

**PRSA Submission to the Government’s Ministerial Expert Committee
on the electoral system for Western Australia’s Legislative Council**

The Proportional Representation Society of Australia submits that ‘Electoral Equality’ for all citizens entitled to vote for WA’s Legislative Council would be best achieved by making three major changes to the existing law, and entrenching them in WA’s *Constitution Act 1899*:

- 1. Discontinuing the current malapportionment**
(to deliver one vote one value),
- 2. Discontinuing Group Voting Tickets**
(to return full control to electors), and
- 3. Ensuring that Upper House Regions have an odd number of MLCs per Region**
(to ensure a majority of votes wins a majority of seats).

1. Discontinuing the current malapportionment

Malapportionment is a deliberate distortion of an electoral system to give more representation to certain electors than to other electors. The current malapportionment of the Legislative Council is amply demonstrated in Table 1 below, which shows the number of electors enrolled in each of the Regions in the 2021 election, and the large discrepancy between the number of MLAs and MLCs per Region.

Region	Number of electors as at 2020-09-30	Number of MLAs in the Region	Number of MLCs in the Region	Value of each elector’s ballot compared to the Mining and Pastoral Region
Mining and Pastoral	68,071	4	6	100.0%
Agricultural	102,775	4	6	66.2%
South West	239,695	7	6	28.4%
East Metropolitan	424,607	14	6	16.0%
North Metropolitan	416,175	14	6	13.3%
South Metropolitan	440,289	16	6	15.4%

Table 1: Enrolment numbers in WA’s Regions showing their pronounced malapportionment

Table 1 shows that at the 2021 election the value of each South Metropolitan ballot is just 15.4% of the value of each Mining and Pastoral Region ballot, which is plainly neither reasonable nor fair.

The malapportionment that has been imposed here is sometimes advocated on the grounds that electors in rural areas need more representation than those in urban areas. We disagree. Geography is not an important factor when considering the best way to represent electors equally and fairly in an elected body. If the aim of elections is to represent the diversity of opinion as expressed by the community at the ballot box, and to represent that diversity as

fairly and as equally as possible, malapportionment of the kind that exists for the present WA Legislative Council should be discontinued.

WA is notable for its constitutional entrenchment of the direct election of all its State MPs. It is highly desirable that prohibition of malapportionment in both Houses also be similarly entrenched.

2. Discontinuing Group Voting Tickets

In the Terms of Reference for the Inquiry, the following facts were pointed out:

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 unfairness of the results outlined in this boxed quotation reflect both the distortions to the system of Proportional Representation using the Single Transferable Vote (PR-STV) caused by Group Voting Tickets (GVTs), and the distortions caused by malapportionment of Regions.

Mr Wilson Tucker was elected with 98 first preference votes ahead of the National Party, which received 5,032 first preference votes. He was elected because the Group Voting Tickets of almost all the smaller or ‘micro’ parties directed preferences to him; and most of the votes for those parties were above-the-line. Mr Tucker thus remained in the count as candidates from the smaller (‘micro’) parties were successively excluded.

Once all the ‘micro’ party candidates were excluded, Mr Tucker moved ahead of ‘minor Parties’ like the Greens Party and the Shooters, Farmers and Fishers Party. At the point in the count that 5 candidates were left – Liberal; National; Daylight Saving; Shooters, Farmers and Fishers; and Greens, it was the Greens that were excluded, and their GVT preferences put Mr Tucker ahead of the other parties. It was then the exclusion of the Shooters, Farmers and Fishers, whose preferences were also directed to Mr Tucker, that had him elected.

A version of the count based only on Group Voting Tickets can be seen on the ABC website at: www.abc.net.au/news/elections/wa/2021/guide/results-mpas. That shows the way in which the Daylight Saving Party, though very low in first preferences, slowly moved up the count as four candidates of the Labor party were elected and their surpluses distributed, and then the other candidates were excluded.

There would be no problem in Mr Tucker’s being elected if it was the intention of every elector that cast votes for every one of those micro-parties to give their ultimate preferences to Mr Tucker. There is no reason in principle why a candidate with a very low, or even zero,

first preference vote should not be elected, because all members of WA's Legislative Council are elected by PR-STV, which is a preferential system. In a PR-STV system, a quota electing a candidate to the Legislative Council can consist of the sum of both first preference votes, if any, and of transferred preference votes, if any.

Moreover, Mr. Tucker was far from the only person elected to the Legislative Council with very few first preference votes, as nine other MLCs - *a full quarter of all the 36 MLCs* - gained fewer first preference votes than he did. The second, third and fourth ALP candidates elected to the Legislative Council in the same Region as Mr Tucker had fewer first preference votes cast for them, but since WA's elections properly give electors transferable votes, the surplus of the first-elected ALP candidate was transferred in accordance with the GVT and led to the election of a 2nd, 3rd and 4th ALP candidate. It is very reasonable to suggest that those that voted for an ALP ticket would have understood that their preferences would go to elect ALP members beyond the first listed.

On the other hand, it is not reasonable to suggest that every elector that voted for a micro-party in the Region for which Mr Tucker was elected understood or expected that their votes would end up electing him. Furthermore, it is not reasonable to suggest that every person that voted for a micro-party in the Region would have understood that this would be at the expense, in that Region, of the National Party, which received 5,032 first preference votes.

The real problem is that the electors for all those micro-parties and independents did not intentionally preference Mr Tucker, but rather their preferences were decided by back-room deals and 'preference whispering'.

The PRSA therefore recommends that the re-elected McGowan Government should amend WA's Electoral Act to discontinue Group Voting Tickets, and return full control of ballots to the electors.

The best system, the 'gold standard' of electoral systems, is that in operation in the Australian Capital Territory and in the State of Tasmania (the 'Hare-Clark' system) where Robson Rotation, and the deliberate avoidance of any provision for 'above-the-line' voting, combined with partial optional marking of preferences, mean that electors have maximum control over who is elected to Parliament. That is the system the PRSA strongly urges be recommended for adoption by the WA Parliament.

However, failing the adoption of that 'gold standard', the Parliament might nevertheless choose to discontinue Group Voting Tickets and introduce *above-the-line* provisions similar to those applying for the Australian Senate since 2016, which at least return control of the preference votes that electors cast for different parties. That Senate reform also introduced partial optional preferential voting *below-the-line*, thus decreasing the risk of ballots being informal if electors make a minor mistake with their last few preferences.

Discontinuing Group Voting Tickets would not ensure that Mr Tucker was not elected with only 98 first preference votes or thereabouts; but it would ensure that if he was so elected it was because a quota of electors explicitly indicated that he be elected.

In a truly democratic PR-STV election it is the votes of candidates after preferences are distributed that create the quota that elects them. It is therefore misleading to expect that the

percentages of first preferences received by parties should be reflected in the percentages of elected MLCs.

Consider the figures in Table 2 below, for first preferences and candidates elected in the 2020 Australian Capital Territory election, held using the Hare-Clark PR-STV system:

Party	% of first preference votes	No. of candidates elected	% of candidates elected
ALP	37.8%	10	40%
Liberal	33.7%	9	36%
Greens	13.5%	6	24%

Table 2: First preference vote percentage in 2020 ACT polls versus that of candidates elected

The notable feature there is that the Greens Party received a much higher proportion of MPs elected than their first preferences, because a very high proportion of the 15% of electors that gave first preferences to parties other than ALP, Greens and Liberal gave their next available preferences, intentionally, to candidates of the Greens.

There are no Group Voting Tickets in ACT elections, and as a result all the preference transfers are intentional. That is a far more democratic system. The prohibition of GVTs or similar contrivances was entrenched by the Territory's *Proportional Representation (Hare-Clark) Entrenchment Act 1994*. The PRSA recommends similar entrenchment in WA legislation.

3. Ensuring that Upper House Regions have an odd number of MLCs per Region

An important principle of democracy is that majority support in the community should be translated to a majority in an elected body. Electing an even number of MLCs per region is problematic because it can mean that a majority of the votes in the Legislative Council, even if the malapportionment was discontinued, does not necessarily translate to a majority of seats.

That is because a majority of seats in a given Region of six MLCs would require four quotas, that is 57.15% support. It is possible for a party with overall majority support to receive between 50% and 57% support in five out of six Regions, but only have elected three out of six MLCs in each of those Regions while a minority party has elected the other three MLCs in each of those Regions. If that minority party then wins just over 57.15% of the vote in the sixth Region, it could control the Legislative Council with only 45.5% support overall, despite the majority party receiving as much as 54.5% support overall.

As an example, suppose there were six Regions, and there were only two parties, Party A and Party B, and there were 100,000 formal ballots cast in each Region. A quota would be 14,286. In Table 3 below, Party A, despite having a significant absolute majority of votes overall, has a minority of MLCs.

Region	No. of Party A votes	No. of quotas	No. of MLCs elected	No. of Party B votes	No. of quotas	No. of MLCs elected
1	56,000	3.91	3	44,000	3.08	3
2	56,000	3.91	3	44,000	3.08	3
3	56,000	3.91	3	44,000	3.08	3
4	56,000	3.91	3	44,000	3.08	3
5	56,000	3.91	3	44,000	3.08	3
6	42,000	2.94	2	58,000	4.06	4
Total	322,000		17	278,000		19

Table 3: An even number of MLCs per Region can prevent 51% of electors from electing an absolute majority of MLCs

That could not happen if there had been an odd number of MLCs per Region, as more members of Party A would have been elected in Regions 1-5. To show how exactly the same votes being cast for exactly the same parties in Regions with exactly the same enrolment would eventuate, if each Region had only five members (and consequently only 30 MLCs), see Table 4 below:

Region	No. of Party A votes	No. of quotas	No. of MLCs elected	No. of Party B votes	No. of quotas	No. of MLCs elected
1	56,000	3.35	3	44,000	2.65	2
2	56,000	3.35	3	44,000	2.65	2
3	56,000	3.35	3	44,000	2.65	2
4	56,000	3.35	3	44,000	2.65	2
5	56,000	3.35	3	44,000	2.65	2
6	42,000	2.52	2	58,000	3.46	3
Total	322,000		17	278,000		13

Table 4: An odd number of MLCs per Region ensures 51% of electors can elect an absolute majority of MLCs

Proposal for reform

WA's current Legislative Council has 36 members. One option would be a reduction of one MLC to 35, with seven MLCs being elected in each of five Regions. A second option would be to have five MLCs elected from each of seven Regions. Having more MLCs elected per Region would increase the chance of minority representation, but whether the Regions elect five or seven MLCs, the important principle of majority representation is guaranteed by having an odd number of MLCs per Region.

However, [Section 73](#) of WA's *Constitution Act 1889* provides, in its sub-section (2), that a Bill providing for a reduction in the number of members of either House must be approved by referendum before it can be enacted. The Government might decide not to hold such a referendum. In either case, it would not be possible to create five or seven Regions with reasonably equal elector populations out of 59 complete and contiguous Assembly Districts, which would be needed in order to avoid elector confusion as to which ballot papers they should be taking, and whether Regions were or were not coterminous with a defined number of Assembly Districts.

Another option would be to increase the number of MLCs to 40, with five MLCs from each of eight Regions, and to increase the number of MLAs to 64, with each Region coterminous with eight Assembly Districts. However, this would result in the Legislative Assembly and Legislative Council each having an even number of members, which is not ideal because it can lead to an even split between two parties or two coalitions.

The PRSA therefore recommends increasing the number of MLCs to 37 and the number of MLAs to 61. MLCs would be returned from three metropolitan Regions (similar to the existing Regions) returning nine MLCs each and two rural Regions returning five MLCs each. Each metropolitan Region would contain fifteen Assembly Districts, while each rural Region would contain eight Assembly Districts. The ratio of MLCs to included MLAs would be 9:15 in the metropolitan Regions and 5:8 in the rural Regions. Though not equal, these only differ by 4%. The PRSA suggests that this is an acceptable deviation from electoral equality if it produces a system where electors will not be confused about which district and Region they are voting in.

In addition, the PRSA recommends that the discontinuation of malapportionment and Group Voting Tickets, and the requirement that each Region should elect an odd number of MLCs, should be entrenched in WA's *Constitution Act 1889*. Finally, the PRSA recommends against any consideration of introducing Exclusionary Thresholds, for the reasons stated at http://www.prsa.org.au/history.htm#_6.

* * * * *