

Submission to WA Ministerial Expert Committee on Electoral
Reform

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Recommendations

1. Group Ticket Voting, in which a vote for a party results in preferences being automatically transferred to another party, must be abolished.
2. In the event that the WA Legislative Council retains a regional structure, malapportionment must be reduced to an insignificant level.
3. A new preferencing system should be adopted that allows voters to distribute preferences and gives them the option of doing so between parties above the line or between candidates below the line. This could take the form of the NSW system (in which voters are told they can give preferences, but not directed to) or the Senate system (in which voters are directed to give preferences, but savings provisions apply if they fail to do so). If the latter, the number of preferences required should be kept modest (as in the Senate system) and savings provisions should apply for numbering errors.
4. A system of four regions with nine members in each may strike the best balance between giving minor parties a fair shot at winning seats and avoiding impractical ballot papers, eight year terms and wins by parties that do not poll a significant vote. This system also appears preferable to the half-in-half-out systems used in NSW and SA because such systems can result in a very difficult upper house for a party that wins government after losing the previous election heavily. Swings from election to election in Western Australia have recently been large.

Author Background

I am a prominent psephologist based in Tasmania and with over 30 years' experience in scrutineering and analysing a range of state, federal and local elections. I am also the author of a donation-funded blog-form psephology, poll analysis and political comment website located at <http://kevinbonham.blogspot.com.au/> . In this capacity, and on Twitter, I have provided very detailed commentary on a range of Australian multi-member system elections, including upper houses with group ticket voting (Victoria, WA) and without (NSW, SA, Senate). I was extensively involved in the process leading to adoption of the new Senate voting system in 2016. This system was implemented to address problems at the 2013 Senate election that were similar in nature to those later encountered at the 2017 and 2021 WA elections as well as the 2014 and 2018 Victorian elections. I work professionally both as an electoral studies consultant but also and primarily in an area of science unrelated to elections. My doctorate was in the latter area, but my university studies included a Political Science major. I am writing this submission in a private capacity and am not a member of, associated with or strongly supportive of, any political party.

Group Ticket Voting

As well as the obviously ludicrous election of a member to the Legislative Council off a party primary vote in a region of just 98 votes, Group Ticket Voting has produced other unfair outcomes in recent WA elections:

- 1.** The election of two Legalise Cannabis MLCs in 2021, off vote shares of 2.63% (East Metropolitan) and 2.21% (South West). In the East Metropolitan case, Legalise Cannabis with 0.18 quotas defeated Labor (0.61 quotas over fourth quota) and Greens (0.42 quotas) by preference harvesting. In the South West case, Legalise Cannabis with 0.18 quotas defeated Labor (0.92 quotas over fourth quota), Greens (0.42 quotas) and Liberals (0.29 quotas over first quota). While Legalise Cannabis might be argued to have the support to deserve one seat on a statewide basis, it won two seats with 2% of the primary vote while the Greens won one seat with 6.4%.
- 2.** The election of the Liberal Democrats in South Metropolitan in 2017 off a primary vote of 3.7% (0.26 quotas), instead of the Greens (0.65 quotas) or One Nation (0.49 quotas)
- 3.** The election of the Shooters, Fishers and Farmers in Agricultural in 2017 off a primary vote of 5.65% (0.4 quotas), instead of One Nation (0.82 quotas). While this gave the Shooters, Fishers and Farmers representation that they approached deserving on a statewide basis, it was not a correct representation of the views of that (malapportioned) district.

Experience with the Senate system where voters choose their own preferences shows that voter preferences are diverse and that parties that are way behind other parties do not catch up, so such results do not represent the will of voters. This would apply even if voters chose to direct preferences between all parties. Parties with tiny vote shares would not catch parties with much larger vote shares irrespective of the rate of exhaust.

Not only are micro-party MLCs elected by Group Ticket Voting unrepresentative, but they are also not truly accountable. Nationally, most MPs who have won seats under Group Ticket Voting that they would not have won otherwise, have been defeated at subsequent elections. The problem is that whether they are re-elected depends on Group Ticket preference deals and luck far more than it does on their primary vote. A good example of this was seen in the 2018 Victorian election – Shooters, Fishers and Farmers MLC Daniel Young managed to more than double his vote, polling nearly 8%, but lost anyway because he was overtaken by two micro-parties that benefited from Group Ticket preference spirals.

The mechanics of Group Ticket Voting also disadvantage parties that get too many votes without reaching a quota. It is in the interests of micro-parties to trade preferences with other micro-parties who they may be able to overtake early in the count. Medium-support parties like the Greens (and in the above example the Shooters, Fishers and Farmers) are easy targets for preference snowballs by groups of micro-parties as a result.

The Western Australian version of Group Ticket Voting has been especially severe because it has provided no savings provisions for voters who choose to vote below the line, forcing

them to number every box without error if they wish to distribute their own preferences. This has, extremely unfairly, coerced voters into voting above the line, because casting a formal below the line vote is both onerous and risky. However Group Ticket Voting cannot be fixed just by adding savings provisions, as the unaccountable nature of elected MPs and the unfairness to parties that get too many votes will persist even if the number of voters using group tickets falls to 90% or so.

Group Ticket Voting is also a hazard to any electoral system that uses it because the near-100% preference flows in it tend to create tipping points early in the count, such as the infamous 2013 WA Senate example. These place elections at much greater risk of voiding if small numbers of votes are lost, ambiguous or wrongly omitted from the count.

Malapportionment

The use of rural and regional electoral regions with much smaller populations than urban electoral regions in the current WA electoral system has egregiously favoured the National Party. At the last four elections, the National Party's share of seats has been over twice its share of votes on every occasion. In all, the National Party has won 11.8% of available seats with an average primary vote of 4.4% - largely because of malapportionment, though undeserved wins on group ticket preferences (eg South-West 2021) have also sometimes played a role. By comparison Labor has won 40.3% of seats with an average primary vote of 42.4%, the Liberal Party 34% of seats with an average primary vote of 32.9% and the Greens 7.6% of seats with an average primary vote of 8.6%.

Malapportionment on such a degree is simply inexcusable as it is fundamentally undemocratic and wrong to give the votes of some voters much more weight than others. It is true that this also occurs in the Australian Senate but (i) this is no reason to allow malapportionment in other systems or to avoid an opportunity to remove it (ii) the malapportionment in the Senate has much less impact on parliamentary balance as the States are relatively similar in their voting behaviour – which is definitely not the case for WA's underpopulated Legislative Council rural regions when compared to urban regions.

This malapportionment had a significant impact on parliamentary balance in 2008 especially, as the Liberal and National Parties combined won 21 seats on a combined primary vote of 44.9% while Labor and the Greens combined won only 15 seats on a combined primary vote of 47.2%. The 2008 lower house election was very close and a fair upper house election would have returned a more evenly balanced parliament.

The main argument advanced for malapportionment is the practical difficulty of representing large areas of land. If WA is to maintain a regional system at all then this issue is better addressed by providing the representatives of larger regions with greater resources, especially with more staff who can be located around the region.

Solutions

Western Australia is fortunate in that it has not entrenched a precise regional formula and therefore the regional makeup of seats can be changed without a referendum.

Some options include:

- 1.** Retaining 6 regions of 6 seats but with boundaries reconfigured to avoid malapportionment. This system has two disadvantages. Firstly even a party with clear majority support in a region will not necessarily win a majority of seats in that region – an odd number of seats per region is preferable because of this. Secondly 6 seat-regions do not provide many opportunities for minor parties with significant support to win seats.
- 2.** Switching to 4 regions of 9 seats, one of which would be essentially the three existing non-metro regions combined (possibly with some slight adjustment of boundaries from time to time to avoid malapportionment). This would increase the chances for small parties to be represented if they could poll a significant vote share (around 5%) in one of the four regions.
- 3.** Having a single statewide electorate with 36 seats, all members elected at once. I think this would be a bad solution as parties are likely to win seats off very small vote shares (1-1.5%), perhaps simply by having catchy or confusing names aided by good ballot draws. Also ballot paper design considerations apply here (see <https://antonygreen.com.au/wa-legislative-council-reform-how-many-preferences-should-be-completed/>)
- 4.** Having a single statewide electorate but using a half-in half-out system (18 seats per election, similar to NSW). NSW experience has shown this system works well in allowing minor parties with reasonable support to win seats and be accountable to their support bases. One downside is that members are elected for eight years. There may also be ballot paper considerations such as a need to limit the number of candidates per party to less than the number of seats to be filled. Another possible disadvantage – see the following simulations - is that where a party comes to government after being heavily defeated at the previous election, it is likely to face a very hostile upper house. In the federal system this can be resolved by a double dissolution, but this is not a desirable option in a state system committed to fixed terms. A further drawback with a half-in half-out system is 8 year terms for members. A member who quits their party or switches parties may be unaccountable to voters for several years, which is so long as to not be an effective deterrent to doing so.

The problems with both half-in-half-out and a 36-seat statewide ballot could be avoided by splitting the state into two regions of 18, but this would have the problem that most of Perth and surrounds would be arbitrarily in one region with a significant part of Perth and the rest of the state arbitrarily in another. The regions would lack coherence.

Under any 36-seat system elections will now and then happen in which “right” parties and “left” parties are deadlocked at 18 seats each and a major party needs to work across the aisle with a minor party of the other “side” to pass legislation. I don’t think this is a bad thing in an upper house as it ensures that legislation is not easily passed through both houses by a government that does not have a convincing lower house mandate. I have a cautious attitude to legislation and see it as more important that upper houses be likely to obstruct bad legislation (and be accountable for doing so to the voters) than that good legislation always pass.

Simulations – 36 seats half-in-half-out vs 4x9

I provide some simulations of possible statewide outcomes under systems 4 and 2 above. It makes relatively little difference to the simulations whether preferencing is explicitly optional (as in the NSW system) or semi-optional with savings provisions (as in the Senate) because experience in both systems is that large gaps are not closed on preferences. These submissions have been quickly calculated and are not absolutely guaranteed to be error-free but should give good general indication of the properties of both systems.

36 seats half-in-half-out (quota = 1/19):

2008:

Continuing (from 2005) Labor 8 Liberal 7 National 1 Green 1 CDP 1

New: Liberal 7-8 Labor 7 Green 2 National 1 Family First 0-1

Total: Liberal 14-15 Labor 15 Green 3 National 2 CDP 1 Family First 0-1

The Liberal Party which won the lower house election extremely narrowly would be burdened by its 2005 loss and would face a very difficult upper house in which Labor and the Greens combined had a blocking majority, so the Liberals would need the support of the Greens *and* at least one conservative party to pass legislation opposed by Labor.

2013:

Continuing (from 2008): Liberal 7-8 Labor 7 Green 2 National 1 Family First 0-1

New: Liberal 9 Labor 6 Green 2 National 1

Total: Liberal 16-17 Labor 13 Green 4 National 2 Family First 0-1

There would now be a 19-17 conservative majority following the 2013 election in which the Liberals had a large win in the lower house.

2017:

Continuing (from 2013): Liberal 9 Labor 6 Green 2 National 1

New: Liberal 5 Labor 8 Green 2 National 1 One Nation 2

Total: Labor 14 Liberal 14 Green 4 National 2 One Nation 2

Labor won the 2017 election easily but would be burdened by its 2013 loss and the upper house would be deadlocked between “left” and “right” parties, meaning Labor would need the support of the Nationals or One Nation to pass legislation supported by the Greens but opposed by the Liberals. This doesn’t seem a fair reflection of the mandate given by voters in the 2017 election.

2021:

Continuing (from 2017): Liberal 5 Labor 8 Green 2 National 1 One Nation 2

New: Labor 12 Liberal 3 Green 1 National 1 Legalise Cannabis 1

Total: Labor 20 Liberal 8 Green 3 National 2 One Nation 2 Legalise Cannabis 1

After one decisive and one enormous Lower House win, Labor would have an Upper House majority.

4x9 system all in all out (quota=1/10)

For simplicity of calculation I have simply combined votes for the three rural/regional regions, although the actual system used might vary from this slightly. It should be noted that "Others" represents a combination of parties of different perspectives, whose voters preference bigger parties more than each other, so the apparent disproportional zero seat result for others is not evidence that the system is unfair to them. If minor parties have strong support in a given region they will win seats and the Nationals result in the simulations persistently shows this.

2008:

	ALP	Lib	Nat	Grn	Others
Vote %	36.1	39.6	5.3	11.1	7.9
E Met	4	4		1	
N Met	3	5		1	
S Met	4	4		1	
Reg/Rural	3	3	2	1	
TOTAL	14	16	2	4	0

The lower house election was extremely close and the upper house result would reflect this by providing an evenly split parliament between left and right elements, forcing the Liberals to work with the Greens to pass legislation opposed by Labor. The left and right "sides" would have 18 seats each off very similar shares of the vote. However this would still be easier for the incoming government than the half-in-half-out model in that at least the Greens' support would alone be sufficient to pass legislation.

2013:

	ALP	Lib	Nat	Grn	Others
Vote %	32.5	47.6	4.9	8.2	6.8
E Met	4	4		1	
N Met	3	5		1	
S Met	3	5		1	
Reg/Rural	2	4	2	1	
TOTAL	12	18	2	4	0

The Liberals, who won the lower house election easily, would be able to pass legislation supported by the Nationals. They would be able to block any inquiries or other measures proposed by all other parties.

2017:

	ALP	Lib	Nat	Grn	PHON	Others
Vote %	40.4	26.7	4.4	8.6	8.2	11.7
E Met	5	2		1	1	
N Met	4	3		1	1	
S Met	4-5	2-3		1	1	
Reg/Rural	3	2	2	1	1	
TOTAL	16-7	9-10	2	4	4	0

Labor won the 2017 lower house comfortably. They would be able to pass legislation supported by the Greens, and would also have had One Nation or perhaps the Nationals as an alternative pathway for legislation opposed by the Greens. Note that while the vote for Others is quite high without any winning a seat, the highest individual component is the Shooters, Fishers and Farmers (2.4%), so there is no specific micro-party that clearly deserves a seat. This party would have gone close to winning a regional/rural seat instead of the Greens.

2021:

	ALP	Lib	Nat	Grn	Others
Vote %	60.34	17.7	2.8	6.4	12.8
E Met	7	1		1	
N Met	6	2		1	
S Met	6	2		1	
Reg/Rural	5	2	1	1	
TOTAL	24	7	1	4	0

Labor's vote clearly merits an upper house majority and they would get it. The Greens are somewhat over-represented though in part this reflects votes being taken away from other parties by smaller left parties, allowing the Greens to often win seats with around half a quota. In this situation the Nationals still win a seat with 2.8% statewide because their vote is concentrated in the Regional/Rural region, so it is possible for minor parties with relatively low statewide vote shares to succeed on merit. Again the Others vote is scattered with no party exceeding 2% or having a localised enough vote to merit a seat. Minor parties could respond to this by merging in search of greater local vote shares and might then be more successful.

I suggest that overall the 4x9 system is somewhat preferable to the half-in-half-out statewide electorate system. I would be available to consider other alternatives if desired.