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Chair and Committee Members  
Ministerial Expert Committee on Electoral Reform  
11th Floor  
Dumas House  
2 Havelock Street  
WEST PERTH WA 6005.

By email: [submissions@waelectoralreform.wa.gov.au](mailto:submissions@waelectoralreform.wa.gov.au)

Dear Chair and Committee Members

Please find enclosed a submission to the Ministerial Expert Committee on Electoral Reform, on behalf of The Liberal Party of Western Australia (WA Division)

Kind regards

Richard

**RICHARD NEWTON**  
Acting State Director  
Liberal Party of Western Australia

## **LIBERAL PARTY OF AUSTRALIA (WA DIVISION) SUBMISSION TO MINISTERIAL EXPERT COMMITTEE TO REVIEW AND REPORT ON THE WA ELECTORAL SYSTEM FOR THE ELECTION OF THE WESTERN AUSTRALIAN LEGISLATIVE COUNCIL**

The Liberal Party affirms its full respect for the members of the Ministerial Expert Committee while deploring the disingenuous timing and nature of this Review.

Two very different issues have been conflated, namely:

- 1) the method of voting used in Legislative Council elections; and
- 2) the distribution of Legislative Council seats between the six Regions.

On the first of these questions, there is widespread consensus that the practice of registering group preference tickets has produced anomalous outcomes and should be abolished forthwith. However the matter of representation of Western Australian electors outside the metropolitan area was known to be far more contentious.

During the 2021 State Election campaign the Premier was asked on different occasions whether a re-elected Australian Labor Party Government would change the distribution of seats in the Legislative Council, and replied that this was not on the Government's agenda. He has stated in response to questions that *'enhanced regional representation would continue and this is just another smokescreen from the Liberals and Nationals'*.

It is therefore disappointing that on 30<sup>th</sup> April 2021, less than seven weeks after the State election, the Government has announced this Review with a clear implication that rural and regional Western Australia should have fewer representatives in the Legislative Council.

The supposedly "outdated" *Electoral Act 1907* was last significantly amended in 2005 by the Gallop Australian Labor Party Government who legislated to abolish the *Electoral Distribution Act 1947* and to incorporate changed electoral provisions into a new Part IIA of the *Electoral Act 1907*.

- Section 16D of the Act stipulates that six Legislative Council Regions will each return six MLCs.
- Section 16H of the Act describes the three metropolitan and three non-metropolitan Regions, with different levels of enrolment implicitly acknowledged for the latter three Regions.
- Through this 2005 ALP legislation the Agricultural Region and the Mining and Pastoral Region that had previously each returned five MLCs, both gained a sixth MLC.

The 2005 legislation was carried against the opposition of the Liberal and National Parties. However the Liberal-National Alliance Government of 2008-17 subsequently left these electoral changes undisturbed, despite having absolute majorities in both Houses between 2013 and 2017.

Former Australian Democrat Senator Andrew Murray has noted (Submission C27) that *"I have not detected recent or ongoing noticeable or meaningful public pressure or political*

*activism for introducing the one vote one value principle to the Legislative Council, to apply across the board regardless of the region”.*

While the election of the Daylight Saving Party candidate in the Mining and Pastoral Region with a primary vote of 0.2% has been cited as the catalyst for this Review, the Western Australian Government cannot claim that this was an unforeseen event.

- At the 2017 election the same preference harvesting formula was employed by a cartel of six small Parties, each favoured to receive cumulative preferences from each other's group voting tickets in the six Regions.
- One of these participants, the Liberal Democrats, secured a seat in the South Metropolitan Region, having also been advantaged by confusion with the Liberal Party ticket further along the ballot paper.
- In the East Metropolitan Region the then Fluoride Free WA Party, polled 1109 primary votes, 0.35% of the total, and in successive preference distributions overtook nine higher-placed Parties.
- Fluoride Free WA despite being an unpopular single-issue Party had accumulated 9.0% of the vote in the East Metropolitan Region before falling short in the contest for the final seat in the Region.

The 2017 election showed clearly how organised preference harvesting could deliver Legislative Council seats to Parties with very small, unrepresentative voter bases.

- A further lesson was delivered by the 2018 State Election in Victoria, where group preference tickets still operate for the Legislative Council. Three micro-party MLCs were elected from primary votes of 0.6%, 0.8% and 1.3%.
- The Western Australian Government should have heeded this manifest electoral injustice to ensure that a similar outcome did not occur at the 2021 State election.

The current Government however chose not to amend the *Electoral Act 1907* to abolish group preference tickets, despite being assured of the support of the Opposition.

- In 2019 the Greens brought forward a Bill for the abolition of registered group preference tickets which received no support from the Government and could not proceed.

Group voting tickets are so obviously a discredited part of our electoral system that a Government need not seek expert advice, but rather should move to abolish them. However it seems that the Government finds them a useful distraction from their main objective, the reduction of non-metropolitan representation.

## METHOD OF VOTING FOR LEGISLATIVE COUNCIL ELECTIONS

Group voting tickets for Senate elections were part of the generally bipartisan electoral reform package of the Hawke Government in 1983-84.

- Above-the-line voting was and remains a practical convenience for the majority of electors who prefer to choose between Parties rather than individual candidates.
- It also greatly reduced the previously high rate of Senate informal voting occasioned by the compulsory numbering of all candidates.

- Understandably this system of group voting tickets was adopted by the Western Australian Parliament when proportional representation for the Legislative Council was instituted in 1987.

However group voting tickets have the effect of handing a voter's subsequent preferences to the discretion of the political Party for which they had voted. Major Parties have generally allocated their preference tickets with reference to their ideological values.

- However in recent years group voting tickets have allowed very small Parties to "game the system" while giving rise to "preference whisperers". These are paid substantial fees for organising alliances of ideologically unrelated micro-Parties, and gain success fees when candidates are elected.
- Whatever its legality, preference harvesting greatly debases the democratic process.

Preference harvesting has been defended on the grounds that it gives representation to electors who vote for those minor Parties unable to reach quotas unaided. On this basis the three MLCs elected in 2021 from the Legalise Cannabis WA Party and the Daylight Saving Party are said to somehow represent all of the 12.8% of electors who did not vote ALP, Liberal, National or Greens in the Legislative Council.

- Logically however these three MLCs can represent only the 2.2% of electors who voted for Legalise Cannabis WA and for the Daylight Saving Party (DSP).
- The 10.6% of electors who voted for the 14 unsuccessful Parties – including Australian Christians, Animal Justice, Shooters Fishers and Farmers, and One Nation – may well have no affinity with the two successful micro-Parties.
- psephologist Antony Green has noted that micro-Party electors who vote below-the-line generally give their preferences to larger, like-minded Parties and not to the other micro-Parties who are colluding on group voting tickets.

In the Mining and Pastoral Region of the Legislative Council in 2021, it beggars belief to imagine that the majority of electors voting for the Shooters, Fishers and Farmers Party would have chosen to direct their preferences to the DSP ahead of the Nationals or the Liberal Party. Nonetheless their preferences were delivered to the DSP via a group voting ticket.

**The Liberal Party most strongly urges that group voting tickets be abolished, and that the Senate voting system in use since 2016 should be adopted for Legislative Council elections.**

- This will give back to West Australian electors the right to direct their own preferences whether choosing to vote above or below the line.
- Electors would be asked to vote 1-6 in the Party boxes across the top of the ballot paper, but their vote will remain formal if they neglect to indicate subsequent preferences beyond 1.
- Western Australian electors have twice used this voting system at the 2016 and 2019 Federal Senate elections, and it therefore has some familiarity.
- These last two elections for the Senate have resulted in election wins by such significant minor Parties as the Greens, One Nation (in Queensland) and the Jacqui Lambie Network (in Tasmania), all of which polled at least half a quota on primary votes.

- On the other hand micro-parties can no longer win seats through preference harvesting, and the “preference whisperers” have lost their business model.
- Most Australians would regard this as a healthy democratic outcome.
- West Australian electors would retain the convenience of above-the-line voting but would no longer be ceding control of preference allocation.
- They would also retain the right to exercise a below-the-line vote, perhaps to a minimum of 12 preferences (if electing six MLCs).

It is noted that (as of 4/6/21) out of 32 individual submissions, 24 submissions express an opinion on group voting tickets, and all but two of these favour their abolition.

**We stress that the post-2016 Senate voting system should be adopted rather than some less familiar system of optional preferences.**

In particular adoption of the Hare-Clark system should be avoided. It may work well enough in Tasmania’s political culture but it would be confusing when applied to much numerically and/or geographically larger Western Australian Legislative Council Regions.

- We should recognise that the majority of electors prefer above-the-line voting because they simply want to indicate support for their preferred Party and not for individual candidates.

#### ALLOCATION OF 36 LEGISLATIVE COUNCIL SEATS BETWEEN REGIONS

The allocation of 18 WA Legislative Council seats to the three non-metropolitan Regions in 2005 was a key part of an Electoral Bill that effectively reduced the number of non-metropolitan Legislative Assembly seats from 23 to 17.

- The combined total of non-metropolitan MLAs and MLCs was 35, as against 60 metropolitan Members. From 2017 the ratio stands at 34:61.
- Prior to 2008/09 respective totals were 40 country and 51 metropolitan MLAs plus MLCs. This was a significant shift.

In 2005 there was an understanding that the maintenance of 18 non-metropolitan MLCs was a measure of compensation for the loss of Legislative Assembly seats from the country. Commenting on the legislation, Professor Greg Craven, Executive Director of the John Curtin Institute of Public Policy, stated:

*“I would respectfully argue that, once the Lower House of the Parliament is constituted on a more or less strict One Vote One Value basis, the case for constituting the Upper House differentially as a Chamber where regional interests receive moderately enhanced representation, is strong. This follows from the necessity to ensure that the diversity of interests contained within the State are adequately reflected in Parliament.”*

**The Liberal Party stands opposed to any further reduction in non-metropolitan representation and accordingly supports the retention of 18 MLCs currently representing the South West, Agricultural and Mining and Pastoral Regions.**

It is frequently noted that equal Senate representation, regardless of State population, lies at the core of the Commonwealth Constitution. Also, no original State can have fewer than five members of the House of Representatives. These provisions have absolute entrenchment, as the electors of any smaller State must endorse any reduction of their representation.

With more immediate significance, the Federal Parliament in December 2020 passed the bipartisan Electoral Amendment (Territory Representation) Bill 2020 that reinstated the second Northern Territory seat in the House of Representatives to which it was no longer entitled by virtue of the relative population of the Territory. Members and Senators argued that such factors as distance and the needs of remote communities were of greater importance than numerical equality.

Warren Snowden, Member for the vast Northern Territory division of Lingiari, noted that 42.0% of his electors were Aboriginal Territorians and that with only one NT electorate *“their votes would have been substantially washed out”*.

Senator Louise Pratt of Western Australia has stated (24/8/20) that *‘one vote, one value is an important principle in our democracy...But it is not the only principle that is important in Australian democracy. She continued: “Our democracy recognises that people cast their votes according to what is important to them and their community [and] ... this can differ extremely widely between the city and the bush, between one part of the city and another, and between communities built around manufacturing or around a service sector or agriculture. Democracy is how we negotiate all of those different values and different interests.”*

The Liberal Party firmly considers that the rural, regional and remote communities of Western Australia, like those of the Northern Territory, remain significantly disadvantaged in comparison with metropolitan electors and therefore need to retain their current representation in both Houses of the Western Australian Parliament. The difficulties involved in representing an extensive non-metropolitan Region are well described by former MLC Murray Nixon OAM (Submission D30).

- We strongly believe that Members of the Legislative Council are as much representatives as legislators, and thus disagree with the view (Submission C24) that the concerns of electors should be left to the Members of the Legislative Assembly.
- MLCs should continue to have discretion as to the placement of their electorate offices and should maintain the same staff entitlement as MLAs.

It is significant that while the combined enrolment of the Mining and Pastoral Region and the Agricultural Region amounts to 10.1% of West Australian electors, these two Regions encompass six of the State’s ten administrative regions. In 2019 the Kimberley, Pilbara, Gascoyne, Midwest, Wheatbelt and Goldfields-Esperance Regions contributed a combined \$84,356 million of Gross Regional Product, 29.5% of the State’s total GRP.

Focusing on the Mining and Pastoral Region, Dr Lex Fullarton (Submission D34) argues *“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?"*

We agree with his conclusion that *"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."*

Andrew Murray (Submission C27) has stated that *"I support a degree of malapportionment favouring rural and regional non-metropolitan regions over the metropolitan regions in the case of Western Australia, because of Western Australia's geographic, economic and political characteristics and culture"*.

- Furthermore the Liberal Party endorses his contention that *"apart from breaching the principle of one vote one value, there is no evidence to indicate that the present system of malapportionment in the Legislative Council Regions creates any concern for voters at large, nor is there any evidence that it has had deleterious effects on the functioning of parliament and government"*.

The Liberal Party believes that MLCs should continue to be elected on the basis of multi-member Regions, noting that the concurrent abolition of group voting tickets would prevent the election of MLCs who fail to gain a significant primary vote.

Country electors however will be further disadvantaged if any supposed 'country' Region overlaps the current boundary of the Metropolitan Area (as recognised in Part IIA of the *Electoral Act 1907*). An admixture of outer suburban and far-flung rural and regional districts will result in the latter being outvoted, with a lack of Regional focus and broad communities of interest.

State-wide election of 36 MLCs has been canvassed in the past as an electoral option. It needs to be understood that in Western Australia this would result in a quota of 2.7%, which is considerably lower than in the two States holding state-wide Legislative Council elections.

- New South Wales has a quota of 4.54% (21 MLCs per election) and South Australia has a quota of 8.33% (11 MLCs per election).
- Both these States have staggered Legislative Council elections and 8-year terms for MLCs.
- A low quota of 2.7% is likely to result in the election of relatively unpopular single-issue Parties to the WA Legislative Council.

The three current non-metropolitan Regions of the Legislative Council maintain the distinct communities of interest that in 2005 were recognised in the *Electoral Act 1907*. With 10 ALP MLCs returned from the combined 18 Regional seats, it cannot be claimed that this electoral system has an entrenched anti-Labor bias. We would however suggest that non-metropolitan electors might have voted differently in the Legislative Council, had they been made aware of the intentions of the Western Australian Government.

**We reiterate that the current allocation of Legislative Council seats is necessary to advocate for the needs of non-metropolitan electors, who should not lose further representation.**