

Ministerial Expert Committee on Electoral Reform

Final Report

June 2021

MINISTERIAL EXPERT COMMITTEE ON ELECTORAL REFORM

28 June 2021

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Level 11, Dumas House
2 Havelock Street,
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Dear Minister,

The Committee appointed by your Government on 28 April 2021, which it has been my honour to chair, has now completed its review of the Electoral System for the Legislative Council of Western Australia.

We were most capably and professionally assisted in carrying out this review by Ms Marion Buchanan, for whom nothing was too much trouble.

I now present to you the Committee's Report and Recommendations with respect to the two matters on which, in accordance with its Terms of Reference, the Committee was asked to provide recommendations.

Yours faithfully,

MALCOLM McCUSKER AC CVO QC

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Acronyms/Abbreviations

ADE	Average District Enrolment
ATL	Above the Line
BTL	Below the Line
GVT	Group Voting Tickets
Electoral Act	<i>Electoral Act 1907</i> (WA)
LDA	Large District Allowance
MLA	Member of the Legislative Assembly
MLC	Member of the Legislative Council
MP	Member of Parliament
MMP	Multi Member Proportionate
OPV	Optional Preferential Voting
PR	Proportional Representation
PR-STV	Proportional Representation - Single Transferable Vote
RDC	Regional Development Commission
WAEC	Western Australian Electoral Commission

Executive Summary

The Committee has recommended that for Legislative Council elections the whole of the state of Western Australia be one electorate instead of the present system, where there are 6 members elected for each of the 6 “regions”. This will achieve electoral equality. “Whole of State” electorates have been in use for some time in New South Wales and South Australia.

Any Whole of State electorate should be established in conjunction with the abolition of Group Voting Tickets and the introduction of Optional Preferential Voting, which will give voters greater control over their preferences.

As is evident from the experience of other jurisdictions, there will be a need to introduce additional regulation of parties and candidates, so that the ballot is reserved for groups and candidates who can demonstrate popular support. The Committee has also suggested other technical measures which may assist in managing the ballot paper.

Finally, the Committee has mentioned a number of related issues which arose during the submission period which may be considered in the future.

Recommendations

The Committee makes the following recommendations:

First Term of Reference

Recommendations as to how electoral equality might be achieved for all citizens entitled to vote for the Legislative Council:

1. That the State of Western Australia be one electorate (the Whole of State electorate) from which all members of the Legislative Council are elected.

Second Term of Reference

Recommendations for the distribution of preferences in the Legislative Council's proportional representation system.

2. That Group Voting Tickets be abolished and replaced with Optional Preferential Voting for the WA Legislative Council with voters instructed on the ballot paper as follows:
 - For voters Above the Line, to mark one or more squares.
 - For voters Below the Line, to mark a specified minimum number of squares. As explained in Section 3.1.6 of this Report, this number will depend on the number of candidates being elected.

Related measures:

3. That the following be introduced:
 - Registration of political parties at least 6 months prior to a general election, with a registration fee and at least 500 declared members for each party, who have not been declared as members in the registration of another political party.
 - Increase the nomination fees per candidate.
 - At least 3 independent candidates be required to form an Above the Line group.
 - That a significant number of electors be required to nominate an independent candidate. These electors must not have nominated another candidate.
4. That measures be considered to manage the size and design of the ballot paper as suggested in Section 3.5 of this Report.
5. That the measures discussed in Chapter 4 be considered, to improve the electoral system.

1 Background to the Report

1.1 Establishment of the Committee

On 28 April 2021 the Minister for Electoral Affairs appointed the Ministerial Expert Committee on Electoral Reform (**the Committee**). The Terms of Reference are in **Annexure 1**. The Committee was asked to review the electoral system for the Legislative Council of Western Australia and to provide recommendations:

1. As to how electoral equality might be achieved for all citizens entitled to vote for the Legislative Council.
2. For the distribution of preferences in the Legislative Council's proportional representation system.

The Committee released a Discussion Paper on 14 May 2021 and sought submissions from the public. The deadline for submissions was extended from 31 May to 8 June 2021. The Discussion Paper is in **Annexure 2**.

The Committee also advertised in the *West Australian* newspaper and invited submissions from the public on Saturday 1 May 2021, Friday 28 May 2021 and Saturday 29 May 2021.

The Committee is grateful to the members of the public, organisations, local governments and political parties who responded to the call for submissions and the Committee's Terms of Reference. A total of 184 submissions were received. Some submissions were provided on a confidential basis. All other submissions are available on the Committee's website at <https://www.wa.gov.au/government/document-collections/submissions-wa-electoral-reform>. The list of submissions is in **Annexure 3**.

The Committee also met with Electoral Commissioners and staff from the Western Australian (WA), South Australian (SA) and New South Wales (NSW) Electoral Commissions. We thank them for their assistance in explaining how their current electoral systems work and in responding to questions we put to them about possible operational and other issues that might arise from reforms to the WA Legislative Council electoral system. The Committee also met with Antony Green AO, a well-known election analyst, to discuss associated technical issues. We thank him for his advice.

1.2 Discussion Paper

As noted, the Committee released a Discussion Paper on 14 May 2021. In summary it:

- Provided a brief historical account of the development of the electoral system in the Legislative Council.
- Described recent trends in enrolments, noting the existence of significant vote weighting in non-metropolitan regions, in particular the Mining and Pastoral, and Agricultural regions.
- Outlined how voter preferences are counted in the Legislative Council, including an explanation of the system of Group Voting Tickets (**GVT**).
- Compared WA's system of GVT with other jurisdictions in Australia.

- Explained upper house electoral models in other Australian jurisdictions, noting that there were principally two in operation: regions-based models (as in Victoria and WA); and Whole of State models (as in NSW and SA).
- Invited public submissions on which model (Whole of State or regions-based) is preferable to achieve electoral equality, including the strengths and weaknesses of each; whether any other electoral model is better suited to achieving electoral equality; and what changes might be made to the distribution of voter preferences in the Legislative Council, including to the system of GVT.

1.3 Scope of the Report

The Committee received a wide range of views in submissions on a variety of subjects relating to the electoral system. There were a significant number of submissions both for and against regional vote weighting. A summary of these arguments is in **Annexure 4**. However, the Terms of Reference require the Committee to examine how (not whether) to achieve electoral equality, so the Report does not engage with those arguments.

1.4 Structure of the Report

Chapter 2 of the Report addresses the Committee's first Term of Reference. It is separated into two parts: the first considers the Whole of State electorate model; the second considers regions-based models aimed at achieving electoral equality.

Chapter 3 considers the issue of preference distribution which is the Committee's second Term of Reference, and the related issue of GVT.

Chapter 4 briefly discusses a range of other issues that were raised in some submissions and which the government may consider worthy of consideration.

2 Achieving Electoral Equality

This Chapter of the Report addresses the Committee’s first Term of Reference – how to achieve electoral equality for all citizens entitled to vote for the Legislative Council. This requires all electors’ votes to be of equal value. Currently, this is not the case. The Discussion Paper outlined the evolution of the Legislative Council’s electoral system and noted that the current system is that each of the 6 multi-member regions returns 6 members (MLCs) by means of proportional voting. As **Table 1** below shows, the 6 regions do not all have equal numbers of electors. The 3 metropolitan regions have approximately equal numbers of electors, but the non-metropolitan regions have significantly fewer. Therefore, the current system gives greater weight to the votes of non-metropolitan electors.

Table 1: Legislative Council enrolments, February 2021

Region	Enrolment (2021)	% of Total enrolled electors	No. of MLCs	% of Total MLCs	Electors per MLC	Legislative Assembly Districts
Agricultural	103,378	6.02%	6	16.70%	17,230	4
East Metropolitan	423,759	24.68%	6	16.70%	70,627	14
Mining and Pastoral	69,651	4.06%	6	16.70%	11,609	4
North Metropolitan	427,779	24.92%	6	16.70%	71,297	14
South Metropolitan	449,182	26.16%	6	16.70%	74,864	15
South West	242,983	14.15%	6	16.70%	40,497	8
TOTAL	1,716,732	100.00%	36	100.00%	47,687	59

Source: WA Electoral Commission (WAEC)

There is also inequality between the 3 regions within the non-metropolitan area. The South West region had more than double the number of electors in the Agricultural region, and more than 3 times the number of electors in the Mining and Pastoral region.

The 2 least populous regions comprise 10.1% of the total number of enrolled electors in WA, but elect 33.3% of the 36 MLCs. More than 6 times as many electors in the average metropolitan region are required to elect an MLC than to elect an MLC for the Mining and Pastoral region. For the Agricultural region, the vote weighting is more than 4 times that of a vote in the metropolitan regions.

The Discussion Paper sought comments on 2 different models for achieving electoral equality in the Legislative Council, based on systems operating elsewhere in Australia. The first is the Whole of State model, which is discussed in Section 2.1 below. The second is a regions-based model, which is discussed in Section 2.2. The Discussion Paper also invited submissions on whether

there were any other models the Committee might consider. A small number of suggestions was received. They are summarised in **Annexure 5**.

The Committee received some submissions that the number of MLCs be reduced (and some that the Legislative Council be abolished). Both would require approval by referendum, and have not been considered by the Committee. Neither is relevant of course to electoral equality in the Legislative Council.

Issues relating to Above the Line (**ATL**) and Below the Line (**BTL**) voting, preferential voting (whether optional or full), and ballot paper design, are relevant to both Whole of State and regions-based models. They are considered fully in Chapter 3 and will therefore not be discussed in detail in this Chapter. It should be noted, however, that these issues already exist in the current system of 6 regions each electing 6 MLCs. Addressing these issues, in particular abolishing GVT and initiating Optional Preferential Voting (**OPV**), is required whether a Whole of State electorate or a modified regions-based model is chosen, or whether the present regions-based system is unchanged.

2.1 ‘Whole of State’ electorate

2.1.1 Introduction

One option for ensuring complete electoral equality for votes cast for membership of WA’s Legislative Council would be for the whole of WA to be one electorate. This system is sometimes described as an “at large” electoral system. It is the system used in NSW and SA for elections to the Legislative Council. In Federal Senate elections, the whole of WA is one electorate, and those elected are Senators “for WA”, not for any district or region of WA.

With a Whole of State electorate, the number of seats won by a group would correspond closely to the percentage of the total valid votes cast by Western Australians for the Legislative Council.

In 1983, a Whole of State model was proposed for WA (but not passed). In the Second Reading speech (Parliamentary Debates, 1983, 2802) in the Legislative Council it was said:

Every elector's vote will be equal. Parties will gain seats in direct proportion to the votes cast for them. A majority of votes will mean a majority of seats. In such a State-wide election, small parties and Independents can gather votes from a geographically scattered base of support. Minorities and Independents will thereby have a realistic chance of parliamentary representation never previously available to them.

If the whole of WA were one single electorate, instead of representing one of 6 regions (as at present) each MLC would represent the entire state. That would be quite different from the WA Legislative Assembly, each member of which represents one of 59 single-member electoral districts.

2.1.2 Criticisms of a Whole of State electorate

A number of submissions which accepted the principle of electoral equality nevertheless opposed changing from a regions-based electoral system for the Legislative Council to a Whole of State system. One argument was that non-metropolitan voters would not be adequately represented with a Whole of State electorate, and that such an approach would not suit the

geographic, cultural and economic needs of regional Western Australia. Other criticisms of the Whole of State model were that the quota to be elected would be too low and the ballot paper too complex and unwieldy. These issues are considered in Sections 2.1.7 and 2.1.8, 3.4 and 3.5 respectively.

2.1.3 Support for a Whole of State electorate

As pointed out in a number of submissions, a Whole of State electorate would produce complete electoral equality, which the Terms of Reference mandate. As one submission (by Malcolm Baalman, L140) observed:

This is literally the only option to create equality, because any approach which does not declare that it takes the same number of votes to elect a member is, by definition, not conferring equality in terms of vote weight.

This state-wide common quota option is essentially what currently happens in each 4-yearly half-Council election for the New South Wales and South Australian Legislative Councils, as such, an established and tested Australian model is available for easy adoption in Western Australia.

And Geoffrey Binckes (G69) submitted: “Minor parties would achieve fair representation. In most elections, neither major party would be likely to control the Council, which is advantageous if the Council is to act as a proper house of review”.

It is arguable that the Whole of State model better provides minority and distinct political viewpoints with representation. As put by Roy Jones (G67) in his submission:

With regard to which electoral model (Whole of State or regions-based) should be adopted for the Council, I submit that the arguments for a Whole of State system are considerably stronger. The Legislative Assembly already offers the state's electors a place-based form of representation by means of its single member electorates. If minority viewpoints, other than those which enjoy locally concentrated pockets of support, are to be proportionately represented somewhere in state parliament, this can only be achieved by the adoption of a Whole of State model for the upper house. There are also pragmatic arguments for a whole of state model since it permanently removes the need for both the drawing and (following demographic shifts) the redrawing of electoral boundaries, thereby removing the party-political conflict and protest - and the related costs - that inevitably accompany these processes.

Under a Whole of State model, the vast majority of seats would be filled by groups or candidates reaching a quota. This model would maximise the choices available to voters, as they could vote for any group or candidate standing for election to the Legislative Council, across the state.

A practical benefit of the Whole of State system is that there would be no need to redraw the Legislative Council's regional boundaries after each election. At present, one of the challenges of each redistribution is the need to fit Legislative Assembly districts into Legislative Council regions pursuant to s 16H of the *Electoral Act 1907* (WA) (**Electoral Act**). A Whole of State system would avoid that.

A Whole of State model would provide every voter in Western Australia, regardless of their postcode, with 36 representatives. Given the political diversity which this system produces, an elector would have the opportunity to approach any MLC who may be sympathetic to an issue which the voter is seeking to address; and MLCs may choose to focus on particular policy issues or areas. The Hon Michael Sutherland OAM (C24) submitted:

There is no reason why the 6 regions should remain. Many MLCs elected for country regions have no real connection with the region they represent and have their offices in West Perth. Most electors have no idea who the MLCs for their region are let alone what work they do. The Upper House is supposed to be a house of review and members are generally not over concerned with constituents, many have minimal contact with the public.

Parties can allocate their MLCs to work in whatever area they believe there is a need for additional representation or attention. They can be allocated to geographically large Lower House regional seats....

2.1.4 Whole of State Electorate models

As noted earlier, there are 2 Australian Whole of State electorate systems for the election of members of a Legislative Council. NSW holds an election every 4 years. The Legislative Council has 42 members. 21 members are elected at each election for a term of 8 years. This is known as the “staggered term” system, as only half the seats are filled at each election. SA has a similar model. There are 22 members, and 11 are elected at each election. Both jurisdictions have a long history of “staggered” terms.

The Committee has considered two possible options for a Whole of State electorate system in Western Australia. One is for all 36 members to be elected every 4 years, for 4 year terms; the other for 18 seats to be filled, for 8 year terms, every 4 years.

2.1.5 Option 1A: election of all 36 members every 4 years

The first option is to elect 36 members to the Legislative Council at each general election, with every member being elected for a 4 year term (as at present).

Under this option, members would be elected, via proportional voting, with seats allocated to groups and candidates when they reach the quota for election. The quota (stipulated in Schedule 1 of the Electoral Act) is calculated by dividing the total number of formal first preference votes cast by the number of seats, plus 1 (i.e. 37), and adding one vote. Accordingly, the quota for a Whole of State electorate with 36 members being elected in one election would be 2.703% plus 1 vote.

While a quota of 2.703% is lower than that of any other upper house in Australia, it is still much higher than the primary vote of 0.2% received in the Mining and Pastoral region by the Daylight Saving Party, whose lead candidate was elected in the 2021 election after receiving preferences from other groups.

2.1.6 Option 1B: election of 18 members for 8 years (staggered terms)

A second option would be to have “staggered terms”, with 18 of the Legislative Council seats being filled at each general election, for 8 year terms. As noted, both NSW and SA have “staggered terms”. The Australian Senate also has “half-Senate” elections on most occasions. There are 12 senators from each state. 6 are elected at each general election, usually for 6 years (the 2 Senators representing the 2 territories only have 3 year terms).

Under the staggered terms option, WA MLCs would be elected via proportional voting, with seats allocated to groups (or individuals) when they reach the quota. The quota for this model would be 5.263% plus 1 vote.

2.1.7 Quotas for election under Whole of State alternatives

Table 2 shows what the quotas for election would be under Option 1A and under Option 1B for WA and the quotas for election in NSW and SA, which have “staggered terms”.

Table 2: Whole of State electorates in Australia

Jurisdiction	Upper House members	Members elected at a general election	Quota for election
SA	22	11	8.33%
WA Option 1B (staggered terms)	36	18	5.26%
NSW	42	21	4.54%
WA Option 1A (4 year terms)	36	36	2.70%

This comparison may lead to claims that the quota for election under Whole of State models (especially 1A) would be too low. It is relevant to examine the number of quotas each party would have received in the 2021 state election, if voting patterns were replicated in a Whole of State electorate using Option 1A. Table 3 shows that 31 of the 36 seats would have been filled with a full quota under Option 1A. (The Daylight Saving Party is listed here because it gained one seat at the 2021 election).

Table 3: 2021 Western Australia General Election (36 members – 4 year terms)

Party	Primary (% vote)	Current system (no. of seats)	Whole of State electorate No. of quotas	Number of full quota seats
WA Labor	60.34	22	22.33	22
Liberal Party	17.68	7	6.54	6
The Greens (WA)	6.38	1	2.36	2
The Nationals	2.80	3	1.04	1
Legalise Cannabis Western Australia Party	1.98	2	0.73	
Australian Christians	1.95	0	0.72	
Pauline Hanson's One Nation	1.48	0	0.55	
Shooters Fishers and Farmers	1.47	0	0.55	
Daylight Saving Party	0.24	1	0.09	

Table 4 provides a similar analysis under Option 1B (for staggered 8 year terms). This table shows that 15 of the 18 members (or 83%) would have been elected on a full quota.

Table 4: 2021 Western Australia General election (18 members - staggered terms of 8 years)

Party	Primary (% vote)	18 member (No. of quotas)	Number of full quota seats
WA Labor	60.34	11.46	11
Liberal Party	17.68	3.36	3
The Greens (WA)	6.38	1.21	1
The Nationals	2.80	0.53	
Legalise Cannabis Western Australia Party	1.98	0.38	
Australian Christians	1.95	0.37	
Pauline Hanson's One Nation	1.48	0.28	
Shooters Fishers and Farmers	1.47	0.28	
Daylight Saving Party	0.24	0.05	

The two Tables above show how many seats would be filled with full quotas under Options 1A and 1B. If GVT were abolished and OPV were introduced (see Chapter 3 below), the remaining seats would be filled with what is known as a “partial” quota, where seats not filled with full quotas are allocated to the candidates who end up closest to a quota after all preferences have been allocated.

Table 5 details the parties that, in the last 6 elections in Western Australia (over 20 years), obtained full quotas. Usually, 4 or 5 parties achieved this.

Table 5 also details other parties that achieved at least half a quota of primary votes in the same period. Those groups (or individuals) who receive half a quota or more could be elected to one of the remaining seats, but they would need to compete with the surplus quotas of the more popular groups. While it is not impossible for a group or candidate to be elected with less than half a quota, under OPV it is much less likely that they would be elected to one of the unfilled seats.

Table 5: Groups with full and half quotas under Option 1A (36 members) in Western Australia 2001-2021

Election	Groups with one or more full quotas	No. of full quotas	Groups with at least half a quota
2021	Labor, Liberal, Greens, Nationals	31/36	Legalise Cannabis, Australian Christians, One Nation, Shooters Fishers and Farmers
2017	Labor, Liberal, Greens, One Nation, Nationals	30/36	Shooters Fishers and Farmers, Australian Christians, Liberal Democrats
2013	Liberal, Labor, Greens, Nationals	33/36	Australian Christians, Shooters and Fishers, Family First
2008	Liberal, Labor, Greens, Nationals	32/36	Family First, Christian Democrats
2005	Labor, Liberal, Greens	31/36	Christian Democrats, Nationals, Family First, One Nation
2001	Labor, Liberal, One Nation, Greens, Democrats	32/36	Nationals, Christian Democrats

Based on voting patterns over the last 20 years in WA, Table 5 demonstrates that most seats are filled with full quotas.

By way of comparison, analysis of results in NSW, which has 21 MLCs (out of 42) elected at each election, shows that 17 members (or 81% of available seats) are usually elected on a full quota, with the other four being elected on a partial quota. In SA, the comparable figure is 8 out of 11 seats (or 73%) filled on a full quota. As Table 5 shows, in WA in a Whole of State election under Option 1A, if voting patterns in the current regions-based system were replicated, the percentage of seats filled with a full quota since 2001 would have been higher, ranging from 83% (30 seats) to 92% (33 seats).

2.1.8 Issues for consideration

A number of submissions pointed to potential ballot paper size and counting issues with a Whole of State electorate. Both Whole of State models (Options 1A and 1B) may potentially attract a significant number of political parties to contest the election, and each group would likely field more candidates. Under Option 1A, major parties could stand up to 36 candidates each. Under Option 1B they could stand up to 18 candidates. If no action were taken to limit the number of groups and candidates on the ballot paper, producing a ballot paper, and counting the votes, could be extremely challenging. Means of mitigating this challenge are suggested in Chapter 3.

However, the Committee is satisfied, through its discussions with the Western Australian Electoral Commission (**WAEC**), that both Whole of State Options 1A and 1B would, from an operational viewpoint (ballot paper size and format, and vote counting) be manageable.

Under both Option 1A and 1B, for Whole of State electorate, if (contrary to Recommendation 2) full preferential voting, and GVT to allocate preferences were retained the contentious issue of groups or candidates being elected with very small numbers of primary votes would be greatly

exacerbated. It would therefore be essential, under any Whole of State model, that a form of OPV be introduced and GVT be abolished.

If Option 1B (staggered terms) were adopted for the Whole of State electorate system, the first election would still have to be for all 36 seats. The issue then arises of how to determine which 18 members are elected for an 8 year term, and which are elected for a 4 year term, so that the following election could commence the staggered term format with only 18 members being elected each for 8 years. There are two methods which could be employed:

- i. The first is that used by the Senate in 2016, following the double dissolution election held that year. This was the “order of election” method, where the first 6 candidates in each state who were declared elected to the Senate were given 6 year terms, and the remaining 6 were given 3 year terms. In WA, using the equivalent method would mean the first 18 candidates declared elected as the count progressed would receive 8 year terms, and the next 18 would receive 4 year terms.
- ii. The second is the “recount” method, under which votes are recounted *as if* the election were an 18 member election, with a higher quota required to win a seat (even though, for the first Whole of State election, all 36 seats would need to be filled). The 18 members elected under this recount method would be given 8 year terms, and the next 18 would be given 4 year terms.

These 2 different methods can produce significantly different outcomes in terms of which members receive the 8 year terms, as Table 6 demonstrates.

Table 6: 2021 WA general election (36 members - staggered terms of 8 and 4 years)

Party	Primary (% vote)	36 member electorate (No. of quotas)	Order of Election method: Members elected for 8 years	Recount method:* Members elected for 8 years	Order of Election method:* Members elected for 4 years	Recount method:* Members elected for 4 years
WA Labor	60.34	22.33	9	12	13	10
Liberal Party	17.68	6.54	6	3	1	4
The Greens (WA)	6.38	2.36	2	1	0	1
The Nationals	2.80	1.04	1	1	0	0
Legalise Cannabis Western Australia Party	1.98	0.73	0	1	1	0
Australian Christians	1.95	0.72	0	0	1	1
Pauline Hanson's One Nation	1.48	0.55	0	0	1	1
Shooters Fishers and Farmers	1.47	0.55	0	0	1	1
Daylight Saving Party	0.24	0.09	0	0	0	0

*These are estimates only, based on the implementation of OPV (see Chapter 3 below).

2.1.9 Summary

The analysis above has compared Options 1A and 1B for a Whole of State electorate. Option 1A provides the greatest diversity of representation, while Option 1B produces a higher quota for election. Option 1B results (after the first election) in members facing the electorate only once every 8 years. While this is the length of term for members of the NSW and SA Legislative Councils, 8 year terms for the WA Legislative Council were abolished in WA in 1987. In its 1995 report, the Commission on Government made the following observation:

We consider the re-introduction of staggered terms would have a detrimental effect on the role of the Legislative Council to act as a house of review and scrutiny. Eight years is too long a period for a member of parliament to avoid the judgment of the voters. Elections should be seen as the judgment of the performance of the entire Parliament and not simply either house or one and a half houses.

A number of submissions echoed this view and also expressed concern that 8 year terms could require legislative amendments to resolve deadlocks between the houses.

The Committee considers that Option 1A offers a greater diversity of representation, avoids the need to have 8 year staggered terms, and produces greater accountability to electors. However, the question of which of the two options is preferable is a matter of policy, on which reasonable minds may differ, and is not a matter on which the Committee has been asked to make a recommendation. Either option will achieve equality of voting in a Whole of State electorate.

2.2 Retention of a Regions-Based Model (with Electoral Equality)

The second model the Committee has considered consists of multiple regions, with the voters in each region electing multiple members for their region by proportional representation. This is the electoral system currently operating in WA and Victoria.

Submissions that supported continuing the current regions-based model that involved regional vote weighting were not considered. As noted in Chapter 1, the Committee's Terms of Reference require it to examine ways to achieve electoral equality. The Committee has therefore only considered regions-based models which are directed towards that objective.

2.2.1 Arguments for a regions-based model that seeks to achieve electoral equality

A regions-based approach has the possible advantage that it is familiar to WA voters, and that it still allows for a level of proportionality to be achieved. Reasons given by supporters of electoral equality who preferred a regions-based model to a Whole of State electorate included:

- Familiarity of electors with a regions-based multi-member model, which has been in use in WA Legislative Council elections since 1989.
- Consistency of a regions-based model with WA history and geography.
- Retention of a regional identity and voice in the Legislative Council.
- An increased likelihood of MLCs who live in the regions being elected.
- Retention of a more direct connection between regional electors and MLCs.
- Concerns that the Whole of State electorate model would raise practical problems, such as a very complex ballot paper design.
- Concerns that the reduced quota for election in a Whole of State model would potentially enable parties to win seats with a very small percentage of the vote.

Some proponents also argued that these factors are likely to make a regions-based model modified to avoid weighting more acceptable to electors and promote trust and confidence in the new system.

2.2.2 Background considerations

The Committee received many different suggestions for the construction of a regions-based Legislative Council electoral system that incorporated electoral equality. Before examining these, it is useful to note the following relevant factors.

Numbers of regions and MLCs

Two key numbers structure the system: the number of regions and the number of MLCs per region. In Victoria, there are 8 regions and each elects 5 members. In WA, there are 6 regions, and each currently elects 6 members. It would not be essential in a regions-based system that each region elect the same number of members. From 1989 to 2005, there were 34 MLCs and 6 regions in WA. Four of the regions elected 5 members, and two elected 7 members. A decision on the number of regions, or the number of MLCs to represent a region, has important consequences:

- The number of MLCs per region necessarily affects the quota required for a party or candidate to be elected. A smaller number of MLCs per region means a higher quota, a higher number reduces the quota. The quota in Victoria (5 MLCs per region) is 16.7%, whereas in WA (6 MLCs per region) it is lower, at 14.3%.
- The existence of a higher quota, due to there being fewer MLCs per region, will reduce the proportionality of the electoral system. In all probability this would make it more difficult for smaller parties to be elected and diminish the diversity of the Council.
- Having more Legislative Council regions can, in theory, improve electors' access to MLCs and potentially enhance regional identity and representation in the parliament.

Electoral equality

Unlike the Whole of State option, it is impossible in a system with more than one Legislative Council region to achieve *exact* equality of electors per member, and even if it were possible to get 'close' to equality (as in Victoria), the electoral roll is not static. It *may* be argued that if a regions-based system were used, allowing a 10% plus or minus variance from the Average District Enrolment (**ADE**) would (approximately, not absolutely) achieve 'electoral equality'. However, the Committee's brief is not to recommend a system that 'nearly' achieves electoral equality.

Nevertheless, it may be possible to *approach* electoral equality through a regions-based model. This would mean having a system with as close as possible to an equal number of *enrolled electors* per MLC. Section 16H of the Electoral Act only refers to having "approximately the same number of complete and contiguous *districts*", for the 3 metropolitan regions. The Electoral Distribution Commissioners would need more flexibility than is currently allowed for in the Electoral Act in combining Legislative Assembly districts into regions, if they are to achieve electoral equality for the Legislative Council.

How Regions Are Created – Combining Districts

As explained in the Discussion Paper, Legislative Council region boundaries in Western Australia and Victoria are currently drawn by aggregating Legislative Assembly districts. Achieving this is relatively simple in Victoria, where there are 88 districts and 8 regions. Therefore, each region consists of 11 districts. In WA, however, there are 59 Legislative Assembly districts, so it is not possible to divide the number of districts equally among Legislative Council regions.

Several factors currently impact on the process of combining districts into regions:

- Because districts can vary in enrolments by 10% above or below the ADE, if a region has more ‘above average’ districts, then it will have higher enrolments per MLC than a region comprising mainly ‘average’ or ‘below average’ enrolment districts. This is one reason why Victorian regions vary in enrolment, despite each region comprising 11 ‘equal’ districts. There is a 16% difference between the regions with the highest and the lowest enrolments in Victoria.
- As noted, the Electoral Act requires that the 3 metropolitan regions have approximately equal numbers of districts. It is impossible to do this exactly, as there are 43 districts in the metropolitan area. The South Metropolitan region comprises 15 districts. There are 14 in each of the North and East Metropolitan regions. Nevertheless, South Metropolitan only has 5% and 6% more electors respectively than those 2 regions, because it has many more districts with ‘below average’ enrolments.
- By contrast, the South West region – with 8 districts – has more than twice the number of electors than either Agricultural region, or Mining and Pastoral region, each of which has 4 districts (i.e. half the number of South West). This is because 7 of South West’s 8 districts have ‘above average’ enrolments.
- Another significant factor is the Large District Allowance (**LDA**) in the Legislative Assembly, which currently applies to 6 districts, with 4 of these having far fewer enrolments than the average district. So despite both the Agricultural and Mining and Pastoral regions being made up of 4 districts, the Agricultural region has a much higher enrolment per MLC (17,230 voters) than Mining and Pastoral (11,609), because the latter region comprises four districts with the largest LDAs.
- Therefore, to achieve approximate electoral equality in the Legislative Council under a regions-based system, it may be necessary for the Electoral Distribution Commissioners to place more districts in one region than another, even if both regions elect the same number of MLCs.

How Regions Are Created – Matters for Consideration

Section 16D of the Electoral Act divides the State into 6 regions, each of which returns 6 MLCs. Section 16H defines the metropolitan area, which prevents the Electoral Distribution Commissioners from changing the boundary between the 3 metropolitan and the 3 non-metropolitan regions. This effectively ensures unequal enrolments between metropolitan and non-metropolitan regions. Section 16H also defines the non-metropolitan regions based on land use patterns, which again limits the flexibility of the Commissioners to amend boundaries between those regions to reflect population shifts.

The implications of s 16H for electoral equality were referred to by the Electoral Distribution Commissioners in their 2019 final review of WA’s electoral boundaries (WAEC 2019, p. 21). A submission to the review had pointed out “the disparity in enrolment levels between the proposed Mining and Pastoral and Agricultural Regions ... when compared with the South West Region” and the “‘inequality’ between the number of districts in each country region”. The Commissioners acknowledged both points but noted that:

“to an appreciable extent this is the result of legislated requirements. Section 16H of the Act sets down a requirement for six separate Legislative Council regions and provides that those regions must generally reflect recognised communities of interest and land use patterns. Those land use patterns include Mining and Pastoral; Agricultural; and ‘a region that includes coastal and forest areas in the south-west of the State’.”

They also noted the provision for a LDA to be applied for large districts. As a result, they said *“the interaction of these factors makes it difficult to achieve more even elector numbers without combining hugely disparate communities of interest.”*

Section 16I of the Act lists matters to which the Commissioners should give consideration when dividing the State into regions and districts. It requires land use patterns, as well as communities of interest, means of communication and travel, distance from Perth, local government boundaries, etc. to be taken into account. To achieve electoral equality, section 16H of the Act would have to be amended so that the metropolitan boundary and land use definitions of the regions are removed. This would give the Electoral Distribution Commissioners the flexibility they would need in order to divide the Legislative Council into regions in such a way that electoral equality, even if not fully achieved, would be closer to being achieved.

Odd and Even Numbers of MLCs in a Region

Several submissions (see, e.g. Proportional Representation Society of Australia, J102; Dr Kevin Bonham, M156; Dr Bruce Stone, M143) noted the significance of whether a Legislative Council region elects an odd or even number of MLCs. Currently in WA, all regions elect an even number (6), whereas previously they elected an odd number (either 7 or 5). This can influence the extent to which voter preferences are reflected in the seats won by political parties. Table 7 below shows the quota of votes which would be required to win a seat, according to the number of MLCs for each region. It also shows the percentage of votes which would be required to win a majority of seats in that region.

Table 7: Quota to win a seat in regions with odd versus even numbers of MLCs

Number of MLCs per region	Quota for election in a region	% of vote required to win a majority of seats in the region
3	25%	50% (2 seats)
4	20%	60% (3 seats)
5	16.67%	50% (3 seats)
6	14.29%	57.1% (4 seats)
7	12.5%	50% (4 seats)
8	11.1%	55.5% (5 seats)
9	10%	50% (5 seats)
12	7.69%	53.8% (7 seats)
18	5.26%	52.6% (10 seats)
36	2.70%	51.4% (19 seats)

Table 7 shows that having an even number of MLCs per region (highlighted in bold) makes it more difficult for a party that wins a majority of votes in a region to win a majority of seats in that region. The table shows that with an odd number of MLCs, 50% of the vote is sufficient to win a majority of seats. In regions with an even number of seats, the vote required to secure a majority of seats is above 50%, often significantly so. For example, with 7 members to be elected in a region, a party would need to win 50% of the vote to win 4 seats (a majority) in that region. In a 6-member region, the vote share required to win 4 seats (a majority) rises to 57.1%. Therefore, it would be possible, in a two-party contest, for one party to win 57.0% of the vote, with 43.0% won by its opponent, with each winning 3 seats.

The percentage of votes a party would require to win a majority of seats in a region with an even number of seats declines as the total number of seats in that region increases. As Electoral Reform Australia (J101) submits “*there is no problem with electorates electing even numbers of representative if district magnitude [i.e. the number of members elected in a district] is sufficiently large so that the quota is small enough to avoid electoral stasis*”. This would apply to the two Whole of State options considered in Section 2.1, which involve 18 or 36 members being elected.

2.2.3 Potential regions-based models for the Legislative Council

Several different models combining numbers of regions with numbers of MLCs per region were submitted to the Committee. As noted earlier, the only models the Committee considered were those premised on electoral equality, in which every elector’s vote is of equal value. In the case of a regions-based model where exact equality is impossible to achieve, this means an approximately equal number of enrolled electors per MLC.

The following factors, which are directly related to the number of MLCs per region, may affect the choice of which of the regions-based models may be preferable:

- Whether or not the percentage of votes required for a party to win a majority of seats in that region is realistic and fair. This strongly suggests that *regions should have an odd number of MLCs*.
- The *degree of proportionality*, the more MLCs to be elected in a region, the higher the degree of proportionality.
- The *diversity of party or candidate representation* likely to be generated.
- The extent to which the model is likely to *reflect links to regional identities and communities*. This is likely to be *inversely* related to the number of MLCs per region, i.e. the more electors in a region, the less reflective of regional identities it is likely to have.
- The extent to which the model is likely to allow for a more direct *connection between an MLC and their electorate*.
- Whether there are likely to be any *ballot paper issues* (which will be issues whether the model used is regions-based or Whole of State).

The Committee considers proportionality, diversity and regional identity to be the most relevant factors, if approximate electoral equality could be achieved. Multi-member regions would invariably have a lower degree of place-based identification between constituents and their MLCs, compared to the situation in single member Legislative Assembly districts.

One model that was submitted (Dr Mike Wood, N178) suggested basing Legislative Council regions on Regional Development Commission (**RDC**) boundaries (with Perth as a region). This has the merit of matching regions to an institutional base. However, as Table 8 shows, it does not allow for any real degree of proportionality i.e. outside the Perth region, as the number of electors in each region would only warrant up to 3 representatives in a 36-member Council based on electoral equality. Therefore, it cannot form the basis for a regions-based Legislative Council system. Nevertheless, some combination of RDC boundaries could potentially form the basis of Legislative Council boundaries. This would be a decision for the Electoral Distribution Commissioners.

Table 8: Legislative Council regions based on Regional Development Commissions

Region	Population Share (2017)	Seats*
Gascoyne	0.4%	0
Goldfields-Esperance	2.2%	1
Great Southern	2.4%	1
Kimberley	1.4%	1
Mid-West	2.2%	1
Peel	5.3%	2
Perth	73.8%	27
Pilbara	2.4%	1
South West	7.0%	3
Wheatbelt	3.0%	1

*Based on proportionate shares of a 36 member Legislative Council.

Table 9 lists the options for a regions-based model for the Legislative Council that the Committee considered, noting that each one has approximate electoral equality.

Table 9: Alternative options for a regions-based model for the Legislative Council

Option	No. of regions	No. of MLCs per region*	No. of electors per region^	No. of LA districts per region#	Level of Proportionality and Diversity	Potential to cater for regional identity
2A	4	9	429,183	3x15; 1x14	High	Low
2B	6	6	286,122	5x10; 1x9	Medium	Medium
2C	6	4x7 1x5 1x3	333,809 238,435 143,061	11 or 12 8 or 9 4 or 5	Medium-high Medium Low	Low-Medium Medium High
2D	6	3x7 3x5	333,809 238,435	11 or 12 8 or 9	Medium-High Medium	Low-Medium Medium
2E	8	6x5 2x3	238,435 143,061	8 or 9 4 or 5	Medium Low	Medium High

Note: All models imply amendment of s 16H(1) and (2) of the Electoral Act to provide the Electoral Distribution Commissioners with flexibility in drawing boundaries to achieve electoral equality, as defined by an equal number of electors per MLC (within permitted variance).

*6x5 means 6 regions with 5 MLCs per region; 2x3 means 2 regions with 3 MLCs each, etc.

^Indicative only. Variance of up to 10% above or below this number is possible.

#Indicative only. Electoral Distribution Commissioners will be responsible for determining boundaries, and may include more or less districts per region, depending on actual district enrolments.

Several submissions (see, e.g. Malcolm Mackerras AO, F60; Kyle Hawkins, J103; Dr Kevin Bonham, M156) suggested, as one possible model, Regions Option 2A, with 4 regions each returning 9 members. This would retain the existing 3 metropolitan regions, and combine the 3 non-metropolitan regions into one. These 4 regions would broadly match the State's existing health service boundaries (i.e. North, South and East Metropolitan health service, and WA Country Health Service). Enrolment splits between the 4 regions, based on the enrolments at the 2021 state election, if boundaries were unchanged, would be as shown in Table 10.

Table 10: Electoral enrolments in a four region model for the Legislative Council (Regions Option 2A)

Region	Electors	% of WA enrolments	Variance from average regional enrolment
East Metropolitan	423,759	24.7%	-1.3%
North Metropolitan	427,779	24.9%	-0.3%
South Metropolitan	449,182	26.2%	+4.7%
Non-Metropolitan	416,012	24.2%	-3.1%

Note: figures are based on 2021 enrolments and no change in metropolitan region boundaries. The average region enrolment for a 4-region system, based on 2021 enrolments, is 429,183.

Boundaries would need to be amended periodically, but even if based on current boundaries, each region would have about 25% of enrolments and would be well within the 10% variance from the average region enrolment per MLC. This option has the advantage of being relatively simple to implement and allows for a high degree of proportionality, as the quota for election would be 10% compared to the current 16.7%. However, the extent to which MLCs from the non-metropolitan region would be more connected to regional WA and to electors in the region, compared to an MLC chosen from a Whole of State electorate, is questionable, given the enormous geographic size of the proposed single non-metropolitan region.

The other options listed in Table 9 have either 6 or 8 Legislative Council regions and therefore provide more possibilities for enhanced regional connections than Regions Option 2A (which only has 4). Regions Option 2B is essentially the same as the current system (6 regions each with 6 MLCs), except that the region's boundaries would need to be extensively revised in order for each region to have approximately equal numbers of electors. However, as noted earlier, having an even number of MLCs elected in a region (in this case, 6) reduces proportionality, in that it would require 57.1% of the vote for a party to win a majority of seats.

Regions Options 2C, 2D and 2E would all have approximate electoral equality and an odd number of MLCs per region. However, they have fewer MLCs per region than Regions Option

2A, which reduces their proportionality by comparison. In other words, there is a trade off – the more regions there are, the more likely that distinct regional interests will be represented, but this will likely come at a cost of proportionality and diversity. Option 2E imitates Victoria in having 8 regions, although two of the regions in WA would only elect 3 MLCs (whereas in Victoria, each region has 5 MLCs).

Regions Option 2C and 2E both include at least 1 region with only 3 MLCs. That would almost certainly reduce the chances of a minor party winning a seat in that region, as the quota for election would be 25%. Option 2D returns to the situation prevailing in WA between 1989 and 2005 in that the 6 regions would have either 5 or 7 MLCs.

Regions Options 2B, 2C, 2D and 2E would all present the Electoral Distribution Commissioners with a much more complex task in drawing boundaries so as to achieve electoral equality, in comparison to the Whole of State option.

2.2.4 Summary

The Committee considered 5 regions-based options. It does not recommend retaining the current system of 6 regions with 6 MLCs each (i.e. Regions Option 2B), even if its boundaries were revised to achieve approximate electoral equality. This is because of the problem, referred to earlier, with regions that elect even numbers of MLCs.

All of the other 4 regions-based options would (at least initially) have approximately the same number of enrolled electors (and so achieve approximate electoral equality). They would also provide:

- An odd number of MLCs per region.
- A reasonable level of proportionality so that voters' preferences are more fully reflected.
- A diversity of parties and interests being more likely to be elected.
- A reasonable prospect of Legislative Council regions reflecting distinct regional communities and identities.

Of the 4 regions-based options with those characteristics, greater proportionality and diversity is more readily achieved in Regions Option 2A. If (as some submitted) the purpose of having a regions-based model is to reflect a distinctive sense of regional connection, then Regions Options 2C, 2D and 2E would achieve this more effectively than Regions Option 2A. However, they would have a lower level of proportionality.

2.3 Conclusion: Whole of State electorate is preferable to Regions-based system

While Regions Options 2A, 2C, 2D and 2E would all be a significant improvement on the current system, by achieving approximate electoral equality while retaining a form of proportional representation in the Legislative Council, each regions-based option has these disadvantages:

- Is more complex than a Whole of State model.
- Requires the Electoral Distribution Commissioners to undertake a redistribution every 4 years.
- Involves a trade-off between proportionality and regional connectedness.
- Delivers, most importantly, a lower standard of electoral equality compared to a Whole of State electorate model.

The Committee therefore resolved to recommend a Whole of State electorate model in preference to a regions-based model.

Recommendation 1

That the State of Western Australia be one electorate (the Whole of State electorate) from which all members of the Legislative Council are elected.

3 Voter preferences

3.1 Background and context

Members of the WA Legislative Council are currently elected via a form of Proportional Representation by Single Transferable Vote (**PR-STV**). Under this system, 6 members from each region are elected by a combination of quotas and preferences. This voting system originated in the United Kingdom in the 19th century, with the intention of ensuring that the votes received by a candidate above the quota required to be elected (surplus votes) could be counted towards the election of additional candidates.

WA introduced proportional representation in 1989, when it adopted many of the features of other voting systems in Australia, including the Senate, NSW and South Australia (Victoria did not adopt proportional voting until 2006). Two key features of this voting system are a divided ballot paper and GVT.

3.1.1 “Above the Line” (ATL) and “Below the Line” (BTL) voting

The divided ballot paper and GVT were introduced for Senate elections in 1984. This system was designed as a solution to a problem which had emerged after the introduction of preferential voting in 1919 (and in particular the introduction of full preferential voting in 1934). As more and more candidates stood for election, the task of filling out every single square on the ballot paper grew more and more onerous. The average rate of informal voting at Senate elections between 1919 and 1983 was 9.1%.

The Senate voting reforms of 1984 sought to provide electors with a choice of two alternative means of voting. The ballot paper was split horizontally and divided into a top Section for party votes ATL and the lower, larger Section for voting BTL for individual candidates.

ATL allows electors to mark one square “1” in a column and thereby vote for all candidates listed in that same column (BTL). GVT enabled groups to lodge with the Electoral Commission an automatic list of preferences. Electors could simply number one square and have their preferences distributed to each of the other candidates, in accordance with the wishes of the group they voted for. This simplified the voting process, and the informality rate at Senate elections dropped to an average of 3.5% (Green 2019). This trend was mirrored in the WA Legislative Council where the informality rate has stayed low since the introduction of the same system in 1989; at the 2021 state election the informality rate for the Legislative Council was just 1.9%, whereas the informality rate in the Legislative Assembly was 3.8%.

There are 2 types of divided ballots currently in use in Australian upper houses. One is divided ballots, with GVT. This is the system in WA and Victoria. Electors choose one group ATL, and this choice is used to allocate their entire list of preferences. This ensures that every candidate is elected with a full quota of votes.

The other type of divided ballot incorporates voter preferences both ATL and BTL. Electors may give their preferences to different groups by numbering ATL squares, which are then used as lists of preferences for their vote. This type of ballot is used by NSW, SA and the Senate.

Since its adoption, there has been ongoing criticism from some observers that voting ATL is easier than BTL, thereby ‘herding’ electors into voting for a party, and not exercising the option of voting for individual candidates (see, e.g. submissions by Malcolm Mackerras AO, F60; Dr

Bruce Stone, M143). Very few voters now choose to vote BTL for individual candidates. Most opt to vote ATL.

3.1.2 Submissions advocating abolition of GVT

An overwhelming number of submissions recommended the abolition of GVT. Reasons cited in the submissions included the following:

- Candidates and parties with very little support are being elected, which is undemocratic.
- Parties are being formed solely for the purpose of directing preferences to other parties.
- Preference harvesting, including payments for the election of candidates, needs to stop.
- There is little ideological or policy consistency in the ordering of preferences between parties in the GVT submitted by groups.
- Following a similar system to the Senate would deliver consistency in voting between state and federal levels.
- Voters don't understand where their ATL preferences go.
- Voting BTL is too difficult, which unfairly "herds" voters into voting ATL.
- The preferences arrangements reflected through GVT, whilst published on the website of the WAEC (and in a limited number of other places, such the ABC election pages), are largely neither understood nor visible to the vast majority of WA voters.

3.1.3 Problems with GVT

Over time, the GVT system has prompted the practice of "preference harvesting". This term refers to political parties exchanging preferences. The practice has instigated the establishment of new single-issue political parties or independent groups, solely for the purpose of enabling a minor party to be elected on preferences pre-arranged to flow to it. This became evident in NSW in particular, when the 1999 NSW Legislative Council ballot had 81 columns and 264 candidates. As Ian Brightwell said in his submission (G72)

WA should CEASE using "group voting tickets" for its Legislative Council electoral system. It has long been known that "group voting tickets" can easily be "gamed" by "preference harvesting" techniques resulting in very undemocratic electoral outcomes.

Because GVT delivers preferences very effectively, this practice has seen candidates elected, even when their party has received very few primary votes. NSW abolished GVT after the 1999 election, but other jurisdictions did not do so at once. The Senate election of 2013 saw a number of candidates elected from parties with very small primary votes, which led to the abolition of GVT for Senate Voting in 2016. SA followed suit in 2018.

WA has retained Full Preferential Voting (FPV) with GVT. An Electoral Amendment (Ticket Voting and Associated Reforms) Bill 2019 (WA) (the 2019 Bill) was introduced by the Hon. Alison Xamon MLC into the Legislative Council in 2019, proposing a number of reforms to the Electoral Act including the abolition of GVT and the introduction of Optional Preferential Voting (OPV) (see the submission by WACOSS, H73). However, the Bill did not proceed, and the law was unchanged.

The problem with the GVT system in WA was illustrated in 2021 when the Hon Wilson Tucker MLC was elected to represent the Mining and Pastoral region despite his Daylight Saving Party receiving just 98 primary votes, 0.2% of the total valid votes cast in that region.

WA legislative reform would be necessary to abolish GVT, by amendments similar to those made in SA and NSW and those proposed by the 2019 Bill. Section 113A of the Electoral Act would have to be repealed and ancillary provisions relating to ‘voting tickets’ for the Legislative Council amended to make provision for ‘group voting squares’ for ATL voting. This would also require related amendments to the *Electoral (Ballot Paper Forms) Regulations 1990* (WA).

As observed earlier, voters are deterred from voting BTL under the current system in WA. Even if there were a significant number wishing to vote BTL, it is difficult because voters are instructed to ‘fill in every box’. As Table 11 shows, at the WA 2021 election this meant numbering at least 47 squares, and as many as 64, sequentially. Several submissions were critical of that requirement. For example:

Western Australia’s current variant is particularly burdensome for the voter, as it requires them to number every single box Below the Line if they do not wish to adopt one of the tickets. It is undemocratic and wholly unfit for purpose. (Henry Schlechta, B18)

Replacing the exhaustive preferential requirement that necessitates correctly numbering all candidates Below the Line with a requirement for a smaller minimum number of preferences as the pre-requisite for delivering a valid vote; this will lift levels of vote formality and remove the discriminatory “numeracy” test that has been built in to the WA upper house voting requirements (Hon Tom Stephens OAM JP, A7)

Table 11: 2021 Western Australia General Election - ATL and BTL candidates by region

Region	ATL	BTL
East Metropolitan	20	47
North Metropolitan	23	54
South Metropolitan	25	64
Agricultural	25	53
Mining and Pastoral	21	53
South West	23	54

In the 2021 WA election, 97.5% of electors chose to vote ATL.

3.1.4 Forms of preferential voting

In Australia, there are two different forms of preferential voting. One is *Full Preferential Voting* under which electors are required to number every square in order for their vote to be formal. This is the method of preferential voting currently in place in most lower houses of parliament in Australia, including the Commonwealth House of Representatives, and in the WA Legislative Assembly (as well as the Council).

The other form of preferential voting is *Optional Preferential Voting (OPV)* which is used in the NSW Legislative Assembly. It is also the most common form of preferential voting internationally. Since the abolition of GVT in the NSW Legislative Council, the Senate, and the SA Legislative Council, these jurisdictions have adopted a form of this method of voting. It gives electors the choice of how many preferences they wish to select.

The vast majority of those submissions which recommended the abolition of GVT also advocated a form of OPV. For example, former Senator Hon. Andrew Murray commented in his submission (C27) that:

The solution is for preferential voting ‘Above the Line’ by political party to be introduced, and lodged tickets abolished.

(By “loded tickets” he was referring to GVT).

3.1.5 OPV – implementation in different upper houses in Australia

While the NSW and SA Legislative Councils and the Senate all have OPV, there are some small but significant differences in their approach. NSW and SA simply instruct electors to mark ‘1’ in a square if voting ATL, and to mark further preferences ATL if they wish. Voters for the Senate are instructed to mark at least 6 preferences ATL, but there is a savings provision in s 269(1) of the *Commonwealth Electoral Act 1918* (Cth) which permits any vote with at least one preference to be treated as formal. (That “savings” provision is not revealed on the ballot paper, however.)

There are also differences in the instructions to electors who opt to vote BTL. NSW electors are instructed to number at least 15 squares (the *Constitution Act 1902* (NSW), Schedule 6, entrenches the requirement that a voter specify preferences for 15 candidates). Voters for the Senate are instructed to number at least 12 BTL. SA follows the Senate in instructing voters to number at least 12. However, SA and the Senate have a savings provision that allows a BTL vote with between 6 and 11 preferences to be treated as formal. Again, this provision is not revealed on the ballot paper. Victoria, which does not permit voters to allocate preferences ATL, “recommends” at least 5 preferences BTL.

Table 12 – Preference requirements and savings provisions in Australian upper houses

	Senate	NSW	Victoria	WA	SA
ATL suggested on ballot paper	6 (‘at least’)	1 (‘at least’)	1 (‘no more’)	1 (‘no more’)	1 (‘at least’)
ATL minimum to be valid	1	1	1	1	1
BTL suggested on ballot paper	12 (‘at least’)	15	5 (‘at least’)	Number all squares	12
BTL minimum to be valid	6	15	5	Number all squares (except for the last but one)	6

Source: Table compiled by the Committee based on relevant legislation and consultations with Electoral Commissions

3.1.6 Impact on preferences of these differences

Instructions given to electors within an OPV system have an impact on the number of preferences which electors produce, and therefore an impact on the overall flow of preferences. There are two types of preferences flows within OPV under the PR-STV system.

One is what is known as *intra-party preferences*. This refers to the flow of preferences between candidates within the same group.

The other is *inter-party preferences*. This refers to the flow of preferences between candidates from different groups.

When electors vote for a group (or party) ATL they are in effect voting for all candidates in that group or party, thus ensuring the flow of *intra-party preferences*. When electors are instructed to number multiple squares ATL, *inter-party preferences* are increased. This is the approach taken by the Senate system. Consequently, there is a higher flow of inter-party preferences in that system. This instruction may be a sensible one in that context, given that the Senate has lower magnitude proportionality (i.e. fewer members being elected from the one electorate) than both NSW and SA. Preferences matter more in a lower magnitude proportional system, as a greater number of groups or candidates do not reach the quota. Some have suggested that the Senate instruction is not really honest, (Malcolm Mackerras AO, F60), because voters are recommended to vote more preferences than the number actually required for a vote to be valid.

The effect of instructing electors to vote in a specific way is illustrated by Table 13 below (produced by Antony Green AO), which examines the number of preferences allocated by electors in the Senate election in 2016. It shows that a significant percentage of voters (6.6%) marked less than 6 preferences, even though they were instructed on the ballot paper to mark 6 or more. Without the 'savings' provision, these votes would have been informal.

Table 13 - 2016 Senate election - Formal Ballot Papers Categorised by Method of Completion and Number of Preferences

State	Percentage of Ballot Papers Marked as Above the Line, by Number of Preferences					Percentage of Ballot papers marked Below the Line
	1	2-5	6	7-12	>12	
NSW	4.7	4.1	80.9	4.3	0.6	5.4
VIC	2.4	3.6	83.5	4.5	0.8	5.3
QLD	2.0	3.3	83.2	4.5	0.8	6.1
WA	2.2	3.4	83.5	4.2	1.2	5.5
SA	2.3	3.0	79.2	5.2	1.7	8.5
TAS	1.1	2.2	61.1	5.0	2.5	28.1
ACT	1.3	1.8	70.6	11.1	..	15.2
NT	2.3	2.8	50.8	35.5	..	8.6
National	3.0	3.6	81.2	4.8	0.8	6.5

Source: Antony Green (2019)

However, in a higher magnitude proportional system (i.e. more members being elected from one electorate), ATL inter-party preferences are not as important, as more groups and candidates can reach a quota based on primary votes alone. This is why the instruction given to NSW and SA electors makes sense, and should be adopted in WA also. Antony Green AO (M162) advocated, in his submission to the Committee, that *‘the NSW and South Australian model of fully optional ATL preference be adopted rather than the Senate system that recommends a minimum six preferences’*.

There are also different impacts which arise from the instructions given to electors who choose to vote BTL. If electors are instructed to number a large number of preferences BTL, this increases the preference flow, which makes it more likely that their vote will elect a candidate, (even if this one is not their first choice). As previously noted, a requirement to number a large number of squares for candidates BTL may have the effect of discouraging electors from voting BTL. Conversely, whilst more people may be inclined to vote BTL if they were not obliged to number a large number of candidates, their votes would more frequently exhaust. This could present significant problems if large numbers of people decided to vote BTL, and did not realise that they were in effect voting only for a small number of candidates rather than for the full list of candidates from their favoured party or group. If an elector is instructed to number a high number of preferences but fails to do so, it has been suggested that a savings provision could provide that their vote would still be formal even if they have not followed the instructions (as is the case for Senate elections).

The instructions given to electors who choose to vote BTL may differ depending on the electoral system being adopted. A regions-based system would elect a smaller number of members in each region, and therefore a lower number of preferences might be recommended.

Conversely, should a Whole of State system be adopted, so that either 18 (or 36) seats were filled at one election, a higher number of preferences would be required to be marked, as a high exhaustion rate would be undesirable.

With 36 members to be elected, where some parties may aspire to elect as many as 22 candidates, the Committee considers that electors should be instructed to number at least 20 preferences. With 18 members to be elected, where some parties may aspire to elect as many as 12 candidates, the Committee considers that electors should be instructed to number at least 12 preferences. This would be consistent with the BTL system in the Senate. It would also ensure that a BTL vote would very likely elect the full list of candidates that the BTL voter was seeking to have elected.

3.2 Transferring preferences

As discussed above, WA uses PR-STV for the Legislative Council. Under this system, most seats are won in the early stages of the preference distribution by the leading candidates of the largest parties, which typically receive one or more quotas on first preferences. This is usually followed by a process in which last-placed candidates are progressively excluded and their preferences distributed to remaining candidates, in a manner similar to preference distributions for seats in the Legislative Assembly and most other lower houses in Australia. This process results in the remaining seats being won by candidates who accumulate a quota's worth of votes through the course of the distribution.

The more complicated process is that used for preferences where a candidate is elected and has surplus votes which can be distributed to other candidates. These are "surplus to quota" preferences. There are several issues that relate to this.

The first issue is the value at which these preferences are distributed, and whether exhausting preferences should be included or excluded from the formula for distribution. The second issue is which votes should be examined for preference distribution, i.e. whether a subset of ballots equal to the size of the surplus should be distributed, or if some or all of the votes received by the candidate should be transferred at a reduced value. A third issue is the size of the surplus and whether (or how) it should be bundled or separated for distribution.

In Australia, different jurisdictions take different approaches to these issues. NSW uses random sampling from the last parcel of ballots received by the elected candidate during the preference distribution. This approach presents problems, as every sample which is used will vary slightly, and the result in a very close contest could change depending on the sample which is used. It also increases the value of the votes in the last parcel, compared with the other ballots that made up the elected member's quota. Similar methods are used in the ACT and Tasmania. NSW and ACT exclude exhausted preferences when calculating the transfer of votes, which effectively means that they are transferred at a slightly higher value.

The Senate, Victoria and SA include all of an elected candidate's ballot papers in the transfer at a reduced value. This is known as the Inclusive Gregory Method. WA uses a variant on this, known as the Weighted Inclusive Gregory Method, which ensures that ballots that are reduced in value at one point in the count do not gain in value if another transfer value is applied to them at a later stage. While counting this can be challenging manually, it is a fair system because it accurately calculates the weight of votes that elected a candidate and created the surplus. The

Weighted Inclusive Gregory Method would remain an effective method of counting votes should WA move to a system of OPV, because more votes will exhaust. This method takes account of this by only utilising those votes that contain preferences.

3.3 Optional Preferential Voting (OPV): Issues for consideration

As Table 5 in Chapter 2 shows, not all seats are filled by a full quota. There is always a small number of seats which are filled with partial quotas. These seats are generally filled by those groups which have come closest to achieving a quota of primary votes. Under a high magnitude proportional system with OPV, it is more difficult to pass candidates with preferences, unless the gap in primary votes is small.

Should the WA Legislative Council move to a Whole of State electorate model, there would be a low quota, and there could be an advantage in being a party or candidate being placed on the left hand side of the ballot if the same ballot paper were used across the whole of the state. Even if this advantage were small, it could make a difference if the quota were just 2.703% (as it would be with a 36 member electorate). Antony Green AO suggests this could be mitigated by rotating the columns on the ballot paper in each electoral district. While such a measure would remove this potential competitive advantage, it may make scanning and counting the ballots more difficult.

This leads on to the more substantial issue with OPV – the counting of the ballots. As discussed above, under GVT, ballots ATL are marked with just “1”, and the preferences are transferred automatically once all formal votes have been added. Under OPV, many of the votes ATL would have preferences which need to be counted, and allocated as the count progresses. In addition, the number of electors who choose to vote BTL may increase, and their votes contain multiple preferences which need to be examined and allocated as the count progresses. Antony Green AO has commented on the difficulty of counting ballots under PR-STV, particularly in electing 36 members by OPV (Green 2021).

One possible solution would be to introduce a completely different counting method, as is used internationally, such as D’Hondt or Sainte-Laguë. These methods do not include preferential voting however, so each would remove the right of electors to allocate their own preferences. Another possible solution is to “close the ballot” which would restrict the choice of electors to groups only (and prevent electors from voting BTL or allocating their preferences differently to the party’s “ticket”) (as submitted by Nicholas Wrenn, A11).

There are two reasons why these options are not favoured by the Committee. The first is that the Committee is providing options for *increasing* voter control over their own preferences, but these options would reduce voter control. The second is that s 73(2)(c) of the *Constitution Act 1889* (WA) entrenches the requirement that ‘members’ be ‘chosen directly by the people’.

A more practical solution to the challenges of counting the ballot is to separate the ATL votes that have not marked a preference and scan the remaining ballots, enabling digital technology to be harnessed. This would require a ballot paper of a size that may be scanned. The following Sections suggest several measures which could be taken to achieve this.

3.4 Parties and Independents

If a Whole of State electorate were to be adopted, measures should be taken to minimise what some submissions have apprehended – that it could result in an unwieldy or impractical ballot paper. Based on discussions with the WA, NSW and SA Electoral Commissions, there are different ways in which the number of groups and candidates on the ballot paper could be limited to make it more manageable and ‘user-friendly’ to voters. It is of course important that any such measures do not unduly restrict the ability of members of the community to nominate as a candidate, either individually or as a group. The intention would be to provide opportunities for election for groups or candidates demonstrating a degree of popular support in the community.

The following measures should be considered:

3.4.1 Registration of parties

There are several ways in which the registration of political parties might be tightened in the Electoral Act. Given that the WA Parliament has fixed terms, parties could be required to register well in advance of the election date. The Act could stipulate a 6 month or even 12 month period ahead of the election date, before which an application for registration must be lodged. In NSW, applications for registration must be lodged 12 months before an election. A minimum cut-off date for registration of at least 6 months prior to a state election, would ensure that political parties would require planning and organisation to access the ballot.

In addition, there may be specific conditions for party registration (see Gordon Payne, addendum to Submission D38). In SA, there is a \$500 registration fee as well as a requirement, for non-parliamentary parties, to provide membership declarations by a minimum number of 200 electors who are party members, and whose names have not been used by another political party.

NSW imposes a party registration fee of \$2000 and requires 750 electors, who are party members, to declare their membership at the time of registration. NSW prevents more than one party using the same members for a party’s registration.

The WA Electoral Act requires that an application to register a party set out the names and addresses of at least 500 members who are electors and provides that if the WAEC believes on reasonable grounds that a “substantial portion” of those named are electors whose names have been provided for registration (or the continued registration) of another party, the Commissioner may refuse to register the political party. WA should follow SA and NSW and require that members listed on an application to register a party have not been declared as members in the registration of another political party in WA and, like SA and the Commonwealth, could require a registration fee of \$500.

3.4.2 Nomination fees

A second possible area of regulation would be to increase the nomination fees for candidates. The nomination fee for candidates for the WA Legislative Council is currently \$250. A nomination fee of \$1000 per candidate would be more appropriate, given that the candidate is seeking state-wide support. In SA, the nomination fee is \$3000 for its Legislative Council, while in NSW the figure is \$500 (with a cap of \$5000 for a group of 10 or more). While the proposed figure of \$1000 is less than \$3000, taken together with new conditions for party registration and stipulations around the minimum number of electors for the nomination of individual candidates

(see Section 3.4.4), this sets access to the ballot at reasonable levels. (The nomination fee would be refunded should that candidate be elected).

3.4.3 Regulation of Independents by group ATL

A third area for regulation involves the ability of independent candidates to nominate and have their own group. Each group on the ballot adds to the size and complexity of the ballot paper. As noted, in NSW, a minimum of 15 candidates is required to access an ATL group voting square, while in SA at least 2 candidates are required. The WA Electoral Act could restrict independents from having their own group ATL on the ballot, unless they nominate a minimum of 3 candidates. The proposed minimum of 3 is based on s 156D of the Electoral Act, which prescribes that vacancies in the WA Legislative Council are filled by a recount. A minimum of 3 candidates would ensure that an ATL group would have a means of replacing elected members should the need arise. Independents could also be required to have a minimum number of electors for the nomination of a candidate (see section 3.4.4), similar to that required for the registration of political parties – but without needing to do so 6 or 12 months prior to the election. Taken together with a nomination fee requirement, this would ensure that candidates with popular support could access the ballot.

3.4.4 Regulation of independent candidates BTL

A fourth area for regulation involves the ability of independent candidates to access the ballot BTL. The Electoral Act could be amended to stipulate that a candidate must demonstrate a minimum degree of popular support to access the ballot. In SA, this requires a nomination form signed by at least 250 electors, NSW requires at least 25 electors. In SA, with grouped candidates, the same elector cannot nominate more than one candidate in the group (or one grouped candidate and another candidate in the election). In NSW, an elector cannot nominate more than one candidate. In WA, a requirement of at least 200 electors who have not nominated more than one candidate would set a reasonable threshold for popular support. A group of candidates who wished to band together could collaborate and ensure that they nominate a minimum of 3 candidates and therefore access a spot ATL.

Table 14 –Possible Measures for the Regulation of Parties and Independents for the WA Legislative Council compared with NSW and SA

Regulation	NSW	SA	Possible Measures for WA
Registration of Parties	register 12 months prior and with declarations by 750 electors who are party members (and who are not relied upon for the registration of another political party) and \$2000 registration fee	register at least 6 months prior with 200 electors who are party members (for non-parliamentary parties) who are not relied upon for the registration of another political party and with \$500 registration fee	register at least 6 months prior to a general election with 500 electors who are party members and who cannot be relied upon for the registration of another political party and with a registration fee
Nomination Fee	\$500 (cap of \$5000 for 10 or more)	\$3000	\$1000
Regulation of Independents by group ATL	at least 15 candidates	at least 2 candidates	at least 3 candidates
Regulation of Independents BTL	at least 25 electors who have not nominated more than one candidate	at least 250 electors who have not nominated more than one candidate in the group (or one grouped candidate and another candidate in the election)	at least 200 electors who have not nominated more than one candidate

Source: Table compiled by the Committee based on relevant legislation and consultations with Electoral Commissions

3.5 Ballot paper design

A further issue concerns the design of the ballot paper. The Committee has considered a number of technical changes which could make the ballot paper more manageable:

- Limit party names to 4 words or less. Long names take up additional space on the ballot paper. Under current provisions, there is a requirement BTL to replicate the party names alongside each candidate for that party. This unnecessarily takes up space.
- Prohibit the use of capitals for party names, which can take up more space on the ballot.
- Do not replicate party names for BTL candidates (who are in a list with the name of the party at the top). This unnecessarily takes up space.

- Allow a group that nominates more than 18 candidates to have 2 sub-columns under its BTL heading. This is likely to only be used by the 2 major parties.
- Place non-grouped independents into one column BTL, with the order of appearance drawn randomly. Currently, each non-grouped independent has his or her own column, even though BTL. This stretches the width of the ballot paper, and could be a significant problem in a Whole of State election, should several non-grouped independents choose to nominate.

3.6 Conclusion

Based on the discussion above, the Committee makes the following Recommendations.

Recommendation 2

That Group Voting Tickets be abolished and replaced with Optional Preferential Voting for the WA Legislative Council with voters instructed on the ballot paper as follows:

- For voters Above the Line, to mark one or more squares.
- For voters Below the Line, to mark a specified minimum number of squares. explained in Section 3.1.6 of this Report, this number will depend on the number of candidates being elected.

Recommendation 3

That the following be introduced:

- Registration of political parties at least 6 months prior to a general election, with a registration fee and at least 500 declared members for each party, who have not been declared as members in the registration of another political party.
- Increase the nomination fees per candidate.
- At least 3 independent candidates be required to form an Above the Line group.
- That a significant number of electors be required to nominate an independent candidate. These electors must not have nominated another candidate.

Recommendation 4

Measures be considered to manage the size and design of the ballot paper as suggested in Section 3.5 of this Report.

4 Related issues

There are several related issues (discussed below) which, whilst not strictly within the Terms of Reference, were raised during the submission and consultation phase, and may be considered in the context of reforms to the WA electoral system.

4.1 Turnout in regional and remote communities

Calculations related to the creation of electorates are generally based on enrolled electors rather than the actual numbers of people who vote. This is because it is possible to assess how many electors are enrolled in an area, but difficult to predict who will be voting. Yet turnout is critical when considering who actually votes and determines electoral outcomes. The Mining and Pastoral region of WA has repeatedly produced lower than average turnout when compared with the other 5 regions of the Legislative Council. The difference in turnout for the 2021 election is shown in Table 15, where Mining and Pastoral was 72%, 13 percentage points below the state average. The next lowest turnout was 85.02%.

Table 15: WA Legislative Council turnout by region, 2021 state election

Region	Turnout %
Agricultural	85.57
East Metropolitan	85.02
Mining and Pastoral	72.00
North Metropolitan	86.93
South Metropolitan	86.28
South West	86.20
Total	85.50

Source: WAEAC

Many of the low turnout areas in this region are within WA's remote Aboriginal communities. There are a variety of historical, social and environmental reasons for this. It is clear that continuing work with Aboriginal communities is needed to address this, to ensure greater equality of access to voting services. As was put to the Committee by Robert Kennedy, WA Electoral Commissioner:

"Given the focus of the Committee's work is on matters of electoral equality I would also take this opportunity to identify a legislative issue directly impacting electors in remote and regional areas around equality of access to voting services. Currently many of these electors rely on mobile in person polling teams who visit remote communities and town sites at election time. This service is subject to the vagaries of weather, remote travel arrangements and other impediments. The introduction of technology assisted voting provisions in the Act present a more reliable avenue for a greater number of these electors but unfortunately the application of this service is limited to a small cohort of electors defined under s.99C of the Act. In other jurisdictions such technology assisted voting provisions are available for electors in remote areas who are enrolled at a location greater than a specified distance from a dedicated polling location. A similar amendment in Western Australia would provide the Commission with a more efficient and effective means of receiving votes from those electors who in particular may be more directly impacted by any changes that your Committee may recommend."

4.2 Electors who reside overseas

When WA electors reside overseas at the time of the election, there is sometimes a very limited number of locations in which they can vote, and if they apply for a postal vote they may not receive it in time. Consideration should be given to enabling WA electors who are overseas to access electronic voting. This form of voting is already available in WA but is limited to individuals who have specific access issues at polling stations in WA. Expanding electronic voting to electors who reside overseas would enable them to participate more fully in Western Australian elections.

4.3 Facilitating a regional presence of MLCs

Several of the submissions raised concerns about how accessible MLCs would be to electors living in non-metropolitan regions, should the current regional vote-weighting be abolished and replaced with a Whole of State electorate. This is a significant concern, given that the distance between major regional centres is considerable. While emerging technology can assist in this respect, there is nevertheless value in encouraging MLCs to situate their offices in locations where there is currently no other upper or lower house member of parliament. Even under the current system, where half the MLCs are elected from outside the Perth metropolitan area, there are very few MLCs who are based a considerable distance away from other members of parliament.

There are two potential solutions to this challenge, should a Whole of State electorate be established. The first is to offer additional resources to those MLCs who base themselves a minimum distance from the centre of Perth. For instance, an MLC may be eligible to apply for additional staffing and travel allowances. This may be more effective than the current system of MP allowances, under which there are a number of such allowances available for MLCs who are elected from regional areas, even if they are based in West Perth.

A second solution may be to offer similar resources to MLCs who base themselves a minimum distance from the office location of MLAs. This would ensure that the offices of MLCs complement MLAs rather than duplicate their location.

4.4 Methods of voting

In supporting voting equality there is also a need to consider forms of voting and whether the methods available remain sufficient, whether greater flexibility around ballot design is required in the Electoral Act or whether any reforms could simplify the process for voters or for the WAEC. This may include expanding the availability of electronic voting, technology assisted voting (including in overseas or remote locations), simplifying early or postal voting processes or considering whether COVID-19 has highlighted the need for other procedural changes.

4.5 Civics and education

Education and awareness of voting and civics education are critical for the functioning of any electoral system, and they are especially important when electoral reform is undertaken. Honorary Professor Harry Phillips AM (2006) has opined that ‘there exists a very strong belief in the community about the importance and need for political and civic education’. While the WAEC, the Constitutional Centre of Western Australia and the WA Parliament (see, e.g. Phillips 2011) have significant education programs in place, the reform of the electoral system represents a unique opportunity to enhance electoral education. This may include a focus on some of the following issues well in advance of the next WA election:

- The role of preferences in impacting outcomes in proportional voting systems.
- Ballot paper changes.
- The importance of enrolment and voting in elections.
- The importance of representation in our political system.
- The role of upper and lower houses of parliament.
- Means of accessing and engaging with MPs.

Recommendation 5

That the measures discussed in Chapter 4 be considered, to improve the electoral system.

References

Green, Antony, 'Submission to the Victorian Parliament's Electoral Matters Committee Inquiry into the Conduct of the 2018 Victorian State Election' (2019), https://www.parliament.vic.gov.au/images/stories/committees/emc/2018_Election/Submissions/103_Antony_Green.pdf

Green, Antony, 'WA Legislative Council Reform – The Problems of Ballot Paper Design and the Number of Preferences', 14 May 2021, <https://antonygreen.com.au/wa-legislative-council-reform-how-many-preferences-should-be-completed/>

Phillips, Harry. 'Submission 22', *Commonwealth Parliament of Australia Joint Standing Committee on Electoral Matters Inquiry into Civics and Electoral Education* (2006), 3, https://www.aph.gov.au/~media/wopapub/house/committee/em/education/subs/sub022_pdf.ashx

Phillips, Harry C. J., 'Perceptions of parliament: the civic education factor - 2010 Western Australian findings' (2011) 26(1) *Australasian Parliamentary Review* 179, 182.

Western Australia, *Commission on Government Report No 1* (1995), [9.3.8.4].

Western Australian Electoral Distribution, 2019 Final Boundaries by Region and District Maps, November 2019, Office of the Electoral Distribution Commissioners, 27 November 2019.

Western Australia, *Parliamentary Debates*, Legislative Council, 11 October 1983, 2801 (Joe Berinson, Attorney General).

Annexure 1: Terms of Reference

MINISTERIAL EXPERT COMMITTEE ON ELECTORAL REFORM

WHEREAS

At the 2021 election for the Legislative Council:

The Daylight Saving Party won one seat in the Mining and Pastoral region, having received 98 first preference votes, which is equivalent to just 0.2% of all formal votes in that region;

AND

The Greens in the North Metropolitan Region received 27,077 first preference votes, or 7.4% of all formal votes in that region, but did not win a seat;

AND

In the Agricultural Region, the Nationals received 22,999 votes and won two seats;

AND

In the South Metropolitan Region, the Liberal Party received 67,000 votes but won only one seat;

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.

MEMBERS

Hon. Malcolm McCusker AC CVO QC

Professor John Phillimore

Professor Sarah Murray

Associate Professor Martin Drum

TERM OF APPOINTMENT

Eight weeks from the date of Cabinet Appointment

EXECUTIVE SUPPORT

To be provided by the Office of the Minister for Electoral Affairs

RESOURCING

To be provided by the Department of Premier and Cabinet

CONFIDENTIALITY

Members are to maintain confidentiality of all information and discussions that are not in the public domain.

Annexure 2: Discussion Paper

Introduction

The Ministerial Expert Committee on Electoral Reform invites the public to make submissions on issues on which it has been asked to make recommendations, and has produced this Discussion Paper for that purpose.

Submissions can be made by 5pm, 8 June 2021 at: submissions@waelectoralreform.wa.gov.au or by post to the attention of the Committee to 11th Floor Dumas House 2 Havelock Street WEST PERTH WA 6005.

Those who have already made a submission are welcome to amend or add to their existing submission.

Terms of Reference

The Committee's Terms of Reference (**attached as Appendix 1**) ask it to review the electoral system for the Legislative Council and to provide recommendations on two matters:

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.

It is important that it be understood that the Committee's role is defined by and limited to the Terms of Reference. The Committee is not asked to recommend to the Government whether or not it is desirable to achieve electoral equality for Legislative Council elections. That is not in the Terms of Reference. The Committee's task is to recommend how "electoral equality" might be best achieved. Nor is the Committee asked to consider either abolition of the Legislative Council (as happened in Queensland in 1922) or a reduction in its membership (each of which would require a referendum).

Structure of the Discussion Paper

The structure of the Discussion Paper is as follows. Chapter 1 provides the background and context for the proportional voting system used to elect members to the Western Australian Legislative Council. Chapter 2 outlines the number of electors enrolled in the different regions within the Legislative Council, and how these numbers have changed since the regions were established in 1987. Chapter 3 looks at voter preferences. Chapter 4 outlines the various upper house models in use across other State jurisdictions in Australia.

1. The electoral system for the Western Australian Legislative Council

A brief history

The Western Australian Legislative Council was established in 1832. It became a wholly elected chamber in 1894, but with the franchise limited to landowners and those of a prescribed level of income. Universal suffrage was finally introduced in 1962, and the Council consisted of a series of 2-member electorates (called provinces), with half the members (or MLCs) being elected at each

election for a 6 year term. There were from the outset significant differences in the number of electors per province, both between metropolitan and non-metropolitan provinces, and between different non-metropolitan provinces.

In 1987, a new system of multi member electorates (called regions), elected by proportional representation, was introduced. Six regions were established. All MLCs now have 4 year terms, and face electors at each election rather than the former situation of only half the Council being replaced each election. Three regions – North, South and East Metropolitan – were established in the metropolitan area with 7, 5 and 5 MLCs each respectively; and 3 regions in the non-metropolitan area – South West, Agricultural, and Mining and Pastoral – with 7, 5 and 5 MLCs respectively. Significant enrolment variation between the non-metropolitan and metropolitan regions persisted, although to a lesser extent than before.

The metropolitan area of Perth was specified in the legislation, with the 3 metropolitan regions fitting within that boundary and the other 3 regions outside it. An independent Electoral Distribution Commission was established to determine the boundaries for Legislative Assembly districts and Legislative Council regions after each election. Legislative Council regions were created by aggregating several Legislative Assembly districts. The Commissioners, in making their determination, must “generally” work within the context of the region scheduled in the Metropolitan Region Town Planning Scheme Act 1959 (WA) and Rottnest Island. Furthermore, land use and physical features as well as communities of interest, local government boundaries, existing regions and districts, the trend of demographic changes and means of communication, travel and distance from Perth, all guide the Commissioners in setting boundaries for the regions.

In 2005, after the election that year, changes were made to the Legislative Council’s electoral system. At the same time, one vote one value was introduced in the Legislative Assembly. The number of MLCs increased from 34 to 36, and the 6 regions each return 6 members, rather than the previous system of 2 regions having 7 MLCs and 4 having 5 MLCs. The metropolitan regions elect 18 MLCs, as do the non-metropolitan regions. The Act now stipulates that there should be approximately equal numbers of “complete and contiguous” districts in the 3 metropolitan regions. There is no such stipulation for the 3 non-metropolitan regions. Maps of the Legislative Council regions are attached in Appendix 2.

2. Electoral enrolment in each region under the current system

The current enrolment figures for each Legislative Council region are provided in Table 1.

Table 1: Legislative Council enrolments, February 2021

Region	Enrolment (2021)	% of Total enrolled electors	No. of MLCs	% of Total MLCs	Electors per MLC	LA Districts
Agricultural	103,378	6.02%	6	16.70%	17,230	4
East Metropolitan	423,759	24.68%	6	16.70%	70,627	14
Mining and Pastoral	69,651	4.06%	6	16.70%	11,609	4
North Metropolitan	427,779	24.92%	6	16.70%	71,297	14
South Metropolitan	449,182	26.16%	6	16.70%	74,864	15
South West	242,983	14.15%	6	16.70%	40,497	8
TOTAL	1,716,732	100.00%	36	100.00%	47,687	59

Table 1 shows the wide difference in enrolments per region and per MLC. The trends over time since the adoption of regions and proportional representation in the Council are shown in Figure 1.

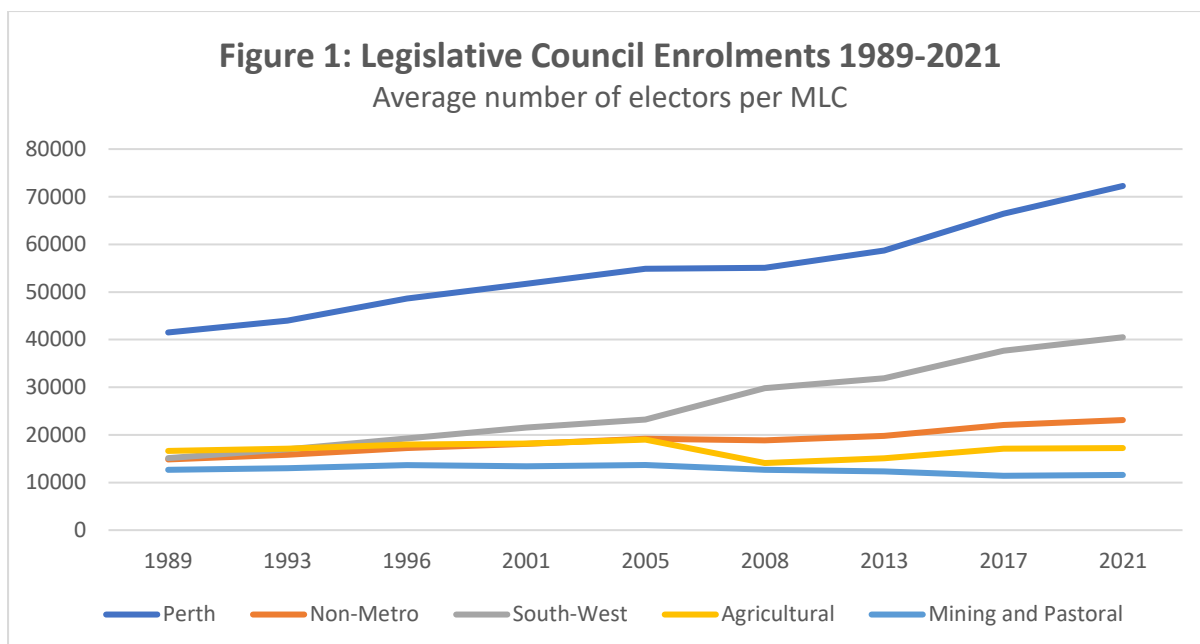


Figure 1: Calculations by Antony Green based on WAEC Election Statistics, (<https://antonygreen.com.au/was-zonal-electoral-system-and-the-legislative-council-reform-debate/>)

Figure 1 shows that there was a gradual increase in the disparity of enrolments per MLC between South West and the other two non-metropolitan regions between 1989 and 2005, accentuated by the changes made after the 2005 election. This growing disparity is clear in Figure 2, which is based on electoral weighting between the regions, compared to the metropolitan average (labelled Perth here).

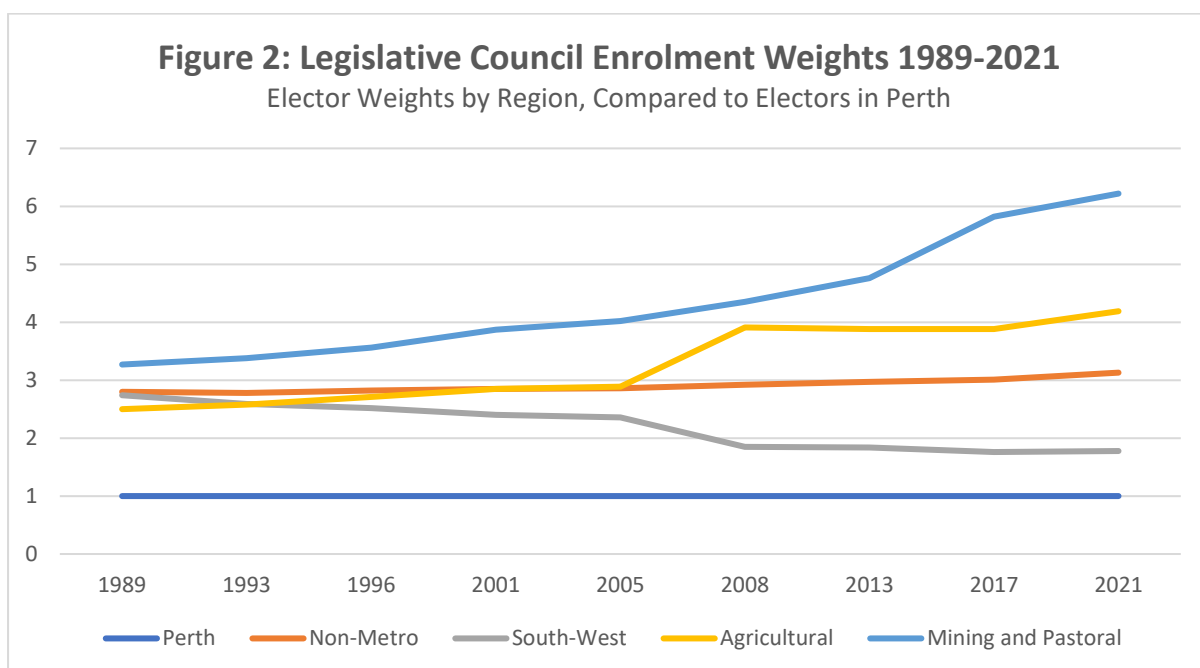


Figure 2: Calculations by Antony Green based on WAEC Election Statistics, (<https://antonygreen.com.au/was-zonal-electoral-system-and-the-legislative-council-reform-debate/>)

Figure 2 shows that on average, non-metropolitan electors have about three times the voting weight of metropolitan electors in the Legislative Council. Overall, non-metropolitan as against

metropolitan weighting has increased steadily from 2.8:1 in 1989 to 3.1:1 in 2021, as the proportion of the State's population living in the metropolitan area has increased. Within the non-metropolitan area, the three regions had approximately similar numbers of electors per MLC when the new system was introduced in 1989. However, as the population shifted towards the South West, this changed. By the time of the 2005 election, the ratio of electors per MLC in Agricultural region compared to South West region had increased from 0.9:1 to 1.2:1, while the ratio for Mining and Pastoral region to South West region increased even more, from 1.2:1 to 1.7:1.

The post-election 2005 changes to the Electoral Act reduced the number of MLCs for South West region from 7 to 6, and increased the number of MLCs from 5 to 6 in both Agricultural region and Mining and Pastoral region. Consequently, the weighting towards Agricultural and Mining and Pastoral regions compared to South West increased markedly, and has continued to do so, as population in the South West grows relative to the other 2 regions. At the 2021 election, South West had 40,497 enrolled electors per MLC, compared to Agricultural's 17,230 and Mining and Pastoral's 11,609. By contrast, the average metropolitan region has 72,262 enrolled electors per MLC. Agricultural now has 2.35 times the voting weight of South West, compared to 1.22 in 2005 (and 0.91 in 1989). Mining and Pastoral now has 3.49 weighting compared to South West, up from 1.70 in 2005 (1.19 in 1989).

In 2021, the two least populous regions (Agricultural, Mining and Pastoral) comprise 10.1% of the total number of electors enrolled in the state, but elect one third (33.3%) of MLCs. More than 6 times as many electors in the metropolitan region are required to elect an MLC compared to one voter in the Mining and Pastoral region. The fixed metropolitan border in the Legislative Council means there is no automatic mechanism to prevent a continuing rise in this disparity.

Legislative Council regions are currently created by aggregating Legislative Assembly districts. The number of districts in each region is listed in the right hand column in Table 1. The two least populous regions (Agricultural and Mining and Pastoral) are each made up of 4 Legislative Assembly districts, compared to 8 for South West region. Two of the three metropolitan regions contain 14 districts and one, South Metropolitan, contains 15 districts. This has occurred because there are 43 districts in the fixed metropolitan region, a number which is not divisible by 3. As a result, South Metropolitan has more enrolled electors per MLC than North Metropolitan or East Metropolitan.

3. Voter preferences

The changes in 1987 established a system of group voting tickets in Legislative Council elections. This means electors choose to either vote for just one group (usually a political party) 'Above the Line', or alternatively they can preference all candidates (sequentially from most to least preferred) 'Below the Line'. For a 'Below the Line' vote, electors are instructed to number every square. Candidates are elected when they reach the required quota of valid votes. In the Legislative Council, with 6 MLCs to be elected per region, the quota is one-seventh, or 14.29%, of the total valid votes cast.

The vast majority of electors in WA vote for just one group 'Above the Line' (see Table 2). A group must lodge with the Electoral Commission a statement of preferences which indicates how their group votes will be distributed if the group is eliminated, or if it has a surplus (above quota)

to transfer. This means that ‘Above the Line’ preferences between groups are decided by the group they have voted for rather than by the voter.

TABLE 2: Above and Below the Line Voting, 2021 Election

	ATL	BTL #1 candidate	BTL other candidates	Total Valid	% ATL	% BTL #1	% BTL other
Agricultural	84,509	1,503	481	86,493	97.7%	1.7%	0.6%
East Metro	341,280	8,128	2,765	352,173	96.9%	2.3%	0.8%
Mining & Pastoral	48,022	747	295	49,064	97.9%	1.5%	0.6%
North Metro	356,731	7,040	2,458	366,229	97.4%	1.9%	0.7%
South Metro	371,717	6,110	2,283	380,110	97.8%	1.6%	0.6%
South West	200,810	3,225	1,064	205,099	97.9%	1.6%	0.5%
Total	1,403,069	26,753	9,346	1,439,168	97.5%	1.9%	0.6%

Table 2:

ATL means the elector voted “1” in the one square for a group ‘Above the Line’.

BTL #1 candidate means the elector voted ‘1’ for the first listed candidate in a group, ‘Below the Line’.

BTL other candidate means the elector voted for a candidate not listed at the top of the group list.

In the Legislative Council, voting ‘Above the Line’ is the dominant method. In 2021, 97.5% of electors voted ‘Above the Line’ in the Legislative Council. Three quarters of the 2.5% of electors who voted ‘Below the Line’, voted for the first-listed candidate, rather than for a candidate lower down a group list (1.9% compared to 0.6%).

As Table 3 demonstrates, the number of candidates on the ballot has increased sharply over the last two electoral cycles (2017 and 2021). This has made the task of voting ‘Below the Line’ more onerous.

TABLE 3: Nomination of candidates: Western Australian Legislative Council 1989-2021

Election	Number of candidates
1989	135
1993	126
1996	129
2001	159
2005	185
2008	170
2013	165

2017	302
2021	325

4. Group voting tickets in Australia

All state jurisdictions except Tasmania have adopted proportional representation in their upper houses, using the divided ballot and group voting tickets. Group voting tickets were first introduced in the Senate in 1984 with the aim of reducing informal voting, as before then it had been compulsory for electors to number all candidates in order of preference. The large number of candidates in multi-member Senate electorates meant informal voting rates were much higher than in the House of Representatives.

While informal voting did decline significantly as a result (and remains lower in all systems using the group voting ticket system – for example, in the 2021 state election, the informal vote was 1.9% in WA’s Legislative Council compared to 3.8% in the Legislative Assembly), over time the number of groups on the ballot increased. Using preference-swapping arrangements, some groups were successful in being elected with a tiny percentage of the vote. This, plus the growing size and complexity of the ballot paper, led to NSW abolishing group voting tickets after its 1999 state election, followed later by the Senate and South Australia (see Table 4).

TABLE 4 – Proportional representation in Australian upper houses

Jurisdiction	Introduction of Proportional Representation	Introduction of Divided Ballot Paper and Group Voting Tickets	Abolition of Group Voting Tickets
Senate	1949	1984	2016
New South Wales	1978	1988	2003
Victoria	2006	2006	..
Western Australia	1989	1989	..
South Australia	1975	1985	2018

Table 4: Antony Green, *Submission to the Victorian Parliament's Electoral Matters Committee Inquiry into the Conduct of the 2018 Victorian State Election* (https://www.parliament.vic.gov.au/images/stories/committees/emc/2018_Election/Submissions/103._Antony_Green.pdf)

In the NSW, SA and Commonwealth upper houses, a system of optional preferential voting now exists. Electors indicate their own preferences between parties, either by voting for one or more parties Above the Line, or for a certain number of candidates Below the Line. Parties are no longer able to submit a list of preferences on behalf of a voter who has voted ‘Above the Line’.

Both WA and Victoria currently retain group voting tickets for ‘Above the Line’ voting. However, Victoria has reduced the minimum number of ‘Below the Line’ preferences required for a formal

vote (electors must indicate at least 5 preferences). In WA, electors are still asked to fill all numbers, if voting Below the Line.

The shift in some jurisdictions away from group voting tickets and from the requirement to number all squares Below the Line usually means that the last few seats are filled ‘below quota’. This occurs because when an elector only indicates a small number of preferences, and all that elector’s preferred parties are eliminated from the count (or their surplus quota is distributed), then their vote is ‘exhausted’ and cannot be transferred to a remaining candidate. This does not occur in WA’s compulsory preferential system.

With a change to optional preferential voting, the number of exhausted votes increases, and the likelihood of candidates winning on less than a full quota towards the end of the count also increases, as there are insufficient votes to transfer. However, abolishing group voting tickets makes it much more difficult for parties with very few primary votes to pass (on preferences) other parties with a higher primary vote, to win one of the final seats.

5. Upper House Models in Australian jurisdictions

In Australia, the Commonwealth and 5 states have upper houses of parliament. Queensland abolished its Legislative Council in 1922, while the Northern Territory and Australian Capital Territory have never had an upper house.

Most Australian upper houses have followed a similar trajectory in their electoral systems, by introducing proportional representation to elect multiple members per electorate, and adopting a divided ballot paper which enables a voter to vote for a group above the dividing line, or for individual candidates Below the Line.

Table 5 summarises the current situation in Australian state upper houses.

TABLE 5: Electoral characteristics of State upper houses in Australia

State	No. of members	Electorates	Quota for election	Largest enrolment	Smallest enrolment	Variance Largest: smallest	Length of term	Preference system
NSW (2019)	42 (21)	1 Whole of state electorate	4.55%	5,271,775	5,271,775	1	8 years Split terms	Semi-optional No group voting
VIC (2018)	40	8 5 MLCs per region	16.67%	545,514 (West Metro)	471,221 (East Metro)	1.16	4 years Single terms	Semi-optional^ Group voting
WA (2021)	36	6 6 MLCs per region	14.29%	449,182 (South Metro)	69,651 (Mining & Pastoral)	6.45	4 years Single terms	Compulsory Group voting

SA (2018)	22 (11)	1 Whole of state electorate	8.33%	1,201,775	1,201,775	1	8 years Split terms	Semi- optional No group voting
TAS* (2021)	15	15 Single member electorate	50% +1 (Single member)	29,084 (McIntyre)	23,085 (Pembroke)	1.26	6 years Split terms	Semi- optional

Table 5:

[^]Hybrid system – group voting tickets Above the Line plus optional preferential voting Below the Line

^{*}Tasmanian upper house electorates are decided on a rolling basis, so these figures are updated more frequently. The figures used here are based on the 2021 state election.

There are two basic models of upper house representation in Australia.

Regions-based models in Australia

Victoria and WA have regions-based models, dividing the state into electoral regions. In Victoria, there are 8 regions, each of which elects 5 MLCs. WA has 6 regions each electing 6 members. Although each state currently has equal numbers of MLCs per region, this is not essential (as noted earlier, from 1989 to 2005, WA had two regions each with 7 MLCs and 4 regions with 5 MLCs each). The Victorian Legislative Council regions are each made up of 11 Legislative Assembly districts, and have roughly equal enrolments (no region may vary by more than 10% above or below the average enrolment per region). In WA, by contrast, there are significant variations in the number of Legislative Assembly districts that make up each Legislative Council region, and enrolments per region vary significantly.

The electoral system for the Australian Senate is also based on a regional representation model. The Senate has 76 members. The 6 states each have 12 Senators (with 6 Senators normally being elected at each half-Senate election), and the two territories each elect 2 Senators at each election. As a result, the less populous states have significant vote weighting. Equal State representation in the Senate was a crucial precondition insisted upon by the 6 colonies before they agreed to form the Commonwealth of Australia in 1901. This arrangement is common in federations.

‘Whole of state’ models in Australia

New South Wales and South Australia each have just one electorate (the whole state). Each MLC is elected by all of those eligible to vote in that state. Unlike WA or Victoria, both NSW and SA elect only half the Council at each election, with each MLC serving 8 year terms. In NSW, there are 42 MLCs, with 21 being elected at each election. South Australia has 22 MLCs (11 elected each election). The quota to elect an MLC is thus smaller – 4.55% in NSW and 8.33% in SA – than in the Victorian and WA regions (quotas of 16.67% and 14.29% respectively). The whole of state electorate model in NSW and SA ensures precise equality between electors, as they are all in the one electorate and every elector has just one vote.

The Committee invites submissions on:

- (a) which model (Whole of State electorate or regions-based) is preferable to achieve electoral equality;
- (b) the strengths and drawbacks of each model;
- (c) whether any other electoral model, not covered in this Discussion Paper, is better suited to achieve electoral equality, with reasons; and
- (d) what changes (if any) should be made to the distribution of preferences in the Legislative Council's proportional representation system, including group voting tickets.

How to make a submission:

Submissions can be made by 5pm on the 8 June 2021 at:
submissions@waelectoralreform.wa.gov.au or by post to the attention of the
Committee to 11th Floor Dumas House 2 Havelock Street WEST PERTH WA 6005.

Annexure 3: List of Submissions

Reference	Name	Reference	Name
A1	Alison Butcher	E45	Graham Currie
A2	Name not for publication	E46	Brian Rettinger
A3	Edward Elias	E47	Dr Colin Huntly
A4	Phillip Jacobs	E48	BJ Cusack
A5	David Reid	E49	Name not for publication
A6	Mathew D'Souza	E50	Shire of Brookton
A7	Tom Stephens OAM	E51	Patrick Gorman, MP
A8	Brenden Hatton	E52	Allan Marshall
A9	Greg King	E53	Shire of Wagin
A10	Scott Shortland	F54	Shire of Esperance
A11	Nick Wrenn	F55	Dr Kelvin Matthews
A12	Gordon Payne	F56	Gerald Hitchcock
B13	John Jury	F57	Paul Clune
B14	Karl Reinmuth	F58	Shire of Lake Grace
B15	Antony Negus	F59	Chris Curtis
B16	Graham Hawkes	F60	Malcolm Mackerras AO
B17	David Karr	G61	Pender Pedler
B18	Henry Schlechta	G62	Professor Geoff Gallop AC
B19	Name not for publication	G63	John Ley
C20	Jamie Hunter	G64	Not for publication
C21	Linda Dillon	G65	Des Criddle
C22	Brett Hilder	G66	Alisa Paterson
C23	Trevor Prowse	G67	Roy Jones
C24	Michael Sutherland OAM	G68	Jane Fuchsbichler
C25	Richard Ananda Barton	G69	Geoff Binckes
C26	Joe Boswell	G70	Bruce Baskerville
C27	Andrew Murray	G71	Henry Pawlaczyk
D28	Geoff Colyer	G72	Ian Brightwell
D29	Grace Gow	H73	WA Council of Social Services (WACOSS)
D30	Murray Nixon	H74	Barry Markey
D31	Murray Cook	H75	Dr Bruce Kennedy
D32	Not for publication	H76	Tay Alers
D33	Eric Rose	H77	Rob Giles
D34	Dr Alexander Fullarton	H78	Herbert Whittal
D35	Nick Griffiths	H79	Robert S Nixon
D36	Graham Hawkes (supplementary submission)	H80	Dr B Glasson
D37	Dale Jury	H81	Dr Glynn Evans
D38	Gordon Payne (supplementary submission)	H82	Helen Barratt
D39	Julie Freeman	I83	Jenny Maher
E40	Lawrence Mitting	I84	Tom Hoyer
E41	The Greens (WA)	I85	Jenny Pitman
E42	Hugo Innes	I86	Stephen Lesslie

E43	Madelyn Ellison	I87	Ian Archibald
E44	Peter Robbins	I88	Robert McCormack
I89	Hon. John Cowdell	L126	Town of Port Hedland
I90	Stephen Luntz	L127	Jim Bivoltsis
I91	Bruce R Keay	L128	Shooters Fishers and Farmers Party WA
J92	Peter McHugh	L129	Michael Kenny
J93	Lindsay Stockdale	L130	Simon Emmott
J94	Shire of Narrogin	L131	WA Grain Grower Group Inc.
J95	Dr Mark Brogan and Ryan Spencer	L132	WA Local Government Association
J96	Judith Lorraine Archibald	L133	Steve Martin, MLC
J97	WA Farmers Federation	L134	Lloyd Gorman
J98	Shire of Bruce Rock	L135	Betty Cockman
J99	John White	L136	Peter Hulme
J100	Stephen Lesslie (supplementary submission)	L137	Not for publication
J101	Electoral Reform Australia	L138	Not for publication
J102	Proportional Representation Society of Australia	L139	Marg Agnew
J103	Kyle Hawkins	L140	Malcolm Baalman
J104	Colin Nicholl	L141	Shire of Mt Marshall
J105	Michael Maley PSM	L142	Great Eastern Country Zone – WA Local Government Association
J106	John Watt	M143	Bruce Stone
J107	Brian Mayfield	M144	Greg Colin
K108	Not for publication	M145	Chris Drurey
K109	Peter Cox	M146	City of Karratha
K110	Jonathan Nelson	M147	Shire of Moora
K111	Maurice Ball	M148	Alexander J Malton
K112	WAXit/Small Business Party	M149	Regional Capitals Alliance of WA
K113	WA Party; No mandatory Vaccination Party; Australian Christians	M150	Shire of Kojonup
K114	Michael Fabiankovits	M151	Roma Strahan
K115	Shire of Narambeen	M152	Caroline Robinson
K116	Adam Dusty	M153	Liam O'Neill
K117	Ronald McLean	M154	Shire of Wyalkatchem
K118	Liberal Party (WA Division)	M155	Hon. Simon O'Brien
K119	Phil Smith	M156	Dr Kevin Bonham
L120	Animal Justice Party WA	M157	Shire of Kulin
L121	Kimberley Regional Group	M158	Simon Ehrenfeld
L122	Pastoralists and Graziers Association	M159	Not for publication
L123	Mary Louise Daniels	M160	Hon. Jack Hayward, MLC
L124	Dean Wicken	M161	The Nationals WA
L125	Phillip Carrivick	M162	Anthony Fels

M163	Antony Green AO		
M164	William Bowe		
M165	Unchain Australia		
M166	Tshung Chang		
N167	Geoffrey Goode OAM		
N168	Julie Walsh		
N169	Damien Kelly		
N170	Not for publication		
N171	Luke Cronin		
N172	Sustainable Australia Party		
N173	Dorothy Hutton		
N174	Shire of Trayning		
N175	Shire of Morawa		
N176	Shire of Carnamah		
N177	Alan Meldrum		
N178	Mike Wood		
N179	Shire of Boyup Brook		
N180	Frank House		
N181	David Booth		
N182	Western Australia Party		
N183	Shire of Dowerin		
N184	Seniors and Disabled Basic Access Group		

Annexure 4: Arguments for and Against Electoral Equality

The Committee received a large number of submissions that supported a continuation of regional vote weighting. Almost all these submissions supported a continuation of the existing system of 6 regions, with half the members coming from the 3 non-metropolitan regions (currently containing 24.2% of enrolled electors) and half from the metropolitan regions (containing 75.8% of enrolled electors). In addition, almost none of the submissions supporting regional vote weighting suggested any alteration to the balance of MLCs (or boundaries or enrolment size) that currently exist between the non-metropolitan regions. As noted in the Discussion Paper, vote weighting towards Agricultural region and in particular towards Mining and Pastoral region, has been increasing in recent elections, while the level of vote weighting towards South West has been declining.

Reasons given for retaining regional vote weighting included the following:

- The model is consistent with WA history and geography.
- Regional WA is the source of a large share of WA's wealth and thus deserves greater representation.
- Regional WA (including remote Aboriginal communities) suffers significant social and economic disadvantage.
- Abolishing or enlarging regions (so that regional MLCs have more electors and/or a larger geographic area to represent) will reduce regional electors' access to MLCs.
- Abolishing or enlarging regions will limit the ability of regional MLCs to service their electors' needs.
- Abolishing or enlarging regions will make it too onerous for MLCs to travel to and through their electorate and thus reduce their appreciation of its issues and challenges.
- It is only through regional vote weighting that regional voices, including from Aboriginal Peoples and Aboriginal communities in regional and remote areas, can be properly heard in the Legislative Council.
- The regional vote weighting system is analogous to the Senate, in which less populated states (such as WA) have the same number of Senators as more populous states.
- The Legislative Assembly is constructed on the basis of 'one vote one value'; the Legislative Council is meant to have a different role and basis of representation, and this is achieved through regional vote weighting.
- A reduction in regional representation will place a greater burden on local government.

There were also many submissions that argued strongly in favour of electoral equality, based both on specific refutations of the arguments summarised above, and on positive reasons for supporting electoral equality. Reasons for electoral equality and for rejecting regional vote weighting include the following:

- In a democracy, individual citizens should have an equal say over the election of their government, regardless of any differences in their income, wealth or place of residence.
- The argument for regional vote weighting based on the economic contribution of the regions is akin to arguments for a property- or wealth-based franchise, which have long since been discredited in favour of equality between citizens.

- There are many forms of disadvantage and inequality in society, and there is no *a priori* reason to give priority to regional forms of disadvantage.
- The extent of regional disadvantage and inequality evident in WA has developed despite regional vote weighting, suggesting it has not played the role its proponents suggest.
- Numerous issues raised in parliament are unrelated to regional factors, and there are no good reason why regional interests should have greater influence over these issues.
- The Legislative Assembly is the house of parliament based on a place-based system of representation, in which electors have a direct relationship with their local MP. It already includes an element of regional vote weighting through the Large District Allowance.
- The Legislative Council's distinctiveness lies in its ability to represent a more diverse range of interests (including minor parties) through its proportional representation electoral system. It does not need to replicate the Assembly's regional vote weighting.
- Advances in communication, as well as provision of greater resources to MPs, can enable voters to access regions-based MPs.
- The specific levels of vote weighting between the metropolitan and non-metropolitan regions, and between the three non-metropolitan regions, are arbitrary. Vote weighting in favour of the Agricultural region and, in particular, the Mining and Pastoral region, has increased in recent years without any corresponding change to their relative social conditions. Likewise, region boundaries are not rooted in any specific logic. Individual towns can be transferred between regions with higher or lower vote value, without any underlying change in the town's characteristics. This has happened in the past to Esperance, for example.¹
- The analogy between the Senate and the Legislative Council regions is misleading. The Senate's creation and structure was an initial requirement for federation to take place, and insisted upon by the States. Western Australia is not a federation and the Legislative Council regions are not creations of or representative of any regional institutions.

¹ Esperance was in the Mining and Pastoral region in 2008 and 2013, but transferred to the Agricultural region in 2017 and 2021. This reduced its level of vote weighting.

Annexure 5: Other Electoral Models

In our Discussion Paper, we asked for submissions on “whether any other electoral model, not covered in this Discussion Paper, is better suited to achieve electoral equality”. A small number of submissions responded to that request by suggesting ideas for reforming the Legislative Council’s electoral system that did not include a Whole of State or regions-based model. These included:

- A return to the system of provinces that existed prior to the legislative changes of 1987, (Murray Nixon OAM, D30).
- Move to a first past the post system of voting (e.g. Dr Kelvin Matthews F55, Dr Bernard Glasson H80) similar to the system currently operating in some local government areas where multiple members are elected in a single electorate.
- The introduction of a weighted vote system to the Legislative Council, (e.g. Geoff Binckes G69), which would operate in similar fashion to voting systems in public companies, where votes are weighted according to the value of shares that a shareholder holds in the company.
- For the Legislative Council to be elected using a ‘mixed member proportional’ (MMP) system similar to that operating in New Zealand, Germany and Scotland, (e.g. David Reid A5; Henry Schlehta B18; Kyle Hawkins J103) which involves members being elected by two different methods. Half the members would be elected in single member constituencies using preferential voting, as currently occurs in the Legislative Assembly. The other half would be elected using proportional representation, either on a Whole of State or regional model.

The Committee is of the view that none of these other models would satisfy the objectives of the Terms of Reference.

Annexure 6: Table of Consultations

Date	Consultation
26 May 2021	Mr David Gully, South Australian Electoral Commissioner
4 June 2021	Mr John Schmidt, New South Wales Electoral Commissioner Mr Simon Kwok, Executive Director - Elections Division Ms Rachel McCallum, Executive Director - Funding, Disclosure & Compliance Division and General Counsel Mr Greg Copson, Manager Candidates and Results - Elections Division
10 June 2021	Mr Robert Kennedy, Western Australian Electoral Commissioner Mr Chris Avent, Western Australian Deputy Electoral Commissioner Mr Justin Harbord, WA Electoral Commission Director Enrolment and Community Education
10 June 2021	Mr Antony Green AO, Election Analyst