

Government of Western Australia

Ministerial Expert Committee Review of the WA Electoral system for the election of the Western Australian Legislative Council

Dr A R (Lex) Fullarton

Adjunct Professor, Curtin Law School, Curtin University; and
Resident and Elector, Mining and Pastoral Electoral Region, Western Australia.

18 May 2021

This submission is in response to a request by The Ministerial Expert Committee on Electoral Reform for submissions on the system used for the election of members to the Western Australian Legislative Council. It focuses on the Mining and Pastoral Electoral Region election results 2021 as that appears to be the primary influencing factor for the Attorney General and Minister for Electoral Affairs to commission the review. The author is also a resident and elector of that electoral region, and was an independent candidate for the Legislative Assembly seat within that electorate known variously as Ningaloo (2001); Northwest Coastal (2005); and (2008).

Background and Context

A brief description of the Mining and Pastoral Region Electorate is contained on the Parliament of Western Australia Internet website.¹ This submission does not elaborate on that description save to indicate two key characteristics of the electorate – its sparse population, a mere 67 686 registered electors; and its broad geographical structure. The Mining and Pastoral Region Electorate covers all of Western Australia east and north of the agricultural regions, the Western Australian wheatbelt. It ranges from the Great Australian Bight in the south, to the tip of the Kimberley in the north, and contains all of the coastal regions north of Kalbarri to the Northern Territory. It covers some 2 205 281 square kilometres.

The people, commerce and natural environment are probably the most diverse social, economic and natural environmental diversity in Australia, and as an electorate perhaps the entire world. Those diverse interests are currently represented by a mere six members of the Legislative Council of Western Australia and are domiciled as far apart as from Port Hedland in the Pilbara and Kalgoorlie in the Goldfields. The region also contain the four largest, by area, Legislative Assembly Electorates: Kalgoorlie, Kimberley, North West Central and Pilbara. Federally, the region is covered by just two House of Representative divisions – Durack, the physically largest Federal electorate in Australia, and O'Connor, a close second.

A comparison might be the largely homogenous population of Wanneroo in the Perth Metropolitan area. The Legislative Assembly electorate of Wanneroo covers just 454 square kilometres and has just over 31 000 registered electors. That is nearly half of the entire electoral population of the Mining and Pastoral Region yet contained within an area of just 0.02 per cent of that vast region. To quote Banjo Paterson, if the electorate of Wanneroo was in the Mining

¹ Parliament of Western Australia, *Mining and Pastoral Region 2021 Electorate Profile* (Web Page) <<https://www.parliament.wa.gov.au/WebCMS/webcms.nsf/content/parliamentary-library-electorate-profiles-2021-mining-and-pastoral-2021>>.

and Pastoral Region, unless one kept sharp navigation ‘the mailman, if he’s extra tired, would pass them in his sleep.’ Indeed, there are numerous Indigenous settlements scattered throughout which might challenge any newcomer to the region, and some residents of many years and generations. All of these people have significant social, economic and natural environmental issues which must be considered when reviewing legislation. Legislation intended to positively address urban issues might have severe negative impacts on those living in extremely remote regions of the Outback.

The physical distances and sparse populations, coupled with the extreme diverse social, economic and natural environments make parliamentary representation a challenge. The apparent disproportionate influence that electors of the Mining and Pastoral Region might have when viewed from the single aspect of mathematics belies the complexity of the region.

This submission moves to address the two main factors contained within the terms of reference for the committee to consider:

- How a candidate with just 98 primary votes, or just 0.14 per cent of the formal votes was successfully elected; and
- How electoral equality might be achieved for all citizens entitled to vote for the Legislative Council of Western Australia.

Statistical Analysis of the 2021 WA Electoral Result

The table shown in Appendix A show the data published by the Western Australian Electoral Commission for the 2021 State General Election for the Mining and Pastoral Region.²

Column A shows the electoral group structure for the 21 groups or individual candidates from left to right on the authorised ballot papers cast in the election. Groups share their primary votes, preferences and quotas firstly between them, and then to other groups on the ballot paper. This will be further discussed as it is central to the explanation provided in this submission as to why Mr Tucker was elected.

Column B shows the party/group name.

Column C shows the primary votes attributed to the group of candidates.³

Column D shows the quota, based on six representatives, in fractions, represented by the number of primary votes received. For example, WA Labor received 28 002 primary votes and thus 3.9946 quotas; or Legalise Cannabis Western Australia Party – 1277 primary votes or 0.1822 of a quota.

A full quota of 1 is required for a candidate to be elected and is calculated by the formula given by the Western Australian Electoral Commission which states

2 Western Australian Electoral Commission *2021 State General Election: Mining and Pastoral Profile* (Web Page) <<https://www.elections.wa.gov.au/elections/state/sgelection#/sg2021/region/5/results>>.

3 Western Australian Electoral Commission *2021 State General Election: Detailed Result Reports* (Web Page) <<https://www.elections.wa.gov.au/elections/state/sgelection#/sg2021/LCDetailResults>>.

Electors mark their ballot, allocating preferences to their preferred ranking for all candidates. A successful candidate must achieve a quota, calculated using the following formula:

$$\left(\frac{\text{Number of formal votes}}{\text{(Number of MLCs to be elected +1)}} \right) + 1 = \text{Quota}$$

Subsequently, if the quota is not reached the candidate with the least number of votes is excluded and their votes redistributed according to the second preference shown. This process continues until a candidate reaches a quota.⁴

Column E shows the distribution of quotas achieved by the respective primary votes for a hypothetical number of four members for the region, should the number of representatives be reduced from six to four. It is noted that the relativity does not change as the ratio of primary votes remains constant. The calculation is affected only by the denominator in the above formula falls from 7 to 5, shown at the bottom of columns D and E.

Columns F, G, H, I and J show allocation of preferences by each group to the other major candidates and the Daylight Saving Party (DSP) (Mr Tucker).

Column K shows that all but four groups preferred the DSP and Mr Tucker over every other major party in the election.

Columns L and M show the quotas attained by each of the groups and the proportion by which they fell to the DSP over the others.

This allocation is based on the assumption that all valid votes cast followed the ‘ticket’ submitted to the Electoral Commission prior to the election as representative of the distribution of preferences should electors chose to ‘vote above the line’ that is follow the group ticket and not select their own distribution of preferences. In fact, 2.12 per cent of electors departed from that option.⁵ For the purposes of this analysis the margin is too small to influence general allocation of preferences and it is assumed that all electors generally followed the pattern shown.

The final result indicates that, despite a few possible exceptions, electors preferred the DSP over the other major candidates with the exception of the Liberals, the Nationals, Fels, Australian Christians and One Nation. In terms of quotas, a bias factor of 5.2247 towards the DSP against 1.7745 towards others. Given the Liberal preferences were not distributed the factor is even higher at 1.0256 against the DSP. That a ratio in excess of 5:1.

Therefore, the statistical analysis shows that after the initial quotas had been allocated and the count moved to the second part of the process – allocating preferences after the primary votes had been accounted for the DSP (Mr Tucker) was the most preferred candidate by all but four

4 Western Australian Electoral Commission, *Voting Systems in WA*, (Web Page) <<https://www.elections.wa.gov.au/vote/voting-systems-wa#:~:text=Electors%20mark%20their%20ballot%2C%20allocating,preferred%20ranking%20for%20all%20candidates.&text=This%20process%20continues%20until%20a,the%20quota%20are%20elected%20immediately>>.

5 Western Australian Electoral Commission, *2021 State General Election: Mining and Pastoral Region Profile*, (Web Page) <<https://www.elections.wa.gov.au/elections/state/sgelection#/sg2021/region/05/results>>.

of the other groups. Given that one of the others was successful in obtaining its quota there were few electors who chose another candidate after their initial (primary) choice. That preference was by a margin of 5:1.

In summary he was simply the most preferred option. It is noted that that includes the WA Labor, which marked him at just 10th over the remaining 47 candidates, other than the WA Labor group of six.

Australian Broadcasting Commission political commentator, Antony Green commented on 1 April 2021:

The Daylight Saving Party starts with fewer than 100 votes, but gets the preferences of every party and independent polling lower. It then leap frogs and collects preferences from other low polling parties, than larger parties, and reaches a quota to win the fifth seat after passing both the Liberal and National Party candidates who began the count with more than 50 times as many votes. Having looked at the count in detail, I can't see how Wilson Tucker does not win the fifth seat.⁶

Electoral Equality of the Legislative Council

This section considers the concept of equality. In particular it focuses on the population of the Mining and Pastoral Electoral Region, and uses the author's discipline of taxation law to consider the concept of treating all citizens equally. It is assumed that electors take part in electing their governments that impose laws upon them and simultaneously they are taxpayers who fund those governments. Therefore, the concept of equality is applicable when considering both electors and taxpayers alike.

The Terms of Reference refer to electoral equality but do not provide a definition. The accompanying 'Minister's Opinion – Electoral Reform' appears to focus on numerical equality. It appears to consider the number of voters in proportion to the numbers of members of each region to conclude that 'votes cast by people in the Mining and Pastoral Region were worth 6.22 times more than those cast in the metropolitan area.'⁷

This submission suggests that if all other social, economic and natural environments were uniform and that Western Australia consisted of one homogeneous culture and society uniformly spread across the entire geographical area of the state, that singular concept of equality would have merit. However, it is suggested that a single influencing factor is not sufficient to base and entire judgement or substance for a particular action or re-action.

Scientific research methods require extensive sampling and populations to reach conclusions that give confidence in their findings. Social scientists engaged a range of research methods to substantiate the conclusions and to produce robust findings.⁸ Therefore to consider numerical distributions of the population to provide 'equal representation' may not be an

6 Antony Green, Australian Broadcasting Commission News: Mining and Pastoral Region Results (Web Blog) <<https://www.abc.net.au/news/elections/wa/2021/guide/results-mpas/#top>>.

7 John Quigley, *Minister's Opinion – Electoral Reform*, (2021) <<https://www.wa.gov.au/organisation/wa-electoral-reform/ministers-opinion-electoral-reform>>.

8 Alexander Robert Fullarton, 'Miners' Motivation: the mass-marketed tax avoidance schemes of the 1990s in the Pilbara region of Western Australia' (PhD Thesis, University of New South Wales, 2013)164.

entirely valid basis to make the assumption that electorates with an equal number of voters is 'electoral equality' there may be a raft of other factors to consider.

The Asprey Report of 1975 considered Fairness or equality of a tax system. It states

As a quality of a tax or a tax system everyone demands fairness, or equity (the terms will be used interchangeably). But, in tax matters as in law and ethics, it is an ideal exceedingly difficult to define and harder still to measure. It is customary to distinguish the two dimensions of 'horizontal' and 'vertical' equity: the notions that it is fair that persons in the same situation should be equally treated, and those in different situations differently treated.⁹

The distinction between a tax system and an electoral system is noted, however as considered previously, taxpayers and electors are closely related and mostly the same individuals therefore the same concept of fairness or equity is applied to this argument.

If the group of electors of 31 000 people living within 454 square kilometres in the suburbs of the Perth metropolitan area, who travel on the same freeways, attend similar schools, are serviced by the same utility infrastructures and go to the same football stadium, enjoy the same climate, and suffer the same weather events as their neighbours are to be considered a homogenous group with largely the same social and economic needs then numerical equality may be a defining factor.

However, if that group was divided into regions tens of thousands of kilometres apart, with a diversity of climates from humid tropical to mild Mediterranean, travelling over roadways from almost abandoned corrugated unsealed tracks to modern highways;

from culturally challenged, and extremely socially distant, indigenous settlements to sophisticated cities and all social structures in between;

from Traditional Owners struggling in all sorts of adversities to maintain and preserve their landscape and their culture to sophisticated modern academics who enjoy an almost urban lifestyle;

How is it possible for a mere six people, no matter how dedicated, to represent those variations of culture, interests and economic wants and needs over a region over three times the size of the State of Texas? The Asprey Report suggests that those people in different situations should be treated differently. In this case they have a higher proportion of representatives in the Legislative Council to represent the extremely wide range of environments and cultures found in that vast region.

Finally, it is noted that

The Legislative Council is often called the house of review because of its function of monitoring and reviewing legislation and scrutinising the budget and administration of government departments and other public agencies. Members use parliamentary processes such as question time, debates in the house and

⁹ Taxation Review Committee, Parliament of Australia, *Full Report, 31 January 1975/Taxation Review Committee (1975)* (Asprey Report) 12.

estimates committees, where ministers respond to questions, to ensure the accountability of government to the Parliament and the people of this state.¹⁰

Therefore, while numerical equality may be somewhat significant in the Legislative Assembly, it is not as critical in the upper house, where a broad range of views may be what is required. Hence the higher proportion of 'Bush' to City people to broaden the scope of perspectives, may be a benefit rather than a detriment.

Conclusion and Recommendation

Equity is not simply treating equal people equally, but equity must also acknowledge that people in differing, or disadvantaged situations, must be treated differently. The sparsely populated, environmentally harsh, rural and remote regions of Western Australia require greater parliamentary service and representation than those of the more clement urban areas.

Therefore, I recommend that the status quo of the number of members of the Legislative Council Mining and Pastoral Electoral Region be maintained. The concept of numerical equality is not sufficient to outweigh the other significant social, economic and natural environmental disadvantages experienced by those rural and remote residents/electors/taxpayers.

The ultimate choice of as many as 80 per cent of candidates and electors as to the preference of Mr Tucker over the remaining candidates must be respected. That is despite the potential shortcomings of this candidate as expressed by the Minister, upon reflection and in hindsight. Who can tell what the future may bring? Mr Tucker may ultimately prove to be a valued member and reviewer of our legislation.

10 Parliament of Western Australia, *Role of the Legislative Council* (Web Page)
<<https://www.parliament.wa.gov.au/WebCMS/webcms.nsf/content/role-of-the-legislative-council#:~:text=The%20Legislative%20Council%20is%20often,departments%20and%20other%20public%20agencies>>.

Appendix A

A	B	C	D	E	F	G	H	I	J	K	L	M	N
Group	Party	No of Primary	Quotas 6 members	Quotas 4 members	Tucker Preference	Liberal	WA Labor	Nationals	Greens	Tucker preferred	Quota Preferred	For	Against
A	Independent - Squires	188	0.0268	0.020473	3	48	42	36	34	Y	0.0268	0.0268	
B	Liberals for Climate	552	0.0787	0.060111	3	31	39	34	41	Y	0.0787	0.0787	
C	Sustainable Australia Party	158	0.0225	0.017206	3	50	44	36	42	Y	0.0225	0.0225	
D	Legalise Cannabis Western Australia Party	1277	0.1822	0.139061	11	27	21	31	17	Y	0.1822	0.1822	
E	Shooters, Fishers and Farmers	1705	0.2432	0.185669	30	32	42	36	50	Y	0.2432	0.2432	
F	Waixt	116	0.0165	0.012632	28	32	36	42	30	Y	0.0165	0.0165	
G	Daylight Saving Party	98	0.0140	0.010672	1	30	40	34	42	Y	0.0140	0.0140	
H	Independent - Kelly	52	0.0074	0.005663	3	48	42	36	34	Y	0.0074	0.0074	
I	The Greens (WA)	2431	0.3468	0.264728	5	25	9	29	1	Y	0.3468	0.3468	
J	Western Australia Party	729	0.1040	0.079386	3	31	40	34	42	Y	0.1040	0.1040	
K	Animal Justice Party	398	0.0568	0.043341	5	35	23	39	19	Y	0.0568	0.0568	
L	Liberals	5250	0.7489	0.571709	24	1	42	5	40	N	0.7489		0.7489

M	Independent - Fels	85	0.0121	0.009256	29	43	48	18	46	N	0.0121		0.0121
N	Great Australia Party	113	0.0161	0.012305	3	36	42	24	52	Y	0.0161	0.0161	
O	Health Australia Party	82	0.0117	0.008930	3	31	39	34	41	Y	0.0117	0.0117	
P	Liberal Democrats	198	0.0282	0.021562	3	31	40	34	42	Y	0.0282	0.0282	
Q	The Nationals	5032	0.7178	0.547969	22	7	38	1	46	N	0.7178		0.7178
R	WA Labor	28002	3.9946	3.049330	10	34	1	28	22	Y	3.9946	3.9946	
S	No Mandatory Vaccination	526	0.0750	0.057280	26	42	48	36	46	Y	0.0750	0.0750	
T	Australian Christians	582	0.0830	0.063378	36	12	44	16	52	N	0.0830		0.0830
U	Pauline Hanson's One Nation	1490	0.2126	0.162256	33	12	46	16	52	N	0.2126		0.2126
	Totals	49064	7	5	284	638	766	599	791		3.4502	5.2247	- 1.7745

Source <https://www.elections.wa.gov.au/elections/state/sgelection#/sg2021/region/5/results>