



BUILDING BETTER GOVERNMENT

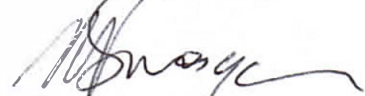
Electoral Reform in WA

Abstract and authorship

This Submission is a response to the Attorney General's Request for Public Submissions
on reform of WA's electoral system

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1.0 Introduction

The terms of reference for this enquiry refer to anomalies in the WA 2021 Legislative Council results that sit uneasily with long held beliefs about how an electoral franchise should work. The remit of any valid and reliable system is to deliver outcomes consistent with democratic principles and properly constituted representative government.

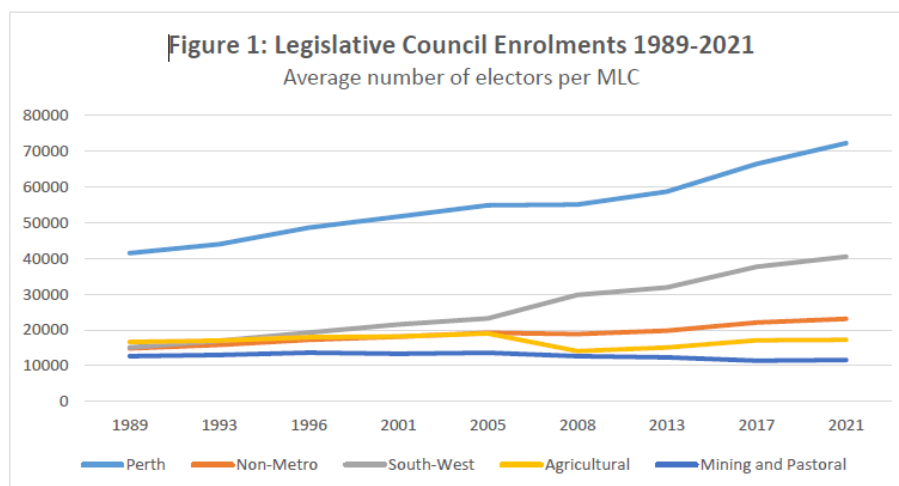
The authors of this submission have no argument with any of the case studies presented by the Attorney General and Minister for Electoral Affairs, in his opinion piece published in the West Australian newspaper on 3 May 2021.¹ They are evidence of a system that has embedded elector vote value inequality and is being gamed by micro-parties to win Parliamentary representation. The latter at the expense of other parties with more votes and a greater claim.

The current system is neither fair nor democratic. The phenomenon of a party winning a seat in the Legislative Council with 98 First Preference (FP) votes from a total voting pool of 50,152 is the most egregious case. However, underlying problems exist with both the Legislative Council (LC) and Legislative Assembly (LA) franchises that describe the need for comprehensive reform, that should be addressed in the interests of fairness and Government legitimacy. Since the Terms of Reference² for this review, do not allow a comprehensive review, the discussion here is limited to the case of the Legislative Council.

2.0 The Issues – The case for electoral reform in the Legislative Council (LC)

2.1 Inequality of elector vote value between metropolitan and non-metropolitan electoral regions and between non-metro regions

Across the regions, in WA2021, the metric of regional electors versus LC seats shows huge variation. According to the Minister, in WA 2021 election votes cast by people in the Mining and Pastoral region were worth 6.22 times more than those cast in the metropolitan area. The ratio of enrolled voters to seats in Mining and Pastoral was 11,608:1, as opposed to 72,262:1 in the metro area. This is by no means the worst case. In the region of South Metro where the authors of this submission campaigned in WA2021, the ratio was 74,864:1. Using Mining and Pastoral once more as the comparison case (11,608:1), the metric of electors to seats is even greater, coming in at around 6.45 times. This analysis performed for other LC regions also points to disturbing levels of malapportionment. Figure 1 from the Discussion Paper, shows the extent of elector inequality across metro and non-metro and between non-metro regions:³



The current reform process presents the opportunity to correct vote value inequity and institute a better, fairer system. Historically, regional malapportionment of electors has been justified in terms of the geographic vastness of some non-metropolitan electorates, the logic being that more members per elector are required to effectively represent larger geographic areas. However, this is a specious argument in the era of the Internet, and other modern communications and transport options. These innovations have lessened the tyranny of distance. The practice of elector malapportionment is an offence against the principles of fairness and one vote one value. It is anti-democratic and if left unchecked, undermines the legitimacy of government.

2.2 Gaming the system- Micro party preference harvesting in the Legislative Council.

Most micro-parties contesting the Legislative Council election in WA2021 recorded less than 0.1 of a quota. In South Metro, the fifteen (15) micro-parties recorded First Preference (FP) ticket votes < 0.13 of a quota. **The mode or most commonly occurring quota vote in South Metro was 0.02 equating to FP ticket votes ranging from a 777 to 1260 in a total pool of 380,110 valid ticket votes.** After preferencing, these votes were insufficient to elect any micro-party candidates. However, elsewhere, in other regions, with preferencing small allocations of ticket votes and quotas elected micro-party candidates (Table 1):

| Region | Party | Ticket Votes | Quotas |
|-------------------|------------------------|--------------|--------|
| East Metro | Legalise Cannabis | 8718 | 0.18 |
| Mining & Pastoral | Daylight Savings Party | 95 | 0.01 |
| South West | Legalise Cannabis | 4357 | 0.15 |

Table 1- Micro party ticket votes and quotas for elected candidates WA2021

These outcomes are perverse when viewed from the perspectives of:

1. first preference ticket votes obtained as a proportion of the vote pool; and
2. transparency to voters in how Group Voting Ticket (GVT) voting above the line is exploited via micro-party deals i.e. via preference harvesting.

In respect of point 2, arrangements for preference swaps between micro-parties are not transparent to voters, leading to a situation where voters are misled or do not have complete information about the implications of above the line voting. Consequently, an above the line vote can result in an elector contributing to the election of a member representing a party with unrelated or even an opposing platform to the party the elector voted for. The Discussion Paper reveals that in 2021, 97.5% of electors voted above the line, describing the power of the Group Voting Ticket (GVT) system through preference harvesting to deliver maverick outcomes such as the election of a micro-party candidate with 98 ticket votes.

3.0 Options for reform of the Legislative Council electoral system

There are many options for reform of the system that address elector vote value equality and gaming of the system via preference harvesting. The discussion below describes options and related advantages and disadvantages.

3.1 Options for achieving elector vote value equality and removing the distortionary effects of group voting.

As the Discussion Paper comprehensively described, inconsistent vote weighting between electors in different regions is a major problem in WA’s system for electing the Legislative Council. Analyst, Anthony Green has explored the problem in detail.⁴ He concluded:

“The weighting ratio adopted for the Legislative Council in 1989 has drifted out from 2.80-to-1 to 3.07-to-1. More importantly, the equality of representation for the non-metropolitan regions adopted in 1989 has fallen apart, representation of the two-smaller regions now registering at 2.81-to-1 against Southwest Region.

It may be that some degree of non-metropolitan over-representation may be retained, as it has been in the Legislative Assembly.

But the current regions based on land usage will have to go. Given population trends, any attempt to base representation based on land use rather than population will be undermined by demography.”

Two clear pathways exist to addressing the problem of vote value weighting between regions.

Option 1- Retain regions and re-allocate seats and electors to remove inequality. Government can address the unfairness of the system by aligning the ratio of electors to seats across the regions. For example, it might elect to retain the current regions but reduce the number of member seats, concurrently effecting a transfer of seats to metropolitan regions. (L1). This method is used in Victoria.

Advantages:

- Preserves regional basis of LC representation and the regional voice in Parliament (but only if a region has sufficient registered voters to achieve a quota with equalization).
- Consistent with the usability of a system that elects thirty-six (36) members every four years using paper ballots.

Disadvantages

- More difficult to achieve vote parity between regions and will likely result in residual and growing inequality over time.
- Some current WA regions (e.g., Mining and Pastoral) may be reduced to a single representative.

Option 2- Unitary Statewide model – Electors vote in one statewide region.

As the discussion paper notes⁵, NSW and SA have opted for a unitary (one region) model for the LC franchise. This method breaks the relationship between elected members and regions by creating **one statewide region** in which all seats are pooled, and seats are elected by all eligible voters in the State using proportional representation and STV. As mentioned in the Discussion Paper, NSW and SA have both implemented statewide systems with 8-year MLC terms and half of the Council being elected every four years.

Advantages:

- Enables precise elector equality to be achieved.
- More consistent with vision of LC as a House of Review, where members via Committee structures scrutinize legislation, rather than represent regions.

- Since a regional representation function is already being performed by a geographically organized Legislative Assembly, removes a source of representational redundancy.

Disadvantages

- Cumbersome, if not implemented with the companion reform of electing half the Council every 4 years.

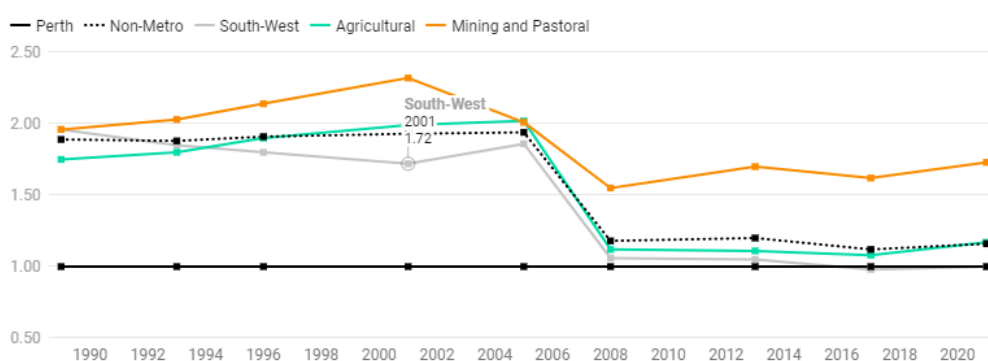
The authors believe that the unitary Statewide model used in SA and NSW provides the best model for dealing with the problem of elector inequality in the WA LC electoral system. The Statewide model removes elector weighting according to land use and geography, allowing representatives to focus on the critical functions of legislative review, strategic policy direction and ensuring government accountability.

In a very real sense, in WA the current LC model is duplicating what is already being done in the Legislative Assembly by anchoring the franchise to geography. This additional geographic representational layer comes at the expense of the role of the Legislative Council as a House of Review.

Importantly, within the one vote, one value reform for the Legislative Assembly adopted in 1989, regional enrolment weights for non-metropolitan electors have continued via the LDA. Green has charted the evolution of weighting since 1989. The point is clear, what manner of additional weighting can be justified beyond what is already on offer in the LA?

WA Lower House Enrolment Weights 1989-2021

Elector Weights by Region compared Electors in Perth



Calculations by Antony Green based on WAEC Election Statistics
Chart: Antony Green • [Get the data](#)

3.2 Options for eliminating preference harvesting and improving representational validity.

Options for reducing the likelihood of gaming of the system via preference harvesting are described below:

- A. Abandonment of the current Group Voting Ticket (GVT) system in favor of optional preferential voting above (party) and below the line (candidate) (Senate, NSW, SA)

A variety of options exist for this. In 2016, the Senate system was amended based on preference voting above and below the line. This reform also removed list ticket voting based on a single party selection above the line. Preference voting now allows six (6) boxes to be numbered above the line where party names only are used. Candidate names are used below the line where the voter can exercise the option of determining how many candidates he or she wishes to preference. The system allows for the exhaustion of preferences where the voter elects not to use all preference

options. Optional preferential voting is also used above and below the line in NSW & SA. In NSW & SA half of the Legislative Council is elected every 4 years.

Abandonment of GVT in favor of A. has been mostly successful in countering the distortionary effects of preference harvesting by micro-parties. In the 2019 Federal Election, no micro-parties were elected. However, in 2019, in NSW, the Animal Justice Party secured a seat with 1.9% of the FP Vote.⁶

Advantages:

- Has worked to reduce gaming of the system in NSW and Federally, since 2016.
- Deals substantially (but not completely) with the problem of micro-party election with small FP % votes.

Disadvantages

- Depending on voter propensity to preference, can result in vote exhaustion depending on the rules.
- Usability is affected by LC size and member terms. Well suited to LCs where only half of members are elected every four years.
- A minimum threshold in FP % may still be required to eliminate aberrant micro party results.

B. Implement minimum threshold party FP % parameter for election eligibility.

As an additional layer of defense against gaming the system, the reform process could also adopt a minimum First Preference (FP) party % threshold to secure Parliamentary representation. In Germany and New Zealand, a 5% threshold is used. Using the ticket and quota count from WA2021, the three micro-party candidates elected whose votes are described in Table 1, could not be elected under such a threshold rule.

Advantages

- Simple to implement as a gaming defense.
- Improves robustness of STV preferential above and below the line.

Disadvantages

- Threshold parameter may be contentious leading to exclusion of some minor parties.

Another possible benchmark for the threshold is the 4% figure used for public funding of election campaigns. In this way the threshold is aligned with the precedent of public funding for elections.

C. Abandon GTV in favor of non-preferential voting using the D’Hondt (or some other) Proportional Representation (PR) method

STV with preferential voting above and below the line, minus GTV, is a straightforward evolution of the current system (Option A) that works well when the below the line candidate list is manageable. A Council of 36 members elected wholly every four (4) years statewide is not a usable configuration with this system and paper ballots. Elsewhere, the system is used where half of the Council is elected every four (4) years, making for a reduced candidate list below the line. All viable options for reform must work within the constraints of constitutionality and usability. A proportional representation method that can work with a statewide region and thirty-six (36) members is provided by the D’Hondt

system. D’Hondt is used to elect the EU and Scottish Parliaments. D’Hondt uses a quotient formula for each party:

$$quot = \frac{V}{s + 1}$$

Where:

- V is the total number of votes that a party received.
- s is the number of seats that a party has been allocated so far, initially set at 0.

This system could be used in conjunction with a regional (currently 6) or statewide (currently 36) population of seats. It can also be used with a threshold as per B.

Advantages

- Simple, reducing likelihood of invalid votes.
- Good representational integrity in terms of primary votes won by a party (but not as good as some other PR methods)
- Could be used with 36 member LC being elected every four (4) years.

Disadvantages

- As a non-preferential system, works to the advantage of major parties at the expense of smaller (but not micro) parties.

4.0 Case studies

Using data from recent elections, the authors checked outcomes with some of the options discussed in 3.1-3.2. Some options are not directly testable with data from WA2017, WA2021. For example, if the STV method were to be used **without** group lists (tickets), but with party preference voting above the line and candidate voting below the line (as per the Senate), we do not know from the available data how voters would have responded to these changes in 2017 and 2021. However, data from NSW, the Senate and SA provides guidance.

4.1 Scenario 1 – STV with optional voting above and below the line (NSW, Senate, SA)

In NSW, in 2019 the Animal Justice Party was elected with only 1.9% of the FP vote.⁷ The minimum FP party vote to elect a candidate was therefore 1.9%. No minimal threshold applied. The election of one micro party candidate with <2% of the FP vote suggests that this method may also require a minimum threshold to avoid aberrant results. Only, half of the Council was elected in NSW2019, consisting of 21 seats state-wide (see Table 2):

| Party | FP votes | Total % Valid Votes (2019) | Quotas | Elected Members (2019) |
|--------------------------------|----------------|----------------------------|--------|------------------------|
| SFF | 246477 | 5.5 | 1.2182 | <u>1</u> |
| Socialist Alliance | 14194 | 0.30 | 0.0702 | |
| Sustainable Australia | 65102 | 1.5 | 0.3218 | |
| The Greens | 432999 | 9.7 | 2.1401 | <u>2</u> |
| Animal Justice Party | 86713 | 1.9 | 0.4286 | <u>1</u> |
| Advance | 3928 | 0.1 | 0.0194 | |
| Group G. | 6543 | 0.1 | 0.0323 | |
| Group H. | 322 | 0.0016 | 0.0016 | |
| Flux | 16212 | 0.4 | 0.0801 | |
| Labor/ Country Labor | 1321449 | 29.7 | 6.5313 | 7 |
| Liberal/The Nationals | 1549751 | 34.8 | 7.6597 | 8 |
| Group L. | 11793 | 0.3 | 0.0583 | |
| Australian Conservatives (NSW) | 26303 | 0.6 | 0.13 | |
| Keep Sydney Open | 81508 | 1.8 | 0.4029 | |
| Liberal Democrats | 96999 | 2.2 | 0.4794 | |
| Voluntary Euthanasia Party | 46971 | 1.1 | 0.2322 | |
| Christian Democratic Party | 101,328 | 2.3 | 0.5008 | |
| The Small Business Party | 30,409 | 0.7 | 0.1503 | |
| Group S. | 3,207 | 0.1 | 0.0159 | |
| T. Pauline Hanson Onbe Nation | 306,933 | 6.9 | 1.517 | 2 |
| Ungrouped | 2,005 | 0.04 | | |
| TOTAL | 4451146 | | | <u>21</u> |

Table 2- NSW (2019) Parties, quotas and seats won.

In the Senate, in 2019, the smallest FP% vote on which a candidate was elected was 8.7% (NSW/Green). In SA in 2018, Greens returned one elected candidate on 5.9% of the vote. Neither of these elections delivered seats to micro parties.

4.2 Scenario 2- Statewide LC region (WA2017) (WA2021) with D’Hondt

The case has been made for moving the WA system to a single, Statewide region as a solution to the problem of vote weighting and malapportionment. However, with thirty-six (36) seats and paper ballots, usability issues exist with STV preferential voting unless:

- WA moves to electing half of the LC every four years (like NSW and SA); OR
- Shifts to a non-preferential, PR system.

The D’Hondt system is a non-preferential PR system that is used in 16 EU member states and the EU Parliament. It offers a solution to the thirty-six (36) seat election conundrum:

Assumptions:

1. Thirty-six (36) seat statewide region
2. No preferencing or thresholds

Method:

Apply D’Hondt formula based on total party % FP votes:

Results:

| Party | Total % Valid Votes (2017) | Elected Members (2017) | d'Hondt (2017) Projected |
|-----------------------|----------------------------|------------------------|--------------------------|
| WA Labor | 40.41 | <u>14</u> | 17 |
| Liberals | 26.71 | 9 | 11 |
| Greens | 8.6 | <u>4</u> | 3 |
| PHON | 8.19 | <u>3</u> | 3 |
| Nationals | 4.43 | <u>4</u> | 1 |
| SFF | 2.37 | <u>1</u> | 1 |
| LD | 1.77 | <u>1</u> | 0 |
| Daylight Savings | | | |
| Legalise Cannabis | | | |
| Animal Justice Party | 1.1 | | |
| Australian Christians | 1.94 | | |
| TOTAL SEATS WON | | <u>36</u> | <u>36</u> |

Micro party

| Party | Total % Valid Votes (2021) | Elected Members (2021) | d'Hondt (2021) Projected |
|-----------------------|----------------------------|------------------------|--------------------------|
| WA Labor | 60.34 | <u>22</u> | 26 |
| Liberals | 17.68 | 7 | 7 |
| Greens | 6.38 | <u>1</u> | 2 |
| PHON | 1.48 | | |
| Nationals | 2.8 | <u>3</u> | 1 |
| SFF | 1.47 | | |
| LD | 0.64 | | |
| Daylight Savings | 0.24 | <u>1</u> | |
| Legalise Cannabis | 1.98 | <u>2</u> | |
| Animal Justice Party | 0.68 | | |
| Australian Christians | 1.95 | | |
| TOTAL SEATS WON | | <u>36</u> | <u>36</u> |

Micro party

Observations:

All votes wherever cast have equal value. Inequalities in elector vote value caused by regional weighting are removed. In both 2017 and 2021, *micro parties with less than 2.0% of the FP vote were not successful in either election with D'Hondt*. The biggest party by total % valid votes won more seats with D'Hondt than via the STV method in the actual vote in both elections. This bias of D'Hondt is acknowledged by its proponents:

"It [DHond't] tends to increase the advantage for the electoral lists which gain most votes to the detriment of those with fewer votes. It is, however, effective in facilitating majority formation and thus in securing Parliamentary operability."⁸

Hare-Niemeyer and Sainte-Laguë/Schepers are PR systems that deliver more proportional results.

5.0 Conclusions and recommendations

5.1 An opportunity exists to achieve an important democratic aspiration, namely that the votes of electors should have equal value regardless of where these votes are cast. The most straightforward and reliable way of achieving this is to implement a single statewide region for the election of a thirty-six (36) member Legislative Council. The statewide system is already in operation in NSW and SA. Such a system is more consistent with the role of the Legislative Council as a house of review (see section 3.1 Option 2)

Recommendation 1:

For the purposes of electing the Legislative Council, the current six region system be abolished in favor of one Statewide region.

5.2 The existing system of Group Voting Tickets (GVT) above the line is being gamed by micro parties to secure the election of candidates with absurdly small numbers of ticket votes and FP quotas. Section 2.2 describes the problem. Three members were elected in WA2021 in this way with ticket vote quotas of less than 0.2%. Perverse outcomes can be eliminated within the current STV system by:

- Dispensing with ticket lists for ALL above the line voting.
- Implementing optional preference voting above and below the line using the Senate system for voter preference order selection (e.g., up to six (6) parties in preference order above the line OR six (6) or more candidates below the line).
- Implementing a minimum threshold (ticket) FP vote for parties to secure election of candidate(s). The current threshold for public funding of parties under election funding law (4%) could be used for this purpose.

The Government could also respond to the problem by abandoning STV in favor of the D’Hondt variant of PR.

Recommendation 2:

That the current STV system be amended to remove group (ticket) list voting above the line in favor of a Senate type system with optional preferential voting above and below the line OR by adopting the D’Hondt system. Both systems are adaptations of Proportional Representation. PR should be retained with or without preferential voting.

As an additional protection against maverick outcomes, the concept of a minimum quota for the election of candidates be actively explored.

Recommendation 3:

That options for a minimum threshold FP party vote be explored to prevent further gaming of the system and the election of candidates from parties with absurdly low FP votes.

If it is decided to retain the STV system with optional preference voting above and below the line AND it is deemed both feasible and desirable to move to a single statewide region for electing the Council, the companion reform of implementing 8-year terms with half the thirty-

six (36) member Council being elected every four (4) years will likely be required to ensure the usability of the system with paper ballots.

Recommendation 4:

That the option of eight (8) year terms for members with half of the LC being adopted every four (4) years be explored

6.0 Need for further reform – Issues with the operation of the Legislative Assembly electoral system

In WA2021, the ALP secured 59.92% of the first preference vote in the LA but secured 89.83% of the seats (53/59). The outcome in terms of seats won was disproportionate to the FP vote obtained, suggesting the need for lower house electoral reform as well. If micro-parties are preference harvesting in the LC, can it be said that LA practices are any better? The preferential system operating in the LA, could also be thought of as involving gaming, since parties decide preference not based on policy, but to maximize electoral advantage through voters who slavishly follow the party HTV.

The authors believe that the data illustrates the need for comprehensive reform involving both houses, a matter that has been excluded from the remit of the current process. The current reform process is therefore open to a charge of being capricious, by not dealing with all dimensions of the problem.

ENDNOTES

¹ Quigley, J. (2021). Minister’s Opinion-Electoral Reform. Retrieved from

<https://www.wa.gov.au/organisation/wa-electoral-reform/ministers-opinion-electoral-reform>

² Government of Western Australia. (2021). *Electoral Reform – Terms of Reference*. Retrieved from:

<https://www.wa.gov.au/government/publications/electoral-reform-terms-of-reference>

³ Ministerial Expert Committee on Electoral Reform. (2021). Discussion Paper. p.3

⁴ Green, Anthony (2021). WA’s Zonal Electoral System and the Legislative Council Reform Debate. Retrieved from: <https://antonygreen.com.au/was-zonal-electoral-system-and-the-legislative-council-reform-debate/>

⁵ Ministerial Expert Committee on Electoral Reform. (2021). Discussion Paper. p.8

⁶ New South Wales Electoral Commission. (2021). NSW State Election Results 2019. Retrieved from:

https://pastvtr.elections.nsw.gov.au/SG1901/LC/State/fp_by_grp

⁷ Ibid.

⁸ European Parliamentary Research Service. (2019). Understanding the d’Hondt method. Retrieved from

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