



# **Submission on the Electoral System for the Legislative Council**

to the The Ministerial Expert Committee  
on Electoral Reform

*on behalf of The Nationals WA*

**THE NATIONALS**  
*for Regional WA*



Ministerial Expert Committee on Electoral Reform  
11th Floor, Dumas House  
2 Havelock Street  
WEST PERTH WA 6005

Dear Committee Members

It is our pleasure to submit our Submission on the electoral system for the Legislative Council.

Although The Nationals appreciate the opportunity to provide a submission in response to the Committee's invitation for recommendations regarding reforming the Legislative Council, we must state for the record how disappointed and concerned we are in the haste of the process and the way it has so far been conducted by the McGowan Government.

Please be advised that our Submission provides detailed background information and recommendations on the following:

- (1) supporting those living in regional and remote Western Australia who have an expectation and a democratic right to be able to reasonably access their Members of Parliament - and therefore resist moving to a model which will not achieve electoral equality for our regional and remote communities.*
- (2) supporting the retention of the current model for the Legislative Council that consists of 6 regions electing 6 Members which will provide "electoral equality" for the people living in our regional and remote communities.*
- (3) supporting the removal of Group Voting Tickets and replacing it with an optional preferential system of voting, similar to the Senate voting system that was introduced at the 2016 Federal Election - requiring voters to allocate six or more preferences above the line or twelve or more below the line on the ballot paper.*

I trust this is of assistance.

Yours sincerely

Jack Mallick  
Acting State Director





## INTRODUCTION

This Submission is made in response to the Ministerial Expert Committee on Electoral Reform's invitation to the public to make submissions on the electoral system for the Legislative Council.

As the only political Party dedicated solely to representing the people living in regional Western Australia we are deeply concerned with the manner and speed with which this Review has been initiated, and the serious consequences of poorly-considered reform for marginalised communities in our regions.

In the lead up to and during the recent Western Australian State Election, Premier Mark McGowan and his Labor State Government, were repeatedly asked whether they would pursue electoral reform if they were successful in being returned - specifically, one-vote-one-value in the Legislative Council.

Time and time again, the Premier and his Ministers claimed that such reforms were not on their agenda. In fact, on Tuesday, 9 March 2021, the Premier went so far as to say *"It's not on our agenda – I've answered this question many times. ...this is just another smokescreen by the Liberals and Nationals."* [Premier, 9th March 2021, ABC News]

However, the very next day after the new 41st Parliament was sworn in on 29 April 2021, the Attorney General announced that large-scale electoral reform would be pursued – and that former Governor Malcolm McCusker AC CVO QC would lead a panel of four members appointed by – and to help - the McGowan Government "modernise the outdated Electoral Act 1907".

The Nationals are not opposed to sensible reforms to modernise the Electoral Act 1907 (the Act). However, the Terms of Reference go on to task the Committee with considering:

**(1) How electoral equality might be achieved for all citizens entitled to vote for the Legislative Council;**

AND

**(2) the distribution of preferences in the Legislative Council's proportional representation system.**

In positioning both issues – apportionment and preferential voting systems – in this way the government has created a false equivalence.

Of the two matters, the second can be dealt with quickly, with negligible concern around disenfranchisement and the changes required to prevent preference harvesting to elect Members to the Parliament who have only accrued a handful of primary votes. The election of the Daylight Savings Party representative at the March 2021 State Election is a compelling reason to support sensible reform on this front.

To this end, The Nationals support the removal of Group Voting Tickets and replacing it with something similar to the Senate voting system that was introduced at the 2016 Federal Election - requiring voters to allocate six or more preferences above the line or twelve or more below the line on the ballot paper.

The bulk of our submission, however, will be concerned with the apportionment question, carrying as it does profound implications for the future of regional representation.

As we shall argue, electoral equality between regions deserves consideration alongside parity according to numbers. This principle was recognised by the process that delivered our current system of apportionment and is reflected in many systems around the world.

Second, we will demonstrate that no matter how apportionment is determined, the current regional model for Legislative Council elections delivers superior results in terms of regional representation.

That is why The Nationals reject the assertion by the McGowan Government and the Attorney General that some weighting of regional votes in the Legislative Council 'fails the democratic fairness test'.

### THE EXPERT ADVISORY PANEL

In announcing the Ministerial Expert Committee to advise the McGowan Government on electoral reform, the Attorney General hand-picked three city-based academic panel members who have long argued for large-scale electoral reform of the Legislative Council:

- ***Professor John Phillimore, Curtin University***
- ***Professor Sarah Murray, University of Western Australia***
- ***Associate Professor Martin Drum, University of Notre Dame Australia***

These three panel members - joining together with eight other city-based university academics – had already commenced a public campaign in February 2019, targeting sitting Members of Parliament and calling for an “urgent need of reform” of the Legislative Council.

In their written correspondence to Members, they claim that “the Legislative Council has the most extreme malapportionment of any State or Territory house of parliament in Australia” and called for a parliamentary inquiry into the WA Electoral Act 1907 – as “anything less is unacceptable for Western Australians”.

In light of this record of their personal standing on electoral reform, The Nationals respectfully request the panel members give due consideration to the arguments which are presented by ours and other submissions for why vote weighing and electoral equality between regions deserves consideration alongside parity according to numbers, particularly as it does carry profound implications for the future of regional representation.

### HOW ELECTORAL EQUALITY BETWEEN REGIONS SHOULD BE DEFINED AS PART OF THIS PROCESS TO HELP ASSIST THOSE MOST VULNERABLE IN OUR REGIONAL COMMUNITIES

As the concept of electoral equality has not been defined under the Terms of Reference for the Ministerial Expert Committee on Electoral Reform, The Nationals submit that equality between regions is every bit as important as strict numerical parity. In fact, when numbers are all that count, electoral outcomes for regional people are anything but equal.

Disadvantage in regional WA is real and significant. Country motorists pay more for fuel and have a lack of subsidised public transport, exorbitant regional airfares and inadequate and unsafe road infrastructure. Regional people are also likely to achieve a lesser education standard, lower socio-economic outcomes and lower life expectancy than their city counterparts.

Health is also a significant determinant of quality of life yet there is very limited access to priority health services in regional and remote areas, necessitating exorbitant costs for regional patients to visit specialists in Perth. In addition, our regional communities have been dramatically impacted over recent years with drought, severe bushfires and more recently COVID-19 – which has decimated local tourism which has been the lifeblood for so many regional communities.

At the same time, our State relies on the industry, communities, and people in regional Western Australia for the wealth that underpins our economy, which is why regional Western Australia is so different and needs specialist representation. It would also seem counterproductive to pursue changes to satisfy a mathematical academic notion of equality at the expense of that representation.

Therefore, the key factors that should determine how electoral equality is best achieved for the Legislative Council is unfortunately not black and

white.

Should it be based simply on the numbers of electors? Or should other factors be included to help provide balance and equity to reflect the tyranny of distance between these rural and remote communities and their capital city, the local knowledge of regional-based representatives, the critically important economic contribution to our State made by these communities and the fact that 78.4% of our local Councils – or 109 – are currently located within the three regional seats of the Legislative Council.

What should also be considered when defining electoral equality for the Legislative Council, is the fact that its role differs to that of the Legislative Assembly - where government is actually formed, and finance is provided for government operations.

The Legislative Council is often called the house of review because of its function of monitoring and reviewing legislation and scrutinising the budget and administration of government departments and other public agencies. It also has an important role in gathering information and publicising issues by using processes such as parliamentary committees, question time and other procedures - such as moving motions, conducting urgency debates, introducing bills and presenting petitions on behalf of members of the public.

The Nationals believe that one vote one value has been achieved for the Legislative Assembly – where Government is actually formed - with the passage of the Constitution and Electoral Amendment Act 2005. The Bill recognised the need to compensate what are considered to be large districts in the mining and pastoral regions by a weighting mechanism known as the Large District Allowance (LDA).

However, if a 'one vote one value' city-centric view is adopted for the Legislative Council – which would differ to the one currently being used for the Legislative Assembly – then the Legislative Council would not be able to effectively undertake its roles

and duties as defined by the Parliament itself, like gathering information and publicising critically important regional based issues.

The detrimental impact of the proposed electoral reform of the Legislative Council – whether it be moving to a whole of state electorate or a region-based model based on 'one vote one value' – will also likely be another nail in the coffin for these regional communities, with further diluted country representation and severely limiting direct access to local Members for electors.

Unfortunately, neither the Terms of Reference or the Discussion Paper provided by the Ministerial Expert Committee on Electoral Reform provides any detail on whether our electoral system ought to recognise and respond to the challenges of representing regional and remote Western Australia.

We all know that Western Australia is unique – and therefore, by extension, so is its Parliament. The three metropolitan regions consist of only 7,539km<sup>2</sup> compared to the total land mass of 2,526,155km<sup>2</sup> of the combined Agricultural, Mining and Pastoral, and South West Regions. Therefore, we need a specialist system for regional representation to provide electoral equality for our regional and remote communities.

In April 2005, then Professor Greg Craven, Executive Director of The John Curtin Institute of Public Policy and Professor of Government and Constitutional Law made a fair comment on the One Vote One Value Bill:

***"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."***

In the same vein, Dr Harry Phillips, Parliamentary Fellow, Adjunct Professor, Edith Cowan University and Curtin University of Technology said in April 2005:

***"In Western Australia, the interpretations of the Canadian Courts have tended to be used as support for the 'one vote one value' argument. However, the Canadian Courts, have given thrust to a broader concept of 'effective representation'. The latter provides scope for deviation (sometimes substantial) from voter parity. If one sought to do so I think there would be scope to argue that in many settings, other factors (such as geography), have to be considered for effective representation to prevail."***

Therefore, it is the view of The Nationals that those living in regional and remote Western Australia have an expectation - and a democratic right - to be able to reasonably access their Members of Parliament. Further, moving away from the current status quo model based on a city centric view of 'one vote one value', will not achieve electoral equality for our regional and remote communities.

### **ELECTORAL EQUALITY IN UPPER HOUSES OF PARLIAMENT – A GLOBAL PERSPECTIVE**

The Discussion Paper makes a significant point of the uneven weighting between metropolitan and regional votes in the Legislative Council, citing the deterioration of this measure from the 2.8:1 deemed appropriate by Parliament in 1989 to 3.1:1 in 2021. Putting aside the question of whether this is indeed a serious deterioration, the Discussion Paper fails to make mention of the common nature of this kind of disparity in upper house representation in bicameral systems the world over.

It makes passing reference to uneven apportionment for elections to the Federal Senate, dismissing these as "common to Federations", as

if such weighting is acceptable when it aligns with boundaries drawn in 19th century London but not when it accounts for geographic disadvantages in today's Western Australia.

For the record, the equivalent weighting for Tasmanian voters as compared to NSW voters at the last election was 13.7, making any disparities in our own system seem fairly trivial by comparison.

The US Senate also apportions two Senators to each state, regardless of population, resulting in weightings of more than 60 (Wyoming vs California, voter registration at 2020 election).

The list of states which utilise some form of uneven apportionment in their upper houses is long, and includes both federal states such as Brazil and unitary states such as Spain. In fact, outside of Australia, directly and proportionally elected upper houses are relatively scarce, with many bicameral parliaments utilising indirect elections or appointments as a counterweight to democratically elected lower houses. Even then, as in the case of countries like Canada and Germany, smaller regions are afforded disproportionate influence in the Upper House.

The point of this discussion is to demonstrate that in a global context, Western Australia's Legislative Council is already relatively equal, in terms of numerical parity, whilst still recognising that true equality should also account for disadvantage and access to representatives.

Regional representation is essential to addressing regional issues such as drought, cost of groceries and essentials, health and education outcomes, serious injuries and deaths on our roads, cost of transportation, access to reliable telecommunications, pest control, youth unemployment, social isolation and suicide - that unfortunately affects regional communities in much greater numbers than in metropolitan areas.

Therefore, any plan to adopt an electorate model for



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the Legislative Council in Western Australia based on purely mathematical considerations, will do nothing short of further disenfranchising our regional communities and their people.

This is clearly evident when looking at both the South Australia and New South Wales Legislative Councils, which the Ministerial Expert Committee on Electoral Reform have included in their Discussion Paper as possible models to consider.

Both Legislative Councils in these two states, have all the offices of their Members located at Parliament House in their respective capital cities – 22 Members in South Australia and 42 in New South Wales. The only exception is The Nationals Hon. Sam Faraway MLC who bases himself at a self-funded office in the regional NSW city of Bathurst when Parliament is not sitting. That's 98.5% of Legislative Council Members being based

in the capital cities of Adelaide and Sydney!

Surely these are not modelling that offer “electoral equality” for the people in our regional and remote communities?

Although the Australian Senate is classified as a region-based model (as each state and territory is classified as a region), each state and territory is actually a whole of state electorate in isolation. Therefore, when looking at the Senate in Western Australia, South Australia, Victoria or New South Wales, we again see a very similar outcome to what has occurred in both the Legislative Councils of South Australia and New South Wales. It shows that all but one of their Senators in each of those states – or 91.7% - are based in metropolitan areas - isolating and removing direct access to regional communities and their people.

### WESTERN AUSTRALIA:

SENATOR			LOCATION			
Senator	Brockman	William	South Perth	WA	6151	Metropolitan Perth
Senator the Hon	Cash	Michaelia	West Perth	WA	6005	Metropolitan Perth
Senator	Dodson	Patrick	Broome	WA	6725	Regional WA
Senator	Lines	Susan	West Perth	WA	6005	Metropolitan Perth
Senator	O'Sullivan	Matthew	West Perth	WA	6872	Metropolitan Perth
Senator	Pratt	Louise	Belmont	WA	6104	Metropolitan Perth
Senator the Hon	Reynolds	Linda	Rivervale	WA	6103	Metropolitan Perth
Senator	Siewert	Rachel	Perth	WA	6000	Metropolitan Perth
Senator	Small	Benjamin	Perth	WA	6000	Metropolitan Perth
Senator	Smith	Dean	Greenwood	WA	6024	Metropolitan Perth
Senator	Steele-John	Jordon	Perth	WA	6000	Metropolitan Perth
Senator	Sterle	Glenn	Booragoon	WA	6154	Metropolitan Perth



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## VICTORIA:

SENATOR			LOCATION			
Senator the Hon	Carr	Kim	Carlton South	VIC	3053	Metropolitan
Senator	Ciccone	Raffaele	Blackburn	VIC	3130	Metropolitan
Senator the Hon	Henderson	Sarah	Geelong	VIC	3220	Metropolitan
Senator the Hon	Hume	Jane	Richmond	VIC	3121	Metropolitan
Senator	Kitching	Kimberley	Essendon Fields	VIC	3041	Metropolitan
Senator the Hon	McKenzie	Bridget	Wodonga	VIC	3690	Regional VIC
Senator	Paterson	James	South Melbourne	VIC	3205	Metropolitan
Senator	Rice	Janet	Brunswick East	VIC	3057	Metropolitan
Senator the Hon	Ryan	Scott	East Melbourne	VIC	3002	Metropolitan
Senator	Thorpe	Lidia	East Melbourne	VIC	3002	Metropolitan
Senator	Van	David	Cheltenham	VIC	3192	Metropolitan
Senator	Walsh	Jess	Brunswick East	VIC	3057	Metropolitan

## NEW SOUTH WALES:

SENATOR			LOCATION			
Senator	Ayres	Timothy	Sydney	NSW	2000	Metropolitan
Senator	Bragg	Andrew	Sydney	NSW	2000	Metropolitan
Senator	Davey	Perin	Deniliquin	NSW	2710	Regional NSW
Senator	Faruqi	Mehreen	Surry Hills	NSW	2010	Metropolitan
Senator the Hon	Fierravanti-Wells	Concetta	Wollongong	NSW	2500	Metropolitan
Senator	Hughes	Hollie	Sydney	NSW	2000	Metropolitan
Senator the Hon	Keneally	Kristina	Sydney	NSW	2000	Metropolitan
Senator	McAllister	Jennifer	Drummoyne	NSW	2047	Metropolitan
Senator	Molan	Andrew	Queanbeyan	NSW	2620	Metropolitan
Senator	O'Neill	Deborah	Erina	NSW	2250	Metropolitan
Senator the Hon	Payne	Marise	Parramatta	NSW	2150	Metropolitan
Senator	Sheldon	Anthony	Drummoyne	NSW	2047	Metropolitan

As can clearly be seen by looking at these previous examples of one vote one value, tipping the current balance with a massive increase of metropolitan based representatives at the expense of regional representation will only make it harder for the people in our regional communities to elevate their important issues in the Parliament and with Government – and it will only widen the gap that currently exists between our regional and metropolitan populations.

Real gaps that currently exist like equitable access to quality health care, education, aged care, the cost of travel in our regions and the fact that many of our communities have substandard telecommunications infrastructure or internet access. It is also why any argument that every elector can access their Member via a virtual online meeting or telephone call is also incorrect and must be discounted.

How could reducing the number of representatives these regional and remote communities have to advocate and raise their important issues to, help to reduce these gaps?

As detailed earlier, given our State relies on the industry, communities, and people in regional Western Australia for the wealth that underpins our economy, it would also seem counterproductive to pursue changes to satisfy a mathematical academic notion of numerical equality at their expense.

### **REGION BASED MODEL – WHY IT ASSISTS IN CONNECTING REGIONAL COMMUNITIES, PROVIDES DIRECT SUPPORT, ACCESS AND REPRESENTATION - AND THEREFORE MUST BE RETAINED**

Although not deemed to be perfect by some city-based academics and politicians, the current regional based model for the Legislative Council provides the best opportunity for ALL Western Australians to receive equal representation and access to their local Members – not just to those living in metropolitan Perth.

It also helps to provide balance and equity for our regional and remote areas by reducing the tyranny of distance to their local regional-based representatives - and the 78.4% of our local governments - or 109 Councils – that are currently located within the three regional seats of the Legislative Council.

As detailed earlier, the role of the Legislative Council differs to that of the Legislative Assembly - and is often called the house of review because of its function of monitoring and reviewing legislation and scrutinising the budget and administration of government departments and other public agencies. It also has an important role in gathering information and publicising issues by using processes such as parliamentary committees, question time and other procedures - such as moving motions, conducting urgency debates, introducing bills and presenting petitions on behalf of members of the public.

Therefore, if a 'one vote one value' view is adopted for the Legislative Council – which would differ to the one currently being used for the Legislative Assembly to compensate what are considered to be large districts in the mining and pastoral regions by a weighting mechanism known LDA – then the Legislative Council would not be able to effectively undertake its roles and duties as defined by the Parliament itself, like gathering information and publicising critically important regional based issues.

As we know, the Legislative Council is currently made up of 6 regions which elect 6 Members, with Members currently working from their electorate offices in Albany, Bindoon, Broome, Bunbury, Eaton, Geraldton, Kalgoorlie, Karratha, Margaret River, Northam and South Hedland (see map on page 13).

It should also be noted that this map does not yet include the regional office locations of five newly elected Members of the Legislative Council, who are currently in the process of establishing their offices in rural and regional WA.

As can clearly be seen between the examples



## REGIONAL OFFICE LOCATIONS FOR THE MEMBERS OF THE LEGISLATIVE COUNCIL



above, it is only the current region-based model that will help to ensure that our regional and remote communities will have better access to local representatives to assist and help them advocate on important issues.

Recent important issues such as the community fight to keep the Moora Residential College and the iconic Schools of the Air (SOTA) open after the Minister for Education in 2017 decided to:

- ***Close residential colleges that were underperforming in the past two financial years, including Moora Residential College.***
- ***Privatise assets such as camp schools.***
- ***Close SOTA and merge resources with the School of Isolated and Distance Education (SIDE). (There are five SOTA and teachers don't have a single learning program but can create individualised curricula depending on parents availability. SIDE focuses on modules and are modified as required. SOTA is considered the better model, but it is more resource intensive).***
- ***Fund regional school buses out of Transport's budget within Royalties for Regions – despite Royalties for Regions being about regional development opportunities.***
- ***After a sustained community campaign and petitions with assistance from their regional-based Members of the Legislative Council, the Minister reversed closing residential colleges and closing SOTA.***

Or when in 2017, Premier McGowan publicly stated budget repair was his priority and floated the idea of a gold resources tax by increasing the royalty rate from 2.5% to 3.75%.

Again, this proposal was abandoned after a sustained regional community campaign assisted by regional-based Members.

Or the reversal of the funding cuts for both the Community Resource Centres (CRCs) and the Laverton Hospital. And there are many, many more examples of regional-based Members of the Legislative Council working closely with, and advocating for, their local communities.

The current region-model is also critically important to ensure a balanced representation of metropolitan and regional Members on Legislative Council Select Committees – as the Legislative Council has the power to move Motions on Notice. These Motions on Notice, if passed, compel the House to act and until recently, was the best way to form Select Committees on certain issues.

How could we get balanced representation on a Select Committee, if we had a Legislative Council that had been formed from a one vote one value model that would clearly elect more city-based Members, who have no knowledge or experience in dealing with critically important regional based issues?

Important Select Committees like:

- ***Management teams within the Department of Education and Training (2006)***
- ***End of Life Choices (2018)***
- ***Public Obstetric Services (2007)***
- ***Elder Abuse (2018)***
- ***Local Government (2020)***
- ***Pinjin Station (2020) – focus on mining leases and allegations of intimidation, abuse and racial discrimination***
- ***Appropriateness of Powers and Penalties for Breaches of Parliamentary Privilege and Contempts of Parliament (2008)***
- ***Finance brokerage in Western Australia (2000)***
- ***The RSPCA and its operations (2016)***
- ***WA Police and its operations (1996)***

As previously detailed, there are also real gaps that currently exist between metropolitan and rural areas like equitable access to quality health care, education, aged care, the cost of travel in our regions and the fact that many of our communities have substandard telecommunications infrastructure or internet access.

It is therefore critically important for the communities in our rural and remote regions to – at a minimum – maintain their current access to their local representatives so as to help address the gaps they are currently facing and to assist and help them advocate on important issues.

### CONCLUSION

Although The Nationals appreciate the opportunity to provide a submission in response to the Ministerial Expert Committee on Electoral Reform's invitation for recommendations regarding reforming the Legislative Council, we must state for the record how disappointed and concerned we are in the haste of the process and the way it has so far been conducted by the McGowan Government.

Not only was it just a single day into the new term of the Government when the Attorney General announced their previously denied plans to reform the Legislative Council – but allowing only eight weeks for the Committee to consult with the public and then provide recommendations to the Government smacks of political arrogance.

Although not deemed to be perfect by some city-based academics and politicians, the current region-based model for the Legislative Council, provides the best opportunity for ALL Western Australians to receive equal representation and access to their Members – not just to those living in metropolitan Perth.

It also helps to provide balance and equity for our regional and remote areas by reducing the tyranny of distance to their local regional-based representatives – and the 78.4% of our local governments – or 109 Councils – that are currently located within the three regional seats of the Legislative Council.

Any plan to reduce the current level of regional

representation in the Legislative Council in Western Australia, will do nothing short of further disenfranchising our regional communities and their people.

Tipping this balance will only make it harder for the people in our regional communities to elevate their important issues in the Parliament and with Government – and it will only widen the gap that currently exists between our regional and metropolitan populations.

Regional representation is essential to addressing regional issues such as drought and natural disasters, cost of groceries and essentials, health and education outcomes, serious injuries and deaths on our roads, cost of transportation, access to reliable telecommunications, pest control, youth unemployment, social isolation and suicide – that unfortunately affects regional communities in much greater numbers than in metropolitan areas.

***Therefore, The Nationals strongly urge the Ministerial Expert Committee on Electoral Reform to:***

- (1) support the retention of the current model for the Legislative Council that consists of 6 regions electing 6 Members which will provide “electoral equality” for the people living in our regional and remote communities.***
- (2) support those living in regional and remote Western Australia who have an expectation and a democratic right to be able to reasonably access their Members of Parliament – and therefore resist moving to a model which will not achieve electoral equality for our regional and remote communities.***
- (3) support the removal of Group Voting Tickets and replacing it with an optional preferential system of voting, similar to the Senate voting system that was introduced at the 2016 Federal Election – requiring voters to allocate six or more preferences above the line or twelve or more below the line on the ballot paper.***





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