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Please find attached my submission to Western Australian Ministerial Expert Committee on Electoral Reform.

Ian Brightwell

# **Western Australian (WA) Ministerial Expert Committee on Electoral Reform**

Submission by

Ian Brightwell

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Disclaimer

This submission is made in a personal capacity. The information contained in this submission has been prepared by the author and only reflects the views of the author.

## Recommendations

The author commends the following recommendations for the committee.

### **Recommendation 1**

If WA wishes to equalise electoral franchise for their Legislative Council, the author recommends WA moves to a “whole-of-state” electorate for their Legislative Council.

### **Recommendation 2**

The author recommends WA should remove the use of “group voting tickets” from its Legislative Council electoral system regardless of any other reforms implemented.

### **Recommendation 3**

The author recommends WA use their current proportional representation (PR) system and adopt the ballot paper layout and rules used for federal senate elections for the WA Legislative Council.

### **Recommendation 4**

The author recommends that if WA needs to use a computer to capture and count votes that appropriate amendments be made to the Electoral Act, giving effect to Recommendation 3<sup>1</sup> of the federal electoral matters committee report dated November 2018.

*Recommendation 3 - The Committee recommends that a non-partisan independent expert scrutineer be appointed to each Central Senate Scrutiny Centre in each state and territory and be responsible for:*

- *auditing the computer systems and processes used to capture and count votes;*
- *undertaking randomised checks between captured data and physical ballot papers throughout the count at a level that provides surety as to the accuracy of the system; and*
- *providing reports to candidate scrutineers about their findings on a regular basis during the count.*

### **Recommendation 5**

The author recommends that if WA should choose to use a federal senate style of system the Electoral Act be amended to provide for the creation of a specialist Election Technology Review

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<sup>1</sup> Report on the conduct of the 2016 federal election and matters related thereto, November 2018, Recommendation 3.  
[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Electoral\\_Matters/2016Election/2016\\_election\\_report/section?id=committees%2freportjnt%2f024085%2f26083#s26083rec3](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2016Election/2016_election_report/section?id=committees%2freportjnt%2f024085%2f26083#s26083rec3)

Board, to scrutinise technology used to capture and count votes. The Board should have access to sufficient information about the design, implementation, configuration and operation of electronic vote management systems to allow it to effectively assure that the systems are operated in accordance with legislation. The Board should report before and during the election only to the Electoral Commissioner, then post-election provides a publicly available assurance report to the Joint Standing Committee on Electoral Matters.

#### **Recommendation 6**

Should WA choose to use a federal senate style of system the Electoral Act be amended to require an audit of an electorally significant sample of voters' actual paper ballots cast against the electronic data used in the count process. The audit sample size should be chosen to ensure that the cross-check process provides adequate statistical confidence in the electoral outcome.

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## 1 Author Background

The author also has some 17 years' experience in the management of technology in the election process as CIO at the NSW Electoral Commission and has worked in the information technology area for over 30 years, with a particular emphasis on provision of technology within government agencies<sup>2</sup>.

## 2 Terms of Reference

Recommendations as to how electoral equality might be achieved for all citizens entitled to vote for the Legislative Council;

AND

Recommendations for the distribution of preferences in the Legislative Council's proportional representation system.<sup>3</sup>

The Committee invites submissions<sup>4</sup> 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.

## 3 Legislative Council (LC) Electoral Model

The decision as to whether each elector has a franchise of equal value is ultimately a political one and only one the electors or WA can resolve. I will not comment on this issue.

However, should WA decide that they want to equalise electoral franchise for their Legislative Council I would recommend WA moves to a whole of state electorate for their Legislative Council (Recommendation 1) and adopt a voting system which allows equal representation.

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<sup>2</sup> LinkedIn profile

<https://www.linkedin.com/in/ian-brightwell-a038573/>

<sup>3</sup> Terms of Reference

<https://www.wa.gov.au/sites/default/files/2021-05/WA%20Electoral%20Reform%20Terms%20of%20Reference.pdf>

<sup>4</sup> Discussion Paper

<https://www.wa.gov.au/sites/default/files/2021-05/MEC%20Discussion%20Paper%202021%20May%2026.pdf>

## 4 Voting Tickets

The author's recommendation is that WA should CEASE using "group voting tickets" for its Legislative Council electoral system. It has long been known that "group voting tickets" can easily be "gamed" by "preference harvesting" techniques resulting in very undemocratic electoral outcomes. I understand WA does not want this type of electoral manipulation in their LC electoral system.

## 5 Optional Preferential Voting

The author acknowledges that that should "group voting tickets" not be used for WA LC elections then WA LC will have to move to optional preferential (OP) voting should the current proportional representation (PR) be retained. OP is seen by some people to be undesirable because candidates maybe elected without quota. This means that a candidate can be elected by not being preferred rather than having received a vote. However, it has been my experience in NSW that the PR OP does not causes any significant issues both electorally or in the minds electorate. Note NSW uses PR OP voting for both local and state elections.

The simple fact is that WA has to choose between PR OP voting or "group voting tickets" if a PR electoral system is to continue to be used. Clearly, "group voting tickets" have failed and PR is very suitable and familiar count system in WA so OP is really the only logical low risk alternative.

## 6 Ballot Layout and Count System

As for the issue of which count system WA should use and what ballot layout, the author recommends the following:

- Retain the current PR system, and
- adopt the federal senate election ballot paper layout and rules.

I make these recommendations because WA's current PR system is fit for purpose and familiar to WA electors and the Commission. Also, the use of the federal senate ballot layout will mean electors will be familiar with the ballot and voting rules which will reduce voting errors (i.e. improve formality). Note it is important the WA use AEC "Saving Provisions" to allow a single preference above the line to be formal, but this should not be in the voting directions.

I specifically did not recommend the NSW LC ballot layout and rules because these need very large groups to operate. These groups cause the ballot to be unnecessarily large and unwieldy and requires many "bogus" candidates to be nominated to allow single preference Above the Line (ATL) voting to work.

The requirement for multiple preferencing above the line as used by the federal senate system allows smaller groups which means most voters will place several preferences ATL. The statistics from the AEC Senate for WA can be used to help decide the minimum number of candidates in a group and the direction for the minimum number of ATL groups the elector should vote. Note it should not be necessary for electors to vote more than 50% of the candidates to be elected as this would be too onerous for most electors to achieve as a meaningful vote.

## 7 Counting of Votes

Should WA adopt an approach for the LC which is similar to the federal system a new approach to capturing preferences and counting ballots will be required. In particular WA will have to enter every ballot into a computer to allow for distribution all preferences.

There are two ways to achieve full ballot entry: one is keying the other is scanning. The author considers both suitable and would suggest the WA Commission should undertake a study to decide which is the most efficient and effective for their needs.

## 8 Improved Scrutiny

Given the above proposed changes to the WA LC system will require all paper LC ballots to be captured individually and counted using a computer it is appropriate to review the current scrutiny processes and determine it is fit for purpose.

The current process used in WA is similar to the federal processes used by the AEC. This is traditional partisan scrutineers are nominated by parties or candidates to try and determine if all ballots are captured and counted correctly in the computer system. These scrutineers typically do not have the skills needed to understand the technology risks and processes being used when all votes are captured and counted entirely by a computer. Also, the experience federally for the Senate system is that because the Commission is not required to provide sufficient information to allow effective scrutiny of the Senate system, they will not provide such information when requested by traditional scrutineers.

The author believes that the increased use of computers in elections has not been followed by improvements in scrutiny. In particular the author's submission to the EMC<sup>5</sup> has identified inadequacies of the current partisan scrutiny system when applied to the computerised senate count. These issues would also apply to the WA count if done completely by computer.

The following are the three main recommendations resulting from the prior submission<sup>5</sup>:

- non-partisan independent expert scrutineer be appointed to each Central Senate Scrutiny Centre to scrutinise the senate counting system's operation (Recommendation 4);
- creation of a specialist Election Technology Review Board, to scrutinise technology used to capture and count votes (Recommendation 5);
- all electronically captured and counted paper ballots should be subject to an audit using an electorally significant sample of voters' actual paper ballots cast against the electronic data used in the count process (Recommendation 6).

Note the above requirement for improved scrutiny should NOT be interpreted to suggest that electoral commissions cannot be trusted. I personally have complete confidence in the integrity of

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<sup>5</sup> Submission Ian Brightwell, Inquiry into and report on all aspects of the conduct of the 2019 Federal Election and matters related thereto  
<https://www.aph.gov.au/DocumentStore.ashx?id=b6f70b16-4427-4704-9804-450ede29f831&subId=669021>



the current Commission management and staff. However, this does not mean error or external undetected influences on systems cannot occur or if our election system will be impacted by integrity issues in say 20 years.

The purpose of improved scrutiny is to improve confidence in the election process both for now and for future elections, thus reducing the potential for undetected errors or system interference.