

By Email

To:	Ministerial Commission on Electoral Reform
From:	Dr Bernard Glasson
Subject:	Electoral System for the Legislative Assembly
Date:	May 31, 2021

Preamble

To be clear from the outset. I fully support the Westminster style of government at both state and federal level. And I am not anti political parties. But I believe their place and role is in the lower, legislative forming houses of our parliament.

My major concern is that, over time, there have been changes in voting procedures for both State and Federal Upper Houses which encourage citizens to vote for parties rather than individuals. Evidence your committee's terms of reference. Between the words 'Whereas' and 'Members', 'political party's' are referred to four times while 'citizens' are referred to once. And at the federal level, the Senate voting procedure is described on the Federal Government's web site in party political terms (see Attachment 1).

With that said let me:

- a. Briefly make comment on your first area of review 'electoral equality'.
- b. Suggest voting systems which to a greater or lesser extent both simplify the voting procedure for the Upper House and reduce or eliminate the possibility of political party 'gaming'.
- c. Make a final suggestion that you may consider taking back to the government for consideration.

Voting equality

The terms of reference do not define the term 'voting equality' but very specifically define 'citizens entitled to vote for the Legislative Council'. My reading of those terms is that you are being asked to recommend ways to remove malapportionment – please don't, for these reasons:

- a. In houses of review malapportionment serves at least four purposes. It
 - i. recognises that the 'wealth generation per capita' ratio per region may vary significantly.
 - ii. acknowledges the historically past contribution rural areas have made to the state's development.
 - iii. should ensure the Legislation brought forward for upper house review does not unfairly disadvantage one or more regions in favour of others, or inadvertently jeopardise a present or future economic or social benefit to the state.
 - iv. stops unjustifiable 'robbing Peter to pay Paul' like legislation getting up.
- b. Today's perceived problem with malapportionment is a result of the 'party-centric' electoral voting system for the Upper House which leads to voting on party lines. If that system is changed to become more 'voter-centric', the House should return to its intended purpose with its elected members voting in a way that serves the best interests of their constituents.

RecommendationsLegislative Council.....(voting) system

The current system for electing members to the WA Legislative Council is fundamentally flawed due to the undue influence of political parties over its formation and structure. A new system for electing its representatives is needed to return the Upper House to its intended purpose, namely as a house of review for proposals put forward by the Lower House. For that to happen the new system must be ‘voter-centric’ rather than ‘party-centric’.

I suggest four alternatives for your consideration that should achieve this to a greater or lesser extent. They are listed below from most to least ‘voter-centric’. The rationale and/or elaboration for each is contained in Attachment 2.

1. First Passed the Post

- a. The *ballot paper* lists the names of all candidates, with their political affiliation or independence noted. The order of candidates being determined by random draw.
- b. The *electors* mark six or more candidate’s boxes to indicate their support for that candidate to represent their interests in the House. To be valid the elector must mark a minimum of six ‘boxes’.
- c. *Declaration* – the six candidates who poll the most votes are declared elected. If a casual vacancy occurs, the position is offered to the 7th then 8th (and so on) preferred candidate until the position is filled.

2. Below the line only

- a. The *ballot paper* lists the names of all candidates, with their political affiliation or independence noted. The order of candidates being determined by random draw. The ‘above the line’ (ATL) option is removed.
- b. The *electors* preferentially vote for six or more candidates to indicate their support for that candidate to represent their interests in the House. To be valid the elector must number a minimum of six boxes, 1 to 6, with their vote considered exhausted after their last preference is recorded.
- c. *Declaration* – the quota system of vote counting remains in place as it is today, but if a casual vacancy occurs, the position is offered to the 7th then 8th (and so on) preferred candidate until the position is filled.

3. Restricted Above the Line

- a. The *ballot paper* layout or appearance remains much as it is under the present system with these changes:
 - i. ATL parties register and publicise one group voting ticket (GVT) of six candidates in preferential order per region, with no party ‘groups’.
 - ii. The names of all ‘below the line’ (BTL) candidates, with their political affiliation or independence noted, will be listed in an order determined by random draw.
- b. *Electors* voting ATL would be required to mark one, and only one, party’s ‘box’. BTL voters preferentially vote for six or more candidates to indicate their support for that candidate to represent their interests in the house. To be valid the elector must mark a minimum of six ‘boxes’ 1 to 6, with their vote considered exhausted after their last preference is recorded.

- c. *Declaration* –The quota system of vote counting remains in place as it is today. If an ATL voter numbers several party boxes preferentially (i.e., 1, 2, 3 etc) only the GVT of the party nominated ‘1’ would be counted. If an elector voted above and below the line, the BTL preferences, if valid, would take precedence. If a casual vacancy occurs, the position is offered to the 7th then 8th (and so on) preferred candidate until the position is filled.

4 *A modified ‘Senate’ system*

Adopt the current Federal Senate voting system with these modifications:

- a. To be valid a BTL voter must preference a minimum of six candidates.
- b. ATL parties must register and publicise one, and only one, GVT per region nominating six or more candidates in preferential order.
- c. ATL voters would only be entitled to mark one ATL box. If multiple ATL boxes were numbered only the box marked ‘1’ would be counted as valid.
- d. The option to have grouped party nominations would be removed, and
- e. If a casual vacancy occurs, the position will be offered to the 7th then 8th (and so on) preferred candidate until the position is filled.

Further Suggestion

Perhaps the interests of the state would be better served if representatives elected for a term in Upper House were appointed on a part time basis.

- a. The time to review/audit legislation is a fraction of that needed to generate it.
- b. The shorter time given over to legislative review means less time for politicking and lobbying on matters outside of the remit of the House.
- c. It opens the possibility for women and men of standing in the community to serve without changing careers, much like non-executive board members of corporations, the current Perth City ‘Brand Forum’, or indeed members of this Expert Committee. This would give the state access to a far greater pool of expertise and viewpoints than is possible now with full-time career-changing appointments.

Our Founding Fathers’ vision for parliament was for a representative set of citizens to periodically to leave their place of work (school, farm, factory, business, trade union, professional associationetc) to meet ‘in session’ to discuss and agree courses of action regarding matters of interest or concern to the state. And at session end, to return to their normal place of work or employment. Perhaps they had something.

For the record, my qualifications are in information processing not political science, and I have no political party affiliations.

Yours sincerely

Dr Bernard Glasson,
Foundation Dean of Science & Technology,
University of Notre Dame Australia (Retired)

Extract from:

https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/Practice7/HTML/Chapter3/Method_of_voting

Pertinent words and phrases have been highlighted in bold by the writer

‘Senate voting

A method of preferential voting related to that described above was also used for Senate elections from 1919 to 1946. A system of proportional representation has been used since 1949. Under that system, a candidate must obtain a certain percentage of the votes in the count, usually referred to as the ‘quota’, to be elected. This system is only appropriate to multi-member constituencies, such as those for the Senate, where each State votes as one electorate.

For **Senate elections the voter has the option of marking the ballot paper preferentially by party/group** or, alternatively, by individual candidate.^[104] The special feature of proportional representation is contained in the method of counting the votes which **ensures that the proportion of seats won by each party** in a State or Territory closely reflects the proportion of the votes **gained by that party**. There is thus greater opportunity for the election of **minority parties** and independents than in the House.

The result of proportional representation has been that since 1949 the numbers of the Senate have usually been relatively evenly divided **between government and opposition supporters** with the balance of power often being held by **minority parties** or independents, whose political influence has increased as a consequence. Governments have frequently been confronted with the ability of the Opposition and minority **party** or independent Senators to combine to defeat or modify government measures in the Senate.’

Preamble Elaboration

The primary purpose of ‘upper’ houses like WA’s Legislative Council and the Federal Senate is to review the efficacy of legislation generated by the Lower House and suggest amendments where deficiencies are found, before it is sent forward for enactment.

From my limited reading of history, it seems that, almost from the day the state and federal ‘upper houses’ came into effect, political parties have made changes to the system of electing candidates to them to try and ensure the majority of those elected were members of, and beholden too, their party. In the minds of many they are now ‘party dominated’ houses (see Senate Voting Extract in Attachment 1) replicating or duplicating to a large extent the cut and thrust of what ought to be Lower House debate at the cost of independent review. I am not against political parties. But I believe the proper place for party politicking is in the Lower House and not the Upper House.

Any voting system in a democracy should make it easy for individual electors to vote for their candidates of choice. The complex Upper House voting system we have now enables an unelected ‘party room’ to determine who is elected to that house simply because of their position on a party’s ‘ticket’.

First Passed the Post

A first passed the post system, where the six candidates with the most votes are elected, is simple to understand, which makes it difficult to misunderstand, simple to implement, least cost to administer (e.g., using mark sense card readers for the count), and best represents the will of the people. With a minimum of six names to mark an ‘I only vote for party’ voter should not have difficulty finding their party preferred candidates with the aid of ‘How to vote cards’ and what, in its second iteration at least, should be a much smaller field. With no ATL boxes or BTL party blocks, political party ‘gaming’ of the system is no longer possible and multiple vote counting necessitated by the ‘quota’ system is no longer required.

Below the line only

The ATL option and party ‘blocks’ below the line should be discarded because they:

- a) Enable non-elected and largely unknown party office bearers to unduly influence the make-up of the Council,
- b) Enable the voting process to be ‘gamed’ as evidenced by one result recorded from the last election,
- c) Invite single issue ‘minor parties’ or individuals to ‘try their hand’ at getting into an elected position to influence legislation supplanting the intended purpose of oversight and review, as evidenced by the public comments of recently elected minor party representatives,
- d) De-emphasise the personal qualifications of candidates.

Furthermore

- e) ATL voting could possibly be challenged on constitutional grounds as it enables electors to appoint an agent (i.e., a political party) to vote on their behalf rather than their voting 'directly'.
- f) ATL voting no longer serves a purpose. It was introduced to reduce complexity. Selective preferential of at least six candidates achieves that more effectively.

The *below the line only* system retains the preferential voting system, but it replaces party appointed casual vacancy replacements with the next most preferred candidate as voted for by the electorate. The 'cosy' arrangement where the Lower House can ignore the expressed wish of the electorate and appoint someone of their own choosing is an insult to the voters and if not changed voluntarily it should be challenged.

Restricted Above the Line

ATL voting via GVT's serves the interest of political parties. The original argument for it was to simplify the voting process given BTL voters had to preferentially number all candidates to cast a valid vote – and the number of candidates was excessive. This has resulted in a 'party-centric' system with most electors voting ATL, because voting BTL has become so onerous given the number of candidates who nominate.

As stated above, selective preferential votes for a minimum of six candidates effectively removes that complexity. ATL voting is no longer necessary. And citizens no longer must cast a vote in favour of candidates they do not want to support to cast a valid vote.

However, if there is overwhelming party-political pressure to retain it, these safeguards are necessary to prevent gaming:

- a. parties should be restricted to nominating six and only six candidates in preferential order,
- b. there should be no opportunity for party 'groups', and
- c. voters should mark one and only one ATL party box.

And to ensure transparency that nomination should be publicised prominently, ensuring ATL voters would be fully aware of where their votes would flow (e.g., their GVT 'How the votes will flow' preferences be printed on the back of any Lower House 'How to vote' cards and alongside same in any "How to..." advertisements or other publicity material).

A modified 'Senate' system

The committee may receive many proposals to adopt the procedure adopted for Senate Election from 2019 almost in its entirety. That revised system, which now accepts a minimum of twelve BTL votes as valid, is a huge step forward. However, the procedure in place for ATL voting as explained to me on enquiry (see Attachment 3) is flawed and will not prevent 'gaming'.

The flaw lies in the use of multiple GVT's, Grouped Party boxes and preference flows across multiple party 'boxes'.

I am happy to stand corrected, but it seems the Senate voting system allows parties to submit more than one GVT. Despite my best efforts using an on-line document search, I am none the wiser as to how that works. This lack of transparency flows through to polling day as parties are not obliged to publicise their GVT preferences. The Senate procedure relating to this states:

'Parties will still hand out how-to-vote cards that show their recommended preferences, but this is a recommendation only' (see Attachment 3).

A recommendation that to my knowledge few, if any, take up.

Group Party Boxes allow minor party's or independents to form an 'alliance' of, I assume, some minimum number of candidates into a GVT. This apparently facilitates gaming.

Voters should not be given the option of preferentially marking multiple party GVT boxes. Preferences flows across multiple groups is at best unwieldy, provides an opportunity for gaming, and at worst unfair. For instance:

It seems theoretically possible for a field of candidates to be listed in preferential order by all (say) 6 parties resulting in each candidate gaining 6 ATL votes (more if the voter preferences more than six party boxes) albeit in a variety of preferential positions. This would enable a citizen voting ATL to have 5 more votes than one voting BTL. Common sense tells me there must be a procedure to prevent this, but if there is, I have not been able to track it down.

In short, the current senate ATL voting procedure:

- a. is complex, and lacks transparency,
- b. does not eliminate gaming, and
- c. requires a minimum of 12 BTL votes as a minimum reflecting the 12 vacancies that would occur in a double dissolution initiated Senate election. Whereas in the WA Upper House the number of vacancies would be 6.

Replicating it in full for WA Upper House elections would be a mistake.

Dear Bernard,

Thank you for your email and for your interest. Voters can choose to vote along party lines (above the line) in the order of your choice, or for individuals (below the line) in the order of your choice.

Above the line: Voters are instructed to number at least 1 - 6 next to the names of parties in the order of their choice. They can number more if they choose. This means that votes go to the first candidate listed below the line under the number 1. Preferences will then flow to the second candidate listed under the number 1 and so on. When all preferences have been distributed within the number 1 party of their choice, they are transferred to the number 2 party of their choice, and so on.

Below the line: Voters are instructed to number at least 1 - 12 next to the names of individuals in the order of their choice. They can number more if they choose. Preferences flow in the order of the individuals numbered by the voter. Your vote will exhaust after your last preference.

Transfer values and quotas are explained in the fact sheet at:

http://www.aec.gov.au/Voting/counting/senate_count.htm .

There are no longer any preference deals between parties, though parties can be grouped together above the line. Visible grouping allows a voter to decide if they wish to vote for the parties as a group. This is illustrated on the fact sheet and the practise how-to-vote tool at:

http://www.aec.gov.au/Voting/How_to_vote/practice/practice-senate.htm .

Parties will still hand out how-to-vote cards that show their recommended preferences, but this is a recommendation only.

Your email has been forwarded to the relevant area for their attention.