

Secretary
Ministerial Expert Committee
WA Electoral Reform

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Dear Sir/Madam

Please find my submission to the Ministerial Expert Committee on WA Electoral Reform attached. I have no connection with any political party or politically active group.

Yours faithfully

Dr Bruce Kennedy

Submission to the Ministerial Expert Committee on WA Electoral Reform

By Dr B P Kennedy

First term of reference

I note that your terms of reference include "...how electoral equality might be achieved for all citizens entitled to vote for the Legislative Council".

Given the words "electoral equality" and "all" in the first term of reference, one way of achieving this outcome would be to treat the whole state as one electorate. Whilst in theory this might seem reasonable, it would mean a significant diminution of the representation of non-metropolitan electors and regions.

There is a matter of equity in representation, not just equality. I am mindful of the incredibly gross over-representation of regional areas in past iterations of the Legislative Council - this however does not mean that there should be no over-representation, given the large distances and the consequential difficulties in providing services to regional areas. A balance needs to be struck, and it is in striking that balance that the difficulty lies. This is why governments appoint expert committees.

The "over-weighting" of the regions can be rationalised in a manner similar to that which occurs in the Australian Senate. In the Federation debates of the 1890s, if the colonies of New South Wales and Victoria had not been prepared to accept that each state should have an equal number of Senators then perhaps federation would never have occurred, and the Commonwealth would never have been established. This 'mal-apportionment' favours the smaller states, including Western Australia. [While many in WA might say that this over-representation does little good for WA, it is important to be careful about what you wish for.]

The extent and distribution of any regional weighting are critical matters for democracy, involving a balance between 'equality' and 'equity' in representation. They are important matters for consideration by the Committee.

Second term of reference

With regard to the second term of reference, I refer to the election of two candidates with 0.2% and 2% of first preferences (refer ABC news website [Legalise Cannabis WA and Daylight Saving parties win seats in Western Australia's Legislative Council - ABC News 1 April 2021](#)). Mr Antony Green in that story makes his views on the outcome perfectly clear. I agree with Mr Green's views.

When voting on 12 March 2021, I was astounded to find that I was expected to complete the Legislative Council ballot paper in the same manner as one used to complete Senate ballot papers. In an earlier phase of my life, I took the trouble to number every box in the Senate ballot paper, even after above the line voting was introduced. With some difficulty, I usually managed to find the preference allocations lodged by the various parties with the Australian Electoral Commission on the AEC website. These preference allocations seemed to be 'buried' in the AEC website. Without this information (and this would have applied to the overwhelming majority of voters), one had no idea of likely preference flows when voting

above the line. This system lacked transparency (a major failing for any electoral system) and was ripe for 'preference whispering' (which duly occurred).

As you would be aware, the Commonwealth have since changed the requirements for completing Senate ballot forms (see [Voting in the Senate - Australian Electoral Commission \(aec.gov.au\)](#)).

The Commonwealth having moved on from a flawed system to one which is more transparent, I was then extremely disappointed on 12 March to find that voting for the WA upper house reflected the unfortunate characteristics of previous Senate voting procedures. Unfortunately (and perhaps unsurprisingly) some bizarre outcomes did occur in the WA election (eg a candidate with less than 100 first preference votes being elected through preference whispering).

[Even more bizarrely, I understand that the elected candidate had been living in a foreign country for some time prior to and at the time of the election. One would expect candidates to have a real and physical connection to the geographic area and the electorate or region for which they are standing. Presumably a review of the criteria for candidature and the provision of relevant information by candidates to the Electoral Commission is required.]

Another ABC article ([WA election leaves Daylight Saving, Legalise Cannabis parties on verge of joining Parliament - ABC News 17 March 2021](#)), indicated that changes had been considered by the WA Parliament in 2019, without coming to a vote. Thus the problems inherent in the Legislative Council voting procedures must have been obvious prior to the last election – otherwise the *Electoral Amendment (Ticket Voting and Associated Reforms) Bill 2019* would never have been drafted, let alone debated in the Legislative Council in 2019.

Indeed, the relevant issues were canvassed in the Legislative Council in debates on the *Electoral Amendment (Ticket Voting and Associated Reforms) Bill 2019* (refer Hansard COUNCIL – Thursday, 21 March 2019; 1621 and COUNCIL – Thursday, 6 June 2019; 3752; and the Explanatory Memorandum ([tp-2511.pdf \(parliament.wa.gov.au\)](#))). Clearly there was a failure in the system (parliamentary and/or government) to actually take the Bill further (in terms of debate, any amendments, and enactment) at that time.

It is therefore clearly beyond time for further consideration of the *Electoral Amendment (Ticket Voting and Associated Reforms) Bill 2019* (taking into account the outcomes of the review by the Ministerial Expert Committee) by the WA Parliament and passed into law.

Should above the line voting be retained (to which I have no objection), then for those electors who wish to vote below the line, the minimum number of squares to be filled in would depend on the number of seats for which the election is being held. This in turn would depend on the number of electoral regions into which the State is divided for the purposes of the Legislative Council, as well as the number of seats per region. It should also depend on more non-partisan information about individual candidates (including meeting the criteria for candidature) being made available to electors (eg via the Electoral Commission website).

It is important for small parties or individuals to be able to stand for election, and be elected, to Parliament. It is when candidates are 'elected' with close to zero community support (as

indicated, for example, by very low first preference votes (eg 0.2% or 2%)), there is clearly something not right with the system. (This is a separate issue from the political or personal qualities of the candidate(s) involved.) The Committee should consider the case for a minimum threshold of first preference votes that a candidate must receive in order to be eligible for election (and what that threshold should be).

As an aside, I recently returned to WA after living for a considerable period in South Australia. Voting procedures for the SA upper house are similar to those for the Senate. WA appears to exist in a 'bubble', separate in many ways from the rest of the country - while this has its advantages it should not blind us to the benefits of federation and being able to take on board useful improvements implemented elsewhere (as well as those developed in WA) in a timely manner.