

8 June 2021

From: Mr. Alexander Malton

To: Ministerial Expert Committee on Electoral Reform

Regarding the Review of the Electoral System for the Legislative Council

Dear Expert Committee,

I thank you for the opportunity to have input into the way the Western Australian Electorate elects its Legislative Council and how it is formed. The recent election undertaken in 2021 has certainly revealed weaknesses in the current system and now is a great opportunity for change. I have some thoughts on this process as I have a keen interest in this area and have done some personal study on different systems both in Australia and around the world. It is not the purpose of this submission to be a treatise on the different systems available and the effects of each, that would be too tedious a read and not in the best interest of the Expert Committee. I will however outline a few options and briefly talk about their pros and cons and draw on references to some methods of calculation, citing Hare Clark and Webster/Ste Laguë methods. I am no mathematician and I am sure there are people that would be more qualified than me in this area.

1. The Distribution of Preferences in the Legislative Council's Proportional Representation System.

With regard to the question of the Distribution of Preferences in the Legislative Council's Proportional Representation System, it is apparent that the current system of distributing preferences within the Legislative Council's proportional representation system is flawed. This approach whilst in principle isn't the issue, the manner in which it is executed and implemented is where the issue lies. Whilst First Preference votes are useful in indicating the mindset of the voters within a district, it does not give the full picture on how the individual voter wishes to be represented should their preferred candidate not win. Whilst there exists calculations to apportion seats to the relevant parties and candidates based on the First Preference vote, relying on these alone would be a backward step as far as our system is concerned and would require a complete overhaul.

Allowing the Parties to decide how preferences should flow (as it is currently under the Group Ticket Voting System) is an insult to the public, as this creates the notion "the public cannot be trusted to make decisions on how they best wish to be represented." By looking at the changes which have been made for the Federal Senate elections; applying the same approach to the Legislative Council (hereafter the WALC) would be a step forward in eliminating the problems caused by Group Ticket Voting. This would give clear indications as to how the public wishes to be represented within the WALC.

A more substantive understanding of this would benefit the overall process by allowing the implementation of a *full preferential system* for the WALC Ballot, to mirror the process for the Legislative Assembly. In doing this, it ensures that fewer voters “feel” like their votes and voices have been “undervalued” or “misrepresented.” One downside will be that the time required undertaking this task will increase.

The Hare-Clark method of proportional representation is one of the best methods of proportionality that can be applied to voting and thus changes here would not be necessary. For the sake of discussion, the use of Webster/Ste-Laguë’s method of allocating seats based on first preferences is one that is used in some jurisdictions around the world. Applying this to say, the NSW LC results for 2019, yielded a very similar distribution in seats (with one exception, thus this method does not fully take into account voters flow of preferences)

2. How electoral equality might be achieved for all citizens entitled to vote for the Legislative Council

The question of “how electoral equality might be achieved for all citizens entitled to vote for the Legislative Council” is certainly one that requires careful thought and deliberation. It may seem like an easy fix to some by applying one method; however there is an inherent risk that doing so will create further *inequality*. Which then poses the question, what system do we use? There are several options each with their own pros and cons:

Option 1: Maintain the Country-Metropolitan Distinction

- Pros:
 - o Maintaining the current country-metropolitan distinction system allows a greater regional voice to be heard and takes the large area of the state into consideration.
- Cons:
 - o The problem of “One vote One value” is still not resolved (i.e. 1 South Metro MLC represents approx 74,864 citizens versus 1 Mining and Pastoral MLC represents approx 11,609 citizens, this gives the Mining Pastoral MLC 6x the voting power as compared to their South Metro counterpart).
 - o Another problem is the electoral boundaries would still be problematic as boundary commissioners have to create to oddly shaped electorates in order to satisfy the Metropolitan scheme area/Regional Boundary (the seat of Swan Hills is an example of this).

To resolve these problems, another method needs to be considered.

Option 2: Abolish the Country-Metropolitan Distinction while maintaining a Regional District System

“Continuing rapid population growth at the northern and southern fringes of the Perth metropolitan area presented the Commissioners with many challenges, with the flow on effects resulting in at least some degree of change in 35 of the 43 metropolitan districts. All districts have been brought within legislative tolerance. Overall elector numbers allowed the Commissioners to address some apparent ‘anomalies’ (such as the elongated districts of

West Swan and Darling Range) brought about by the difficult spread of electors in 2015, while still keeping all 43 districts within the defined metropolitan area. In other locations the uneven spread of numbers prevented the Commissioners from observing community of interest considerations more closely.”¹

- Pros:

- This would enable the creation of equally populous regions thereby satisfying the “One Vote, One Value” problem. This would effectively balance the voting power between the Metropolitan and Regional areas and level it out across the state, enabling the metropolitan zone to proportionally increase its vote share. This model would follow the system currently used in Victoria, indeed Western Australia and Victoria are the only states that use a regional district system to elect members to their Legislative Councils. The number of regions to be created will depend on how many MLCs should be elected per region (e.g. 5 MLCs per region would require 7 regions thus reducing the number of MLCs to 35; 6 MLCs per regions, as we have now, would not require changes to the number of MLCs).

However, in the spirit of equality, an equal number of seats per region is strongly recommended in order to maintain a balance of populations. Therefore either the Legislative Assembly (hereafter the WALA) grows by 1 seat to 60 for 6 Legislative Council Regions or shrinks by 3 to 56 for 7 Legislative Council Regions. It is worth noting that it would not be impossible to group an uneven number of electorates into regions. It would run the risk of creating unequal regions by population, this may however be balanced out by the Large District Allowance.

- Another pro in eliminating the Country-Metropolitan Distinction is this will make the drawing of future District boundaries less complex as communities of interest across the Scheme Boundary would be able to be grouped together thus reducing the chance of oddly shaped districts being drawn.

- Cons:

- Whilst balancing out the voting power can be seen as a positive, this can also be seen as a negative as it ignore the sheer size of Western Australia. 75% of Western Australia’s population lives in the Metropolitan region, yet this 75% occupies an area equating to 0.212% of the state area. On a geographic level seems quite unequal. Therefore area must be taken into consideration when forming regions and drawing boundaries. For a regional voice, this would help to balance out the discrepancy particularly in matters for regional development and communities of interest. The Large District Allowance (LDA) would help to balance this but in its current form of 1.5%, this would have very little change at the WALC level in terms of the

¹ Electoral Boundaries WA, 2019, *Western Australian Electoral Distribution – 2019 Review of Western Australia’s Electoral Boundaries - Final Boundaries - November 2019*, last accessed 07/06/2021, <https://www.boundaries.wa.gov.au/sites/default/files/content/2019%20Nov%20Final%20Distribution%20Report.pdf>

entitlement to MLCs, thus the percentage would need to be greater (e.g 5% or 10%) for any advantage to be had.²

Option 3: Abolish the Country-Metropolitan Distinction and Legislative Council Regions

- Pros:
 - o Abolishing the Regional Zones for the WALC would effectively treat the state as a single multi-member electorate. This would mean Western Australia would have the same system as New South Wales and South Australia. This would allow all voices to be treated equally and allow *every* West Australian can vote for whichever party they choose regardless of where they live (e.g. a voter in Mindarie can vote for a Nationals candidate where this was not possible under the previous system, not least due to Nationals candidates not contesting Metropolitan seats).
- Cons:
 - o It is highly probable that there would be more Metropolitan based members being preferred over their Regional counterparts within the Hare-Clark system after the quota is calculated and votes distributed. This therefore would not solve the problem of *where* the elected MLC comes from unless certain safeguards were made (either in the form of calculations or regional quotas for seats). This in itself could open the door to bargaining and potential political “back door agreements” within party lists.

Currently Western Australia elects a *full* Council every 4 years at each General Election. Given the need to elect 36 members to the council every 4 years would run the risk of having the same problem faced by New South Wales many years ago with the fabled “Tablecloth Ballot,” where the voters had to choose their preferences among a large number of candidates. Therefore, it will be prudent to introduce safeguards to prevent this from occurring, learning from the NSW experience. It may also be worth considering Half Council Elections after predetermined terms.

Option 4: Abolish the Bicameral Parliament as it stands and create the first Mixed-Member Proportional Parliament in Australia

This option may seem extreme (and quite possibly beyond the scope for this submission) however by including this option it explores the creation of a more proportional parliament to its population:

- Pros:
 - o Nothing will change for the public in how they vote in the elections. They will still have 2 votes – one for their District Member and one for the Party vote at large. The

² Based on current Enrollment Statistics for Dec 2020, Regional WA would be entitled to 9 MLCs and Metro WA entitled to 27 MLCs, incorporating the LDA of 1.5% does not change this figure. Incorporating a LDA of 5% would increase the Regional Entitlement to 11 Regional MLCs to 25 Metropolitan MLCs. It is worth noting that equal number of MLCs per region is preferable, thus 5 per region (for 7 regions = 35 MLCs) or 6 per region (for 6 regions = 36 MLCs). Regional Entitlements would thus be 10 MLCs in the first instance and 12 MLCs in the second. The remainder being Metropolitan MLCs.

number of electorates will not change and Regional Districts can be made up of either:

- A single electorate as is the case for New Zealand³, or
 - By several regions as is the case for Scotland, where they use an Additional Member System in order to attain proportionality. The main feature here is this would create a more proportional parliament that would more accurately reflect the public vote, depending on how it is structured (Min percentage of votes/seats won to count, overhang seats, First Nations Seats⁴ etc.)
- Despite the relative population size of Western Australia, we are just as diverse as other states and territories in Australia and other countries around the world. Allowing for a more proportional Assembly here would ensure that as many diverse voices here are given an opportunity to be represented at a governmental level.⁵
 - The operations of a unicameral house are beyond the scope of this submission.
- Cons:
- The biggest con is mainly financial – refitting the Parliament to house a 95 seat Assembly (based on current member numbers). In addition to adapting the Electoral Commission to be able to perform the new calculations to make up the house and becoming used to operating in a new environment once implemented. These seem relative and take time to adapt to these changes.
 - With this system, there comes a greater likelihood for coalitions to form as it is generally harder for parties to form an overall majority. This means that parties must work together in order to pass legislation. To say it is impossible for an overall majority to occur would be a fallacy as this has occurred in the 2011 Scottish General

³ If the New Zealand Mixed-Member Proportional system were applied here, Labor would achieve an overwhelming majority of 66 seats (48 needed for majority) with an additional Nationals overhang seat – a 96 seat assembly. This calculation is rough as the regional/metro representation differs (i.e. Nationals on having regional representation).

⁴ The mention of First Nation Seats seems a controversial topic, and by no means is it a simple one. Including First Nation representation in the state parliament would certainly ensure that the First Nation voice is truly heard. It is neither for me nor is the purpose of this submission to decide on how the First Nations in Western Australia wish to be represented at the State level (whether this be in the form of seats in the Assembly, a First Nations Assembly as is seen in Victoria or in a different form.) It is an option however any further discussion on this topic would be best handled between the First Nation Peoples and the Government of Western Australia in a forum of dialogue and mutual understanding rather than by giving it out or offering it for potential political gain as this would be likely seen as a form of “tokenism.” All people deserve to be represented equally and regarding the topic of First Nations Representation, this must be treated with respect and dignity.

⁵ One measure of proportionality is the Gallagher Index - measuring “an electoral system’s relative disproportionality between votes received and seats allotted in a legislature.” A score of 0 represents a perfectly proportional parliament, and score of 5 or less is considered desirable. Applying this to the 2021 General State Election revealed indices of 25.29 for the WALA, 6.27 for the WALC and 15.42 for the Parliament as a whole when measuring total seats won versus total party votes cast. Contrasting this to New Zealand’s 2020 General Election, this had an index of 4.16 for its mixed-member proportional parliament)

Election where the Scottish National Party won 69 seats, 65 were needed for majority.⁶

How best do we represent the people of this great state at a governmental level? Representation at this level can be as straight-forward or as complex as we want to make it. It does however need to be fair and equitable to everyone. The voices of West Australians need to be balanced and proportional, though it is clear different factors need to be taken into account. What do I think on a personal level; abolish Group Ticket Voting in favour of *full preferential voting* for the WALC Ballot, remove "How to Vote" cards and implement a Proportional Unicameral Assembly, this allows the full Western Australian Electorate to vote for all parties contesting in order to create more balanced representation.

Thank you for the opportunity to contribute to this important discussion.

Faithfully,

A large black rectangular redaction box covering the signature area.

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⁶ If the Additional Member System used in Scotland was applied to Western Australia under the current regional set up, the Labor Party would also achieve an overwhelming majority of 69 seats (48 needed for a 95 seat Assembly)