

Please find the attached submission to the Ministerial Expert Committee  
on Electoral Reform.  
Robert McCormack

# Submission to the Ministerial Expert Committee on Electoral Reform

Robert McCormack

3 June 2021

## 1 Introduction

This submission to the Ministerial Expert Committee on Electoral Reform addresses the terms of reference of the Committee by examining some options to achieve more equitable electoral outcomes and has been developed in light of the associated discussion paper.

## 2 Terms of Reference

It is noted that the terms of reference highlight apparent anomalies in the recent State election that have arisen under the current electoral laws in the following words:

*WHEREAS*

*At the 2021 election for the Legislative Council:*

*The Daylight Saving Party won one seat in the Mining and Pastoral region, having received 98 first preference votes, which is equivalent to just 0.2% of all formal votes in that region;*

*AND*

*The Greens in the North Metropolitan Region received 27,077 first preference votes, or 7.4% of all formal votes in that region, but did not win a seat;*

*AND*

*In the Agricultural Region, the Nationals received 22,999 votes and won two seats;*

*AND*

*In the South Metropolitan Region, the Liberal Party received 67,000 votes but won only one seat;*

The Government convened the committee to provide...

*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.*

It is noted the Committee has invited submissions 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 Underpinning Principles**

Before delving into the possible solutions to the problems articulated in the terms of reference, this paper proffers some suggested principles to underpin the consideration of options put in this paper as follows:

- The membership of the Western Australian Parliament should be appropriately representative of the views of the people of the State;
- While it is of paramount importance that the Parliament should fairly reflect the wishes of the majority of the people in the State, it is nonetheless desirable to see views that enjoy significant minority support also represented in Parliament;
- Every elector should have equal voting rights and this should not be comprised in light of other considerations such as the challenges of representing the resultant large areas covered by some electorates;
- Electors should be enabled to vote for candidates they believe would best represent their interests and the interests of their fellow citizens; and
- The Legislative Council should serve as a house of review charged primarily with reviewing legislation and, policy and budgetary decisions for the benefit of the State.

The electoral system should deliver outcomes consistent with the above principles.

### **4 Current System**

The current electoral system has seen many fine Western Australians duly elected to Parliament who have served us effectively and diligently in carrying out their roles as members of Parliament.

The apparent anomalies listed in the terms of reference nonetheless support the notion that there is some room for improvement in the electoral laws and regulations to ensure fairer outcomes.

The need for refinement of our electoral laws is also evident in the entrenched electoral weighting given to non-metropolitan seats that has until recently seen conservative parties maintain control in the upper house even when a substantial majority of the state has elected Labor Governments.

### **5 Achievement of Electoral Equality**

Consistent with the principle that every elector should have equal voting rights, the number of electors per member of Parliament should be as equal as possible. To do otherwise is to give greater power to one group of citizens above others by virtue of their geographic location.

While it may be argued that regional areas deserve greater representation because of the unique challenges they face, it could be equally argued that other parts of the State also face particular challenges that could be addressed with greater representation. The challenges of representing regional areas can be mitigated to some extent by more effective use of technology and the allocation of additional staff and resources to members from regional areas to assist them in carrying out their duties. I am of the view that all eligible electors should have equal voting rights regardless of their geographic location, level of disadvantage or any other consideration.

There are several approaches to achieving electoral equality as follows:

- (i) Increasing the numbers of members for each of the metropolitan regions with commensurate decreases in the numbers of members for each non-metropolitan seat;
- (ii) Use only four regions each electing nine members by merging the Mining and Pastoral, the Agricultural and the South West regions;

- (iii) Use a region-based approach where each Legislative Council region comprises nine or ten Legislative Assembly seats; and
- (iv) Use a whole-of-state electorate.

I will elaborate upon each of these models below.

## 5.1 Maintain the Existing Regions with Differing Numbers of Members

This model would see the current regions kept but with the numbers of members elected varied in proportion to the numbers of voters as per the following table.

**Model 1: Keep Current Boundaries and Adjust Numbers of Members**

Legislative Council Seat	Legislative Assembly Seats	Current Members	Proposed Members	Enrolment (2021)	Enrolment (2021) per Member	Quota as a % of Votes
Mining and Pastoral	4	6	2	69,651	34,826	33.3%
Agricultural	4	6	2	103,378	51,689	33.3%
South West	8	6	5	242,983	48,597	16.7%
North Metropolitan	14	6	9	423,759	47,084	10.0%
South Metropolitan	13	6	9	449,182	49,909	10.0%
East Metropolitan	16	6	9	427,779	47,531	10.0%
Total	59	36	36	1,716,732	47,687	

The advantage of this approach is that it would involve the least change to the existing regions to advance the desired outcome of greater parity of votes across regions. The current borders of the Legislative Council regions arguably align reasonably well with communities of interest and each region would return candidates that would identify with their region.

However the model would still see the Mining and Pastoral region maintain greater voting power per vote than the other regions. This disparity would increase over time if population continues to grow at a faster rate in the metropolitan and south west regions.

A possible disadvantage of this model is that the small numbers of members in the Mining and Pastoral and the Agricultural regions would likely only see candidates from the major parties elected for those regions.

## 5.2 Combine Non-Metropolitan Regions

Combining the Mining and Pastoral, the Agricultural and the South West regions into one region would see four regions with nine members each, each with similar numbers of voters.

**Model 2: Combine Non-Metropolitan Regions**

Legislative Council Seat	Legislative Assembly Seats	Current Members	Proposed Members	Enrolment (2021)	Enrolment (2021) per Member	Quota as a % of Votes
Regional and Remote	16	18	9	416,012	46,224	10.0%
North Metropolitan	14	6	9	423,759	47,084	10.0%
South Metropolitan	13	6	9	449,182	49,909	10.0%
East Metropolitan	16	6	9	427,779	47,531	10.0%
Total	59	36	36	1,716,732	47,687	

This model would potentially increase the diversity of candidates elected to some extent because the quota required for election would reduce from the current quota of 14.3% of the valid votes cast to 10.0% of the votes.

### 5.3 Six Region-Based Electorates with Equal Numbers of Voters

Another option to consider is the maintenance of six regions electing six members each but with essentially equal numbers of voters in each electorate.

If we continue to have each region comprising selected legislative assembly seats, each region would essentially comprise a grouping of ten adjacent Legislative Assembly seats. However disparities between the sizes of Legislative Assembly seats make this somewhat challenging in practice.

One possible way of doing this is outlined below (with details provided in Attachment A) although it is recognised that further refinement would be required if this model were to be adopted.

#### Model 3: Six Regions Electing Six Members Each

Legislative Council Seat	Legislative Assembly Seats	Proposed Members	Enrolment (2019)	Enrolment (2019) per Member	Quota Required as a % of Votes
Agricultural, Mining and Pastoral	11	6	253,278	42,213	14.3%
South West	9	6	263,071	43,845	14.3%
South Metropolitan	10	6	279,781	46,630	14.3%
North Metropolitan	9	6	261,292	43,549	14.3%
East Metropolitan	10	6	284,489	47,415	14.3%
Inner Metropolitan	10	6	284,882	47,480	14.3%
Total	59	36	1,626,793	45,189	

As can be seen, this modelling resulted in slightly lower numbers of voters per member (based on voter numbers for 2019) for the Agricultural, Mining and Pastoral, the South West and the North Metropolitan.

### 5.4 Whole of State Electorate

If the whole of state were to be used as a single electorate for the Legislative Council, every vote would have exactly the same voting power as each other regardless of geographical location. This would deliver the most equitable outcome. A single whole-of-state electorate would always ensure voter equity unlike a multi-region approach which will require ongoing boundary adjustments in light of population changes to maintain reasonable voter equity.

This option may deliver the most diverse Legislative Council because the quota required to gain a seat would be only 2.7% of the formal votes cast across the State.

However a preliminary analysis outlined in the following table suggests the impact may not be as significant as first thought. When votes are aggregated across the State, minor parties still generally fail to accumulate a sizable quota although preference deals may still see some parties/candidates doing better than the initial quota shown in the table might otherwise suggest. Furthermore parties that have not contested all regions may gain votes from other regions which will improve their position.

**Model 4: Statewide Electorate – Impact on Membership based on 2021 Election Outcomes**

Party	Votes	% of Votes	Quotas	Actual No of Members
WA Labor	868,374	60.34%	22.32	22
Liberal Party	254,380	17.68%	6.54	7
The Greens (WA)	91,849	6.38%	2.36	1
The Nationals	40,285	2.80%	1.04	3
Legalise Cannabis Western Australia Party	28,473	1.98%	0.73	2
Australian Christians	28,051	1.95%	0.72	
Pauline Hanson's One Nation	21,259	1.48%	0.55	
Shooters, Fishers and Farmers	21,210	1.47%	0.55	
No Mandatory Vaccination	16,094	1.12%	0.41	
Independent	11,486	0.80%	0.30	
Western Australia Party	10,496	0.73%	0.27	
Animal Justice Party	9,732	0.68%	0.25	
Liberal Democrats	9,218	0.64%	0.24	
Liberals For Climate	7,515	0.52%	0.19	
WAxit	4,924	0.34%	0.13	
Sustainable Australia Party	4,405	0.31%	0.11	
Daylight Saving Party	3,485	0.24%	0.09	1
Great Australian Party	3,397	0.24%	0.09	
Health Australia Party	3,105	0.22%	0.08	
Socialist Alliance	948	0.07%	0.02	
Other	482	0.03%	0.01	
Total	1,439,168	100.00%	37.00	36

A possible disadvantage of this approach is that members of the Legislative Council would not be specifically identified with a particular region. However the Legislative Assembly will continue to have local members from across the State, and members of the Legislative Council may choose to associate with particular regions. Members may also choose to champion particular issues or groups within the State.

Another potential negative impact could be that voters may view the potentially large numbers of candidates nominating for each election as unwieldy and, as a result, may become more disinterested in the election.

## 6 Distribution of Preferences

The election of multiple members for each Legislative Council region presents peculiar challenges in the context of our preferential voting system in that it can result in the election of candidates that have received modest numbers of first preference votes as evident in the recent election of a candidate receiving only 98 first-preference votes.

The specific details of how preferences are distributed for seats in which multiple candidates are to be elected is not well understood by the general public.

Schedule 1 of the Electoral Act 1907 describes how votes are to be counted using the quota derived from the number of formal votes cast with excess quotas places subsequently reallocated to candidates with lower preferences. Part of that schedule states:

4. *Unless all the vacancies have been filled, the number (if any) of votes in excess of the quota (in this Schedule referred to as surplus votes) of each elected candidate shall be transferred to the continuing candidates as follows —*

- (a) *the number of surplus votes of the elected candidate shall be divided by the number of first preference votes received by him and the resulting fraction shall be the transfer value;*
- (b) *the total number of ballot papers of the elected candidate that express the first preference vote for him and the next available preference for a particular continuing candidate shall be multiplied by the transfer value, the number so obtained (disregarding any fraction) shall be added to the number of first preference votes of the continuing candidate and all those ballot papers shall be transferred to the continuing candidate,*

*and any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of any such transfer shall be elected.*

...

8. *Where, after the counting of first preference votes or the transfer of surplus votes (if any) of elected candidates, no candidate has, or less than the number of candidates required to be elected have, received a number of votes equal to the quota, the candidate who has the fewest votes shall be excluded and all his votes shall be transferred to the continuing candidates as follows —*

- (a) *the total number of ballot papers of the excluded candidate that express the first preference vote for him and the next available preference for a particular continuing candidate shall be transferred, each ballot paper at a transfer value of one, to the continuing candidate and added to the number of votes of the continuing candidate and all those ballot papers shall be transferred to the continuing candidate;*
- (b) *the total number (if any) of other votes obtained by the excluded candidate on transfers under this Schedule shall be transferred from the excluded candidate in the order of the transfers on which he obtained them, the votes obtained on the earliest transfer being transferred first, as follows*
  - (i) *the total number of ballot papers transferred to the excluded candidate from a particular candidate and expressing the next available preference for a particular continuing candidate shall be multiplied by the transfer value at which the votes were so transferred to the excluded candidate;*
  - (ii) *the number so obtained (disregarding any fraction) shall be added to the number of votes of the continuing candidate;*
  - (iii) *all those ballot papers shall be transferred to the continuing candidate.*

Possible changes that could be made to the distribution of preferences in the Legislative Council's proportional representation system are as follows:

- (i) Modify the current system so that a minimum number of first preference votes must be received by a party or candidate to remain in the ballot;
- (ii) Retain group voting tickets for 'above the line' voting but reduce the minimum number of 'below the line' preferences required for a formal vote;
- (iii) Use a system of optional preferential voting similar to the system used in the NSW, SA and Commonwealth upper houses; and

- (iv) Abandon preferential voting by having voters lodge votes for candidates up to the number of members to be elected.

### **6.1 Set Threshold Number of First Preferences**

Modify the current system so that a minimum threshold number of first preference votes must be received by a party or candidate to remain in the ballot. The votes for eliminated candidates would be redistributed in line with each voter's preferences.

It is suggested a threshold equivalent to 25% of the quota be used.

This approach would ensure candidates from parties with very limited primary support would be prevented from being elected by "milking preferences".

### **6.2 Reduce Minimum Number of 'Below the Line' Preferences Required**

As stated in the Ministerial Expert Committee on Electoral Reform: Discussion Paper, *"Both WA and Victoria currently retain group voting tickets for 'above the line' voting" but "Victoria has reduced the minimum number of 'below the line' preferences required for a formal vote" albeit with a minimum of 5 preferences.*

This approach has merit in that it represents a minor change to the current system.

However the continuation of group voting tickets for 'above the line' voting may see again the occasional election of a candidate with a very small portion of first preference votes.

### **6.3 Optional Preferential Voting Similar to Senate Elections**

As stated in the Ministerial Expert Committee on Electoral Reform: Discussion Paper, the optional preferential voting systems used in the NSW, SA and Commonwealth upper houses sees *"Electors indicate their own preferences between parties, either by voting for one or more parties above the line, or for a certain number of candidates below the line" and "Parties are no longer able to submit a list of preferences on behalf of a voter who has voted 'above the line'".*

This approach has merit in that its adoption would see voters using the same system to elect candidates for the Legislative Council as for the Australian Senate, and in so doing reduces the potential confusion and resultant informal votes caused by having different approaches for elections for the WA Parliament and the Australian Parliament.

The approach will significantly reduce the likelihood of the election of a candidate with a very small portion of first preference votes.

### **6.4 Abandon Preferential Voting**

Consideration could be given to abandoning preferential voting. Instead electors would lodge votes for candidates up to the number of members to be elected with each vote counted equally.

This approach has been used successfully by several organisations to elect members of their boards and is arguably much easier to understand than the preferential voting system currently used.

However it may be preferable to continue to use a modified version of the existing preferential voting system because voters are generally familiar with this method for electing members of parliaments in Australia.

## **7 Recommendations**

My view is that for Legislative Council elections we should:

- (i) Use the whole of state as the electorate; and
- (ii) Use a system similar to that used to elect Senators with electors indicating their own preferences between parties, either by voting for one or more parties above the line, or for a certain number of candidates below the line but with parties failing to gain a at least 25% of the quota eliminated from the ballot.

I favour these options because they will ensure ongoing equality of votes and see members elected who will have primary support from a significant proportion of the population.

## Appendix A: Possible Allocation of Legislative Assembly Electorates to Legislative Assembly Regions

Row Labels	Legislative Assembly Seats	Enrolment (2019)
<b>Agricultural, Mining and Pastoral</b>	<b>11</b>	<b>253,278</b>
Albany	1	26,600
Central Wheatbelt	1	25,458
Geraldton	1	25,874
Kalgoorlie	1	19,622
Kimberley	1	15,460
Moore	1	25,297
North West Central	1	10,904
Pilbara	1	21,700
Roe	1	24,545
Vasse	1	29,287
Warren-Blackwood	1	28,531
<b>South West</b>	<b>9</b>	<b>263,071</b>
Baldivis	1	29,162
Bunbury	1	29,392
Cockburn	1	28,620
Collie-Preston	1	29,588
Darling Range	1	29,181
Dawesville	1	29,374
Mandurah	1	29,434
Murray-Wellington	1	28,967
Warnbro	1	29,353
<b>South Metropolitan</b>	<b>10</b>	<b>279,781</b>
Bateman	1	29,367
Bicton	1	26,959
Cannington	1	27,704
Fremantle	1	28,651
Jandakot	1	28,799
Kwinana	1	26,567
Riverton	1	28,181
Rockingham	1	27,975
South Perth	1	28,405
Willagee	1	27,173
<b>North Metropolitan</b>	<b>9</b>	<b>261,292</b>
Burns Beach	1	28,200
Butler	1	28,799
Carine	1	29,754
Hillarys	1	28,930
Kingsley	1	29,573
Landsdale	1	28,944

Mirrabooka	1	28,888
Wanneroo	1	29,481
West Swan	1	28,723
<b>East Metropolitan</b>	<b>10</b>	<b>284,489</b>
Armadale	1	29,460
Bassendean	1	28,337
Belmont	1	27,832
Forrestfield	1	27,120
Kalamunda	1	28,890
Midland	1	29,326
Morley	1	28,768
Southern River	1	27,919
Swan Hills	1	28,392
Thornlie	1	28,445
<b>Inner Metropolitan</b>	<b>10</b>	<b>284,882</b>
Balcatta	1	28,284
Churchlands	1	28,417
Cottesloe	1	29,433
Joondalup	1	28,171
Maylands	1	27,967
Mount Lawley	1	28,133
Nedlands	1	29,036
Perth	1	29,055
Scarborough	1	29,272
Victoria Park	1	27,114
<b>Grand Total</b>	<b>59</b>	<b>1,626,793</b>