from 1 to 53 in the Agricultural region). I'm not really sure why having a large number of candidates is considered a 'problem'. The discussion paper does not really advance any argument other than it makes the task of voting more 'onerous', but for whom? What is the evidence that voters who enjoy voting are deterred by a large number of candidates? I think these assumptions should be either challenged by the Commissioners or evidence provided that they actually are a real problem.

Why are the electoral models restricted to just Australian jurisdictions? There are good ideas worthy of consideration elsewhere, and there is no particular merit in trying to homogenise all Australian systems to be the same (or if there is, no argument is advanced). My submission argues for a model not covered in the discussion paper (MMP), on the basis that it will prevent any one party controlling the 'house of review', and which I believe will provide more 'electoral equality' than the current system.

Need to define 'electoral equality'

It would be helpful to define the term 'electoral equality' as used in the terms of reference. I have not been able to locate any definition of the term.

The terms of reference ask for recommendations on achieving electoral equality between 'all citizens' entitled to vote for the Legislative Council. On the one hand this seems to refer to those voters only as individuals (specifically, as 'citizens'), but the terms of reference do not ask for any recommendations on weighting or geographical constituencies, so I am assuming the term 'electoral equality' in relation to the Legislative Council must refer to greater equality between citizens as members of groups or interests represented in the Council, rather than between citizens as single individuals as represented in the Assembly.

If electoral equality means equality between individual voters as individuals, then I take it that refers to a one-person-one-vote principle, as largely operates in the Legislative Assembly. The discussion paper's discussion of enrolments in each region suggests this may be what electoral equality means, but it is not clear. If electoral equality means equality between voters as members of social groups, then I take it that refers to the geographically weighted constituency principle that operates in the Legislative Council.

The Attorney General has referred in the media to the Legislative Council as a 'house of review'. This would seem apposite for a chamber elected by citizens as members of social groups and interests that balances a chamber elected by citizens as individuals. Currently, those groups or interests in the Council are generally restricted to geographical interests or communities. A more generous understanding could extend this to other groups and interests, and therefore lead to a question of how to provide those other groups or interests with equal, as in proportional, representation in the Council.

Therefore, my submission assumes the phrase 'electoral equality' refers to achieving greater equality in the Council between the groups and interests represented by making the overall

composition of the Council generally reflect the overall strength of at least the larger or more organised interests at an election, one of which will be geographical interests.

Model to include for consideration – some form of MMP

A model for the Legislative Council that I submit should be considered is some form of Mixed Member Proportional Representation (MMP, also known by other names) as practiced in the New Zealand and Scottish parliaments, with ‘open lists’ for a statewide constituency and freedom for voters to vote for different parties or candidates in the constituency and statewide ballots.

I acknowledge that the New Zealand and Scottish parliaments are unicameral, but there is no logical reason to avoid applying an MMP model for one house in a bicameral system. An outcome would be that no single party can persistently command a majority in the Council, which I contend is necessary if the Council is to truly function, as the Attorney General describes it, as a ‘house of review’.

MMP would allow for the retention of members representing geographic constituencies plus the addition of a members representing other interests. The geographic members would be elected from within their constituency, and the other members would be elected from a single state-wide constituency. This would meet what the discussion paper describes as “precise equality between electors” (page 9) for half the Council seats.

MMP could be implemented by retaining the same number of Legislative Councillors as currently, and ideally adding one to make an odd-number of councillors (37) to avoid tied votes. One approach is shown below:

6 constituencies of 3 members each	18	A candidate needs at least 33% in each constituency
1 statewide constituency of 19 members	19	A candidate needs c5% statewide
Total MLCs	37	

Another approach could be to make the 37th member electable by either the most populous region or as representative of some other group or interest, as shown below:

6 constituencies of 3 members each	18	A candidate needs at least 33% in each constituency
1 statewide constituency of 18 members	18	A candidate needs c5% statewide
1 additional member	1	
Total MLCs	37	

The advantage of the MMP model is that geographic representation remains in place, while also allowing for other interests to be represented. Party alignments + natural thresholds for election will probably mean that established parties will be able to win many, if not all, of the geographic seats, although it would not necessarily exclude a party with a strong regional identity securing seats). While older established parties they will also win some of the statewide seats with the lower threshold, the use of an ‘open list’ that allows voters to

choose individual candidates, will mean interests outside the older established political parties will also have a chance to gain seats. Overall, representation should generally reflect the votes casts at an election, especially the votes cast for smaller interests that cannot reasonably expect to be elected in the single member Assembly seats, or the geographical constituencies in the Council. There is no need for these to mirror the Assembly voting pattern as voters in a Council election may well chose to vote differently in each house.

Model to include for consideration – Indigenous seats

One group that could be considered for particular representation in the Legislative Council, and so achieve greater electoral equality, is Indigenous Western Australians. The example of dedicated Māori seats in New Zealand’s parliament, which have existed since 1867, provides a model for how this can practically operate in terms of eligibility, enrolment systems and so on. Some other parliaments, such as Taiwan and Maine, also have dedicated indigenous seats. The concept is not alien to representative democratic parliaments including Westminster style parliaments.

Modifying the approaches above, this could be shown as:

6 regions of 3 members each	18	A candidate needs at least 33% in each constituency
1 statewide constituency of 16 members	16	A candidate needs at least c6% statewide
1 statewide Aboriginal constituency of 3 members	3	An alternative could be 3 Aboriginal constituencies, based on cultural associations, of 1 member each
Total MLCs	37	

There are clearly opportunities to vary the number of seats allocated to the geographic, statewide and Aboriginal constituencies and still achieve a total number of 37 MLCs. The purpose here is simply to illustrate an approach. At least two Aboriginal seats would be needed to be achieve representation roughly equal to the 4% Aboriginal proportion of the statewide population. Obviously, beyond accepting the principle of dedicated Aboriginal seats as one means of achieving ‘electoral equality’, all further matters would have to be negotiated with the relevant Aboriginal bodies.

Whatever the outcomes of an election, there will be guaranteed minimum Aboriginal representation in the ‘house of review’ (there may also be additional Aboriginal members elected from the other constituencies, but they will also be representing geographic, partisan or other interests).

This reform would in the spirit of the Uluru Statement’s ‘voice to parliament’, enacted within a State context, and be a means of addressing historical Aboriginal political inequality in the lead-up to the 200th anniversary of the formal establishment of Western Australia in 2029. Dedicated Aboriginal seats would also recognise Aboriginal people as partners in any future treaty negotiations. It would seem to be consistent with the phrase ‘electoral equality’ as I have used it.

Distribution of preferences

A principle that the voter chooses the allocation or destination of preferences should be the key factor in designing a system of distributing preferences. That could include the option of not allocating any preferences, or of allocating a minimum number of preferences for a valid vote to be cast. Group voting tickets should be abolished.

Summary

- The phrase 'electoral equality' needs a clear definition for the purposes of this review.
- In regard to the Legislative Council, it is assumed in this submission that 'electoral equality' refers to proportional equality between social and interest groups in the Council, rather than between single individuals, which is provided for in the Legislative Assembly.
- A Mixed Member Proportional Representation (MMP) system should be one of the options considered.
- Indigenous Western Australians are one group or interest that should be recognised for representation in the Legislative Council, through dedicated Aboriginal seats.
- The total number of Legislative Council seats should be an odd number to prevent tied votes.
- Electors should distribute their own preferences.