

Submission to Western Australia's 2021 Ministerial Expert Committee on electoral reform for its Legislative Council, by Geoffrey Goode OAM

The [Terms of Reference](#) for this Committee are as follows:

THE GOVERNMENT NOW ASKS THE COMMITTEE TO REVIEW THE ELECTORAL SYSTEM FOR THE LEGISLATIVE COUNCIL AND PROVIDE:

Recommendations as to how electoral equality might be achieved for all citizens entitled to vote for the Legislative Council; AND Recommendations for the distribution of preferences in the Legislative Council's proportional representation system.

The Committee's recommendations should include each of the three aspects detailed below.

1. Need to discontinue the *above-the-line* option on the ballot paper

Group Voting Tickets provide, in the *above-the-line* option on the ballot paper, for the transfer of preferences whether from a surplus, or from an exclusion, using a zombie version of democracy that divides voters into two classes, those that vote *above-the-line* and thus take the easy path where only a single mark is required on the ballot paper, and those that prefer to explicitly mark the individual candidates in the order they most prefer - even though it is unnecessarily made to be more arduous and error-prone, - and therefore vote *below-the-line*.

The fact that a large majority of voters choose to vote *above-the-line* rather than *below-the-line* is hardly surprising given how much easier *above-the-line* voting has been made by the unnecessary provision for virtual full marking of all preferences if a *below-the-line* vote is cast.

The Committee's goal of 'electoral equality' would be served by discontinuing the provision for those two classes of voter, and de-cluttering the ballot paper by discontinuing *above-the-line* voting, thus resulting in only one class of voter, so that source of inequality would be thereby removed.

Each *above-the-line* voter is deemed, by means of a single mark, to concur with a long, intricate preference order predetermined and published, but highly unlikely to be deliberated upon by many voters given that the system provides voters with no other information about the numerous candidates other than their name and the name of their party.

Above-the-line voting ingeniously and effectively subverts the important requirement in [Section 73\(2\)\(c\)](#) of WA's *Constitution Act 1889* that all MPs must be directly chosen by the people. The use of GVTs resulted, in the 2021 elections for the Legislative Council, in over a quarter of Western Australian MLCs being elected with 98 or fewer first preference votes. Of that group of ten MLCs, the one with the largest number of first preference votes was Mr Wilson Tucker, of the Daylight Saving Party, whose election with so few first preference votes was the only one of those ten MLCs mentioned in the above Terms of Reference. The above reform could best be achieved by using the [Hare-Clark](#) electoral system of Tasmania and the Australian Capital Territory. Optional preferential voting should be introduced.

2. Need to discontinue the malapportionment of WA's Legislative Regions

WA's Regions are markedly malapportioned, and that constitutes a major reason why electors are not given even close to equal influence in the election of its MLCs. Such malapportionment no longer exists in any other State or Territory jurisdiction for any chamber. A similar percentage tolerance in enrolments should apply as already applies for the Legislative Assembly. That has been efficiently achieved in Victoria by requiring that each Region is coterminous with the prescribed number of Assembly Districts.

3. Need for all Regions to elect the same number of MLCs, with that number being an odd number

This need works towards the Committee's goal of electoral equality, by ensuring electoral parity between all MLCs and Regions. Having the same number of MLCs for each Region results in all MLCs requiring the same percentage quota of votes for their election, and close to the same number of votes with small variations due largely to different levels of turnout among the Regions.

Each Region should have an odd number of MLCs so that a bare absolute majority of voters in a Region elects an absolute majority of MLCs in that Region. With an even number of MLCs, it is possible for an absolute majority of voters in a Region to fail to elect an absolute majority of MLCs in that Region.

ADDITIONAL CONSIDERATIONS:

A. Avoidance of suggestions for Exclusionary Thresholds:

[Exclusionary Thresholds](#), which are common in PR systems that use any form of Party List were advocated for Senate elections by the former NSW senator, Helen Coonan, but were fortunately not adopted. Just as fortunately, they would not be constitutional under [Section 73\(2\)\(c\)](#) of WA's *Constitution Act 1889*, which requires that all MPs must be directly chosen by the people.

At least one of the submissions to the Committee has supported use, in whole or in part, of a 'Mixed Member Proportional' system as used in New Zealand and in Germany. Fortunately that system's use of Party Lists would also not meet the above constitutional requirement for [direct election](#).

B. Maintenance of the existing good features of WA's Legislative Council electoral system:

The Committee should recognize and support the good features of WA's system, which include –

- WA's being the only mainland Australian Upper House electoral system so far that provides for the filling of casual vacancies by direct election by the voters. That quality is the result of [Section 73\(2\)\(c\)](#) of WA's *Constitution Act 1889*, under which all MPs must be directly chosen by the people.
- WA's being one of the two mainland Australian States whose Upper House has separate regional electoral districts, represented by the current six Regions, rather than the whole State being a single Region. The maintenance of separate Regions with multi-member Regions will ensure a diversity of representation within each Region owing to the PR-STV electoral system, and will also ensure a focus by a Region's MLCs on the issues and electors of each Region. The single electorate that applies in NSW and South Australia unfortunately excessively dissipates focus on specific parts of a large State, and that would be magnified if it were to be applied in Australia's largest State in area.
- WA's having a more accurate and voter-empowering set of rules for transferring surplus votes, known as the [Weighted Inclusive Gregory Fractional Transfer](#), than any other Australian jurisdiction.

Entrenchment of provisions vulnerable to opportunistic alteration:

WA has been well-served by the above-mentioned [Section 73\(2\)\(c\)](#) of WA's *Constitution Act 1889*, under which all MPs must be directly chosen by the people.

The Committee's purpose would be well-served by recommending entrenchment of explicit marking of preferences and partial optional preferential voting as applies in the [Proportional Representation \(Hare-Clark\) Entrenchment Act 1994](#) of the Australian Capital Territory, and the existence of a prescribed number of Regions comprising a prescribed uniform number of coterminous Assembly Districts, and each electing the same prescribed odd number of MLCs as applies in Victoria's [Constitution Act 1975](#).

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