

WAFarmers Submission

to the

Government of Western Australia Ministerial Expert Committee Review of the WA Electoral system for the election of the Western Australian Legislative Council

4 June 2021

This submission is in response to a request by The Ministerial Expert Committee on Electoral Reform for submissions on the system used for the election of members to the Western Australian Legislative Council.

WAFarmers represents farm families across the grains livestock, dairy and bee industries with our members predominantly in the Great Southern, Wheatbelt and South West regions.

As part of our response to the questions posed WAFarmers would like to draw their attention to three papers that should be carefully read by the Commissioners as part of their deliberations.

1: The submission to the Commission by the Hon Andrew Murray.

WAFarmers welcomes the submission by Andrew Murray and supports the key recommendations and discussion points made.

The practise of enhanced regional representation in democratic parliaments, particularly in legislatures that have an upper house, is well established.

In its application to Western Australia that practise of enhanced regional representation is reinforced by geography and demographics, requiring regions in this vast state to be created to allow for good administration and communication.

Accordingly, there are ten districts development regions, 144 local governments of which 30 are in Perth, and State departments like energy, health, police and education all have designated regions for organisational purposes.

On any measure there is no electoral equality between local government cities, councils and shires, but there is no political of community concern about that. Such concern as there is centres on the viability capacity and sustainability of low population local governments.

2: The submission by Dr A R Fullarton

Who also builds a compelling case around remoteness.

The people, commerce, and natural environment (of Western Australia) are probably the most diverse social, economic and natural environmental diversity in Australia, and as an electorate perhaps the entire world. Those diverse interests are currently represented by a mere six members of the Legislative Council of Western Australia and are domiciled as far apart as from Port Hedland in the Pilbara and Kalgoorlie in the Goldfields.

The region also contains the four largest, by area, Legislative Assembly Electorates: Kalgoorlie, Kimberley, North West Central and Pilbara. Federally, the region is covered by just two House of Representative divisions – Durack, the physically largest Federal electorate in Australia, and O'Connor, a close second.

A comparison might be the largely homogenous population of Wanneroo in the Perth Metropolitan area. The Legislative Assembly electorate of Wanneroo covers just 454 square kilometres and has just over 31 000 registered electors. That is nearly half of the entire electoral population of the Mining and Pastoral Region yet contained within an area of just 0.02 per cent of that vast region.

To quote Banjo Paterson, if the electorate of Wanneroo was in the Mining and Pastoral Region, unless one kept sharp navigation 'the mailman, if he's extra tired, would pass them in his sleep.' Indeed, there are numerous Indigenous settlements scattered throughout which might challenge any newcomer to the region, and some residents of many years and generations.

All of these people have significant social, economic and natural environmental issues which must be considered when reviewing legislation. Legislation intended to positively address urban issues might have severe negative impacts on those living in extremely remote regions of the Outback. The physical distances and sparse populations, coupled with the extreme diverse social, economic and natural environments make parliamentary representation a challenge. The apparent disproportionate influence that electors of the Mining and Pastoral Region might have when viewed from the single aspect of mathematics belies the complexity of the region.

Electoral Equality of the Legislative Council

If the group of electors of 31 000 people living within 454 square kilometres in the suburbs of the Perth metropolitan area, who travel on the same freeways, attend similar schools, are serviced by the same utility infrastructures and go to the same football stadium, enjoy the same climate, and suffer the same weather events as their neighbours are to be considered a homogenous group with largely the same social and economic needs then numerical equality may be a defining factor.

However, if that group was divided into regions tens of thousands of kilometres apart, with a diversity of climates from humid tropical to mild Mediterranean, travelling over roadways from almost abandoned corrugated unsealed tracks to modern highways; from culturally challenged, and extremely socially distant, indigenous settlements to sophisticated cities and all social structures in between; from Traditional Owners struggling in all sorts of adversities to maintain and preserve their landscape and their culture to sophisticated modern academics who enjoy an almost urban lifestyle;

How is it possible for a mere six people, no matter how dedicated, to represent those variations of culture, interests and economic wants and needs over a region over three times the size of the State of Texas? The Asprey Report suggests that those people in different situations should be treated differently. In this case they have a higher proportion of representatives in the Legislative Council to represent the extremely wide range of environments and cultures found in that vast region.

Equity is not simply treating equal people equally, but equity must also acknowledge that people in differing, or disadvantaged situations, must be treated differently. The sparsely populated, environmentally harsh, rural and remote regions of Western Australia require greater parliamentary service and representation than those of the more clement urban areas.

3: High Court Decisions.

The question of electoral equity has been considered by the High Court in a number of cases.

The majority findings in the case *McGinty v Western Australia* that the interpretation of sections 7 and 24 of the Australian Constitution did not require that all votes hold the same value should be referenced in the Commissions final recommendations.

McGinty v Western Australia, The plaintiffs sought to enshrine the principle of 'one vote one value' in the Australian Constitution, and has had a significant impact on how the High Court approaches matters of the franchise, as well as malapportionment. The plaintiff's submissions were unanimously

rejected by the court, who found that the interpretation of sections 7 and 24 of the Australian Constitution did not require that all votes hold the same value.

The majority largely took the view that whilst the principle of representative government was contained within the Commonwealth Constitution and the Western Australian Constitution it did not necessitate an equality of voting power.^[5] The majority made reference to ss 7 and 24 of the Commonwealth Constitution, which provides that the Senate and House of Representatives respectively will be "*directly chosen by the people*".^[6] Gummow J found that whilst these sections read with the rest of the Constitution did give rise to a requirement for a representative government; "*It does not follow from the prescription by the Constitution of a system of representative government that a voting system with a particular characteristic or operation is required by the Constitution. What is necessary is the broadly identified requirement of ultimate control by the people, exercised by representatives who are elected periodically*".^[1]

TERMS of REFERENCE QUESTIONS

In respect to the specific questions asked we provide the following responses.

(a) which model (whole-of-state electorate or region-based) is preferable to achieve electoral equality;

Answer: Regional Based

(b) the strengths and drawbacks of each model;

A state wide model diminishes the relevance and uniqueness of the regions and will further drive a metro centric focus of the parliament.

Noting the similarity of the metropolitan regions vs the individual geographic, economic, social and community uniqueness of the three non metropolitan regions, a compelling argument can be made to maintain a regional based model to ensure the voice of the individual regions are given a fair hearing in the parliament.

Moving to a state wide electorate of 36 seats would set an unusually low quota of 2/7% in comparison of the Senate or the two other states with a state wide upper house electorate.

A quota of 2.7% is likely to result in the election of more, not, less relatively unpopular single-issue Parties like the Day Light Savings or Anti Fluoride Party into the WA Legislative Council and hence should be avoided,

(c) whether any other electoral model, not covered in this Discussion Paper, is better suited to achieve electoral equality, with reasons; and

Answer: No

(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.

Answer: Andrew Murray makes the case and sums it up succinctly.

"Voting for a single political party above the line and the attendant Legislative Council lodged ticket voting system should be ended. Political party or group preferencing above the line should be introduced instead. The Commonwealth system is an adequate template."

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

Answer: Taking into consideration that

- Western Australia is a large and diverse state.
- The High Court confirms there is no constitutional requirement to go to a pure one vote one value system
- One vote one value does not apply to the States Legislative Assembly electoral model or the Australian Senate.

WAFarmers is firmly of the belief that the existing balance of 18 metro and 18 regional Upper house seats split between 6 x 6 member regions should remain unchanged.

John Hassel
President
WAFarmers