

Submission to the Standing Committee on Environment and Public Affairs

In response to the e-petition on Electoral Reform

Hon Neil Thomson MLC

2 October 2023

Introduction

Regional voters are deeply concerned about the erosion of their rights in the parliamentary system of Western Australia and over 2,400 Western Australian's signing a petition calling on the President and Members of the Legislative Council of the Parliament of Western Australia in Parliament assembled. To:

- Express our dismay at the proposal to abolish another regional Legislative Assembly seat in Western Australia which further erodes and silences the voices of the Regions.
- The petitioners noted "this comes on the back of attacks on regional Western Australia including:
 1. the recent implementation of unworkable Aboriginal Cultural Heritage laws
 2. the removal of regional representation from the Legislative Council when no mandate was given to this at the 2021 Election
 3. the proposal to shut down the live sheep trade by the Federal Government
 4. the abrupt decision to end sustainable native timber harvesting.
- Call on the Legislative Council to stand in solidarity with regional people in the face of the ongoing assault and marginalisation of regional voices and support in the strongest terms the following:
 1. The retention of existing regional Legislative Assembly seats until the 2029 election cycle.
 2. The establishment of a Parliamentary Select Committee to:
 - (a) examine how to improve our democracy with fair representation from regional people.
 - (b) ascertain whether the electoral roll has been accurately maintained to reflect the number of eligible voters in regional and remote seats in Western Australia.
 - (c) provide recommendations to the Parliament of Western Australia and Minister for Electoral Affairs on how to ensure a balanced and robust democracy which acknowledges the challenges of isolation and remoteness in Western Australia.

Proposal for a Select Committee

I support the petitioners request, especially in establishing a Parliamentary Select Committee to carry out a review with Terms of Reference broadly defined as listed.

It is vital, if the Parliament is to retain the confidence of the community, that it takes a lead role in considering the appropriateness of reforms noting it is the Parliament, not the Executive, that is ultimately responsible for democracy in Western Australia

Whilst the most recent electoral reforms were voted on by the Parliament it is clear that this support was based on partisan lines put through with the massive majority of the WA Labor Party and this in itself poses a concern for the electorate’s confidence in the fairness of the reforms.

A Select Committee would provide more balance in the assessment and consideration of issues which should be considered as part of a genuine electoral reform process which should go well beyond those that were designed for short term political advantage.

A Select Committee would at least provide an opportunity for bi-partisan support.

A Select Committee could explore a much wider range of issues and would not be limited by a highly constrained Terms of Reference as was the case with the Ministerial Expert Committee on Electoral Reform.

Concerns over Electoral Reforms

My submission to the Boundaries WA outlines the reasons for concern in the redistribution of electoral boundaries in the Legislative Assembly which could have only been facilitated by amendments to the Electoral Act following the so-called reform process in 2021. Most obviously, was the amendment which removed the constraint of Electoral Districts to be constrained to the regions including most specifically the Mining and Pastoral Region which I represent.

It is noted that if there were similar enrolment rates (as a proportion of adult population data), the electoral districts within Mining and Pastoral Region would in fact be over-subscribed with voters and certainly not requiring the abolition of a seat.

I liken the process to what is termed “demolition by neglect” in the heritage system, where a building owner demolishes a heritage building by simply leaving it to be run down by wear and tear of the elements.

The analogy here is that the Western Australian Government is demolishing the vital democratic heritage of Western Australia by neglecting regional enrolment. Enrolment rates were outlined in my submission to Boundaries WA which paint a very disappointing picture. (Extract from my submission in Table below)

Table 1: Estimated Enrolment Rates of Adult Population on Selected Electoral Districts

Electoral District	Population Over 18	Electors	% adults enrolled
North West Central	18,121	11021	61%
Kimberley	25,901	16514	64%
Pilbara	34,987	23716	68%
Kalgoorlie	28,344	20268	72%
Cottesloe	36,126	32,248	89%
Joondalup	33,359	29,724	89%

Disappointingly this important issue was neglected to be considered by the so-called Ministerial Expert Committee on Electoral Reform when it considered the making recommendations on changes to the Electoral Act. This omission raises questions of the robustness of the review process, noting this review would not, in my opinion, meet a standard expected in the peer reviewed academic study because of the glaring omissions of analysis and poor linkage between analysis and its recommendations.

There is more than one structural issue affecting regional Western Australia, but the issue of under-enrolment is the most important.

Other matters which could be considered by a Select Committee could be:

1. The suitability of the Large District Allowance, given the practicality of servicing massive areas by a single MP
2. Whether the proposed boundaries of Boundaries WA will likely to increase the probability of a political party achieving Government even when it did not achieve the popular vote on the Statewide in Two Party Preferred basis.
 - a. Boundaries WA has not presented any data to indicate whether its proposed boundaries would result in a change of Government if a uniform swing were to occur seeing the popular Two-Party-Preferred vote going to the Liberal Party for example.
 - b. Rather, based on existing boundaries (minus North West Central) it is clear that a uniform swing of 23% is required meaning there would need to be 53%:47% TPP if a change of Government is to occur
 - c. A Select Committee could commission detailed modelling to examine whether the system is more or less prone to seeing a loser of the popular vote become the Government of the day, noting if this is the case, it flies in the face of the 'One Vote, One Value' principle.
3. Whether Western Australia's current system, in the Legislative Assembly is fit for purpose into the future, noting the demographic changes are further marginalising regional voters whose needs are much more complex than those of the metropolitan area.
 - a. Consideration could be given to a wider range of electoral systems within the global context within the context of equality and equity, but most of all within the context of creating a stronger perception of fairness and support for democracy.
4. Whether the WA Electoral Commission is appropriately resourced to meet the specific needs of regional Western Australia, noting the challenges in providing voter education and electoral services in the regions.

A Parliamentary Select Committee could examine a much wider range of options than the Expert Working Committee did, noting the extremely restrictive Terms of Reference which were commented on by the Chair of the Committee when its report was handed down.

A Select Committee might also look at World best practices including other models where democracy has adjusted to changing trends and ensured there is confidence in the community that Governments are formed on the results of robust representative elections.

I request that the Standing Committee on Public Affairs and Environment consider my submission and this petition with the utmost importance for the sake of our future and that of our children.

My full submission to Boundaries WA is attached.

Objection to 2023 Proposed Electoral Boundaries in Western Australia

Prepared by Hon Neil Thomson MLC, Member for Mining and Pastoral Region

21 August 2023

Introduction

I write to convey the *“dismay of Western Australian constituents at the proposal to abolish another regional Legislative Assembly seat in Western Australia which further erodes and silences the voices of the regions”*.

At the time of writing, almost 2,000 Western Australian’s had signed an electronic petition with the Legislative Council with the words quoted above.

For many regional people, the proposal undermines the confidence they have in the electoral process in Western Australia and this view, in itself, poses a significant problem for our State over the longer term. Given this:

- **it is important that the Electoral Distribution Commissioners (Boundaries WA) provide a stronger rationale for its proposal with more supporting evidence before finalising the electoral boundaries;**
- **Boundaries WA should re-assess its existing proposal based on an assessment of feedback in this submission; and**
- **independently to this particular process, the Western Australian Electoral Commission (WAEC) should examine how it can:**
 - **urgently remove any regional bias caused by the excessively high under-enrolment rates in regional Electoral Districts;**
 - **urgently more effectively engage with people in remote and regional areas; and**
 - **provide an accurate and updated electoral roll for consideration by Boundaries WA.**

In order to assist Boundaries WA in 1) explaining itself more effectively and 2) further scrutinising its proposal with a more rigorous assessment of facts, I have focussed on only one of several shortcomings in the proposed electoral boundary distribution being:

the impact of a systemic under enrolment within regional Electoral Districts when compared to the higher enrolment rates in metropolitan areas which has impacting on the Average District Enrolment (ADE) of existing regional Electoral Districts.

Regional Under-Enrolment Impacting on Average District Enrolment (ADE)

Enrolment rates in Western Australia are the lowest of any State in Australia when measured as a percentage of eligible enrolments. This poses a significant problem for the WAEC Commissioner when assessing himself against Section 7F of the Electoral Act 1907, especially subsection (1) (b).

(b) is responsible for the proper maintenance of electoral rolls and the proper conduct of elections under this Act;

On the 31 December 2022 (as per the Federal enrolment data), 94.7% of the eligible community were enrolled. This compares with a national average of 97.1% as at December 2022 and most recently (as at July 2023) 97.5%, an increase that has been attributed by some to the interest in the Referendum on the Voice to Parliament.

Low enrolment rates are a concern in themselves, but the skew of under-enrolment rates in regional Western Australia is a material factor for Boundaries WA.

Regional biases in enrolment should be addressed by the WAEC and considered by Boundaries WA when making its decision.

As an important aside, Boundaries WA could be more precise in its definitions within its Explanatory Statement (July Report) regarding the use and distinction of population data and electoral roll data. Confounding of these data within the July Report diminishes the rigour of that report. It should be clarified that ABS data is only being used for boundary definition while electoral roll data is being used for determining as the baseline for the size of the seat.

Maintenance of the Roll

On 21 June, 2023, the Hon Tjorn Sibma MLC asked in Parliament about the maintenance of electoral rolls, noting Section 7F. The low rates of enrolment of eligible voters in Western Australia, should be a cause of concern for the Electoral Commissioner as any regional variation in enrolment rates would have a direct bearing on the distribution of seats by Boundaries WA as low regional rates would bias ADE calculations.

Figure 1: Question by Hon Tjorn Sibma 21 June 2023

Extract from *Hansard*
 [COUNCIL — Wednesday, 21 June 2023]
 p3131b-3131b
 Hon Tjorn Sibma; Hon Matthew Swinbourn

ELECTORAL ROLLS — MAINTENANCE

708. Hon TJORN SIBMA to the parliamentary secretary representing the Minister for Electoral Affairs:

I refer to the statutory functions of the Electoral Commissioner under the Electoral Act 1907.

- (1) Is the Electoral Commissioner complying with section 5F of the act as it relates to the maintenance of proper rolls, particularly in rural and regional Western Australia?
- (2) If yes, how is the Electoral Commissioner ensuring the maintenance of proper rolls?

Hon MATTHEW SWINBOURN replied:

I thank the member for some notice of the question. The following answer is provided to me by the Minister for Electoral Affairs.

- (1) Yes.
- (2) The Electoral Commissioner is ensuring the maintenance of proper rolls through ongoing joint roll management collaboration with the Australian Electoral Commission.

Whilst there is collaboration between the Australian Electoral Commission and the WAEC, the interstate variation in enrolment rates stands out as a poor outcome for Western Australia.

The Aboriginal Enrolment Rate

In June 2023, the Hon Tjorn Sibma MLC sought information on the number of eligible Aboriginal people on the electoral roll.

Figure 2: Question by Hon Tjorn Sibma 22 June 2023

Extract from *Hansard*
 [COUNCIL — Thursday, 22 June 2023]
 p3270d-3271a
 Hon Tjorn Sibma; Hon Kyle McGinn

ELECTORAL ROLLS — MAINTENANCE

740. Hon TJORN SIBMA to the parliamentary secretary representing the Minister for Electoral Affairs:

I refer to the Electoral Commissioner's responsibility under the Electoral Act 1907 to ensure the maintenance of proper electoral rolls.

- (1) What is the estimated Aboriginal voting age population in Western Australia?
- (2) How many of the above population are —
 - (i) enrolled to vote; or
 - (ii) currently unenrolled?

Hon KYLE MCGINN replied:

I thank the member for some notice of the question. I answer on behalf of the parliamentary secretary representing the Minister for Electoral Affairs. The following answer has been provided by the Minister for Electoral Affairs.

The answers to (1) and (2) are the most recent Indigenous enrolment rate figures published by the Australian Electoral Commission on the AEC website.

- (1) At 31 December 2022, the estimated Indigenous voting age population in Western Australia was 71 456.
- (2) (i) At 31 December 2022, the estimated Indigenous enrolled population in Western Australia was 52 942.
- (ii) At 31 December 2022, the estimated Indigenous unenrolled population in Western Australia was 18 514. The Western Australian Electoral Commission continues to work closely with the Australian Electoral Commission on enrolment activities.

The response to this question demonstrates a significant structural problem within the Western Australian electoral roll, noting the distribution of Aboriginal people in Western Australia is more skewed towards remote and regional areas than the general population.

All of the remote Aboriginal communities in Western Australia (with only a very few exceptions) are located in the seats of the Kimberley, North West Central and the Pilbara. There is an estimated 12,000 people living in Aboriginal remote communities in Western Australia. It would appear that a very low percentage are enrolled.

Boundaries WA should, prior to completing its final report, provide detailed assessment of where Aboriginal under-enrolment occurs in WA.

However, the gap of Aboriginal under-enrolment (18,514 voters) does not adequately explain the Statewide under-enrolment in Western Australia (of over 54,000 if the national average of 97.5% enrolment is used as an acceptable benchmark).

An assessment of the Australian Bureau of Statistics (based on the 2021 Census) data on the adult population demonstrates that there may be a vastly higher rate of under-enrolment of all voters (both Aboriginal and non-Aboriginal) in the regions when compared to the metropolitan area.

Table 1: Estimated Enrolment Rates of Adult Population on Selected Electoral Districts

Electoral District	Population Over 18	Electors	% adults enrolled
North West Central	18,121	11021	61%
Kimberley	25,901	16514	64%
Pilbara	34,987	23716	68%
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Joondalup	33,359	29,724	89%

The expectation is that some of those adults in each Electoral District are ineligible by virtue of the citizenship status. However, this percentage cannot explain the differential between the number of enrolled voters and the adult population.

If it is assumed that 6% of the adult population in Western Australia is ineligible to vote due to their citizenship status, then under-enrolment can be assessed for the following seats

Table 2: Estimated Under-Enrolment Numbers in selected Electoral Districts

Electoral District	Under enrolment % (est)	Under enrolment number (est)
North West Central	33%	6013
Kimberley	30%	7833
Pilbara	26%	9172
Kalgoorlie	23%	6375
Cottesloe	5%	1710
Joondalup	5%	1633

Contributing factors for the greater discrepancy between enrolment rates and adult population rates in seats like the Pilbara and Kalgoorlie may include the following factors.

- 1) A significant number of residents of regional areas only live in those areas for a short period of time, for example, Police Officers and Teachers working on rotation for between 2-4 years before moving to a different post. These residents often do not change the address on their enrolment to the correct location when they move.

It is noted that Section 17 (2) of the Electoral Act 1907 states:

*Subject to sections 145(7) and 172(1)(c) where an elector enrolled under subsection (1) changes his place of living to another district he may, until his name is transferred to another roll, vote at any Council election, and any election in the district in respect of which his name continues enrolled, if the election is **held within 3 months after he has so changed his place of living.***

If this is a factor, the management of this matter by the WAEC appears inadequate.

- 2) A significant number of regional residents are cynical and disengaged from the electoral system, noting this is also reflected in low voter turnout in those regional seats. This issue needs to be address with vigorous and well-resourced campaigns to ensure balance in our electoral system, noting failure to do so, on top of the moves to further disenfranchise regional voters will simply further compounding disengagement.

Section 5F (d) of the Electoral Act 1907 states:

The Electoral Commissioner - (d) shall promote public awareness of electoral and parliamentary matters by means of the conduct of education and information programmes and by other means.

The processes of public awareness, education and information programs is wholly inadequate in regional Western Australia.

- 3) Factors of isolation can impact on regional and remote residents having access to the WAEC systems which reduces enrolment rates.

This issue was borne out during the recent North West Central by-election when reports came through from those working on the ground that the WAEC arrived at remote communities with very little notice. It was reported that local a Police station based in one remote community was only made aware of the imminent arrival of electoral commission officers for polling within hours of their arrival and this meant that in some communities had less than 20% of the adult citizens engaged in the by-election. This example is symptomatic of a WAEC which has few permanent staff available for remote engagement.

Boundaries WA should as a matter of priority provide an assessment of general under-enrolment and its impact on regional distribution of Legislative Assembly seats.

The WAEC should adequately meet the requirements of Section 5F with regular awareness campaigns in locations across the State to ensure an adequate number of eligible persons are enrolled.

Suggested Analytical Framework

The July Report by the Boundaries WA could be improved with further explanation of the methodology underpinning the Victorian software used in Western Australia. Without such explanation, the July Report could be misconstrued as, in the parlance of evaluation experts, 'black box' thinking. For the community it comes out as 'trust us' attitude which does not provide the required confidence in the electoral system.

Boundaries WA should properly outline methodology underpinning the boundary assessment software it has used and transparently provide an explanation of the discretion and options it could apply to its recommendations.

This section outlines a suggested analytical framework to underpin Boundaries WA final decision. A disclaimer is provided noting Boundaries WA has significantly more resources and access to data than I have in the preparation of this submission.

Step 1: Establish a Best Practice Benchmark for Acceptable Enrolment Rates

The Western Australian enrolment rate (defined as percentage of enrolled voters to total number of eligible voters) should, as a matter of Best Practice, equal or exceed the average enrolment rate of Australia. As a minimum, enrolment rates should:

1. meet the national average; and
2. there should not be major variations across a regional distribution.

Step 2: Identify and Rectify Regional Discrepancies in Enrolment Rate

As outlined previously, there is evidence of a disproportionate level of under-enrolment in regional Electoral Districts. If enrolment numbers are adjusted for the systemic under-enrolment – that is achieving a uniform level of under enrolment of only 97.5% the following outcomes could be achieved for large regional seats.

Table 3: Feasible Enrolment Rates if an Assumed Target of 97.5% Enrolment and Adjusting for Non-Eligible Adults at a Uniform Rate of 6%.

	Enrolled Electors	Adjustment to achieve uniform under-enrolment	LDA	Variation to Statewide ADE
Kalgoorlie	20,268	25,935	8332	9%
Kimberley	16,514	23,699	8032	1%
North West Central	11,021	16,581	12275	-8%
Pilbara	23716	32,013	4383	16%

The analysis above, indicates, with adequate enrolment rates and with some minor boundary realignments, particularly by increasing North West Central, there would be no need to reduce the number of seats.

Step 3: Adjustment for Bias in Enrolment Rates

Depending on assessment at Step 2, both Boundaries WA and the Electoral Commission should act to adjust to any regional bias in enrolment rates.

If Boundaries WA is limited on its capacity to adjust for under-enrolment bias, it should immediately direct the WAEC to update its roll, such that under-enrolment is eliminated within agreed tolerances. Such action will require a delay in the assessment of new boundaries, but this should conform to Section 16 E of the Act which requires that:

The State must be divided into districts in accordance with this Part as soon as practicable after the day that is 2 years after polling day for each general election for the Assembly.

The emphasis is on the point 'as soon as practicable' noting this must be read in conjunction with Section 5F.¹

Boundaries WA should undertake an analysis of regional under-enrolment and adopt measures to rectify any regional bias in setting boundaries if this analysis shows a disproportionate under-enrolment in the regions.

The WAEC should as soon as practicable rectify under-enrolment in regional areas and provide an updated roll.

WAEC should, in consultation with the State Government, ensure that government officers taking a regional position, should be aware of their obligations to change their enrolment within 3 months of changing their address.

¹ 5F. Electoral Commissioner, functions of

(1) The Electoral Commissioner —
(b) is responsible for the proper maintenance of electoral rolls and the proper conduct of elections under this Act;

Part 3 – Enrolment

17. who is entitled to vote

(2) Subject to sections 145(7) and 172(1)(c) where an elector enrolled under subsection (1) changes his place of living to another district he may, until his name is transferred to another roll, vote at any Council election, and any election in the district in respect of which his name continues enrolled, if the election is held within 3 months after he has so changed his place of living.

Recent Changes To the Roll

I asked a question in parliament on the 15th August 2023, about the state of the electoral roll and when the Electoral Commission assessed the boundaries.

Extract from *Hansard*
[COUNCIL — Tuesday, 15 August 2023]
p3719b-3719b
Hon Neil Thomson; Hon Jackie Jarvis

ELECTORAL ROLLS — MAINTENANCE

834. Hon NEIL THOMSON to the parliamentary secretary representing the Minister for Electoral Affairs:

I note positive reports of an increasing number of Aboriginal people on the electoral roll as a result of the Voice campaign. I also note the answer to Hon Tjorn Sibma's question without notice 740 on 22 June 2023, which confirmed that 18 514 Aboriginal people of eligible voting age are not enrolled.

- (1) What date of electoral enrolment did the Western Australian Electoral Distribution Commission use to assess the recommended boundary distributions that have been published for community consideration?
- (2) Given the huge underestimate of eligible voters on the roll previously, will the Electoral Distribution Commission update the calculation of variations on average district enrolment prior to finalising boundary distributions?
- (3) How can the Cook Labor government support the removal of parliamentary representation from seats with a high proportion of Aboriginal people while it simultaneously claims to support improving Indigenous representation?

Hon JACKIE JARVIS replied:

I thank the honourable member for some notice of the question. The following response, which I provide on behalf of the parliamentary secretary, has been provided by the Minister for Electoral Affairs.

- (1) The date was 13 March 2023.
- (2) No. The determination of the relevant day is set out in section 16E of the Electoral Act 1907, which states that the state must be divided into districts as soon as practicable after the day that is two years after polling day for each general election for the Assembly. The roll closure for the distribution took place on the relevant day, which was 13 March 2023, in accordance with the act.
- (3) The member's question is ill-conceived. The decision of where seats will be and where electoral boundaries are drawn is determined by the Western Australian Electoral Distribution Commission. The commissioners are entirely independent of government and government has no influence over the final determination of electoral boundaries.

Several members interjected.

Question 834 (1) provided confirmation that the roll was assessed on 13 March 2023. It is my contention that this roll is flawed due to regional under-representation and should not have been used as part of the considerations by Boundaries WA.

Question 834 (2) indicated that the Act requires the state to be divided into districts 'as soon as practicable after the day that is two years after polling day.

My request is that Boundaries WA makes, as a condition of its assessment, due diligence to ensure that the electoral roll reasonably represents a fair and equal assessment of eligibility across the regions. Further, that it directs the WAEC to update its roll to reflect the benchmarks outlined earlier in this submission.

It is noted the Minister for Electoral Affairs proffered his own value judgement on the conception of Question 834(3). The Question was directed at the Minister, not at the Western Australian Electoral Distribution Commission (otherwise referred to as Boundaries WA).

Summary Statement

The State is already beset by challenges from disruptive influences of social media, expressed through extreme and/or ill-informed groups who don't see the need to engage through their elected members.

Alternatively, many in communities, such as the remote those in remote Aboriginal communities in the Kimberley, have become disengaged because of neglect and despair, as successive Members of Parliament have reduced their engagement as that seat has expanded in size to unmanageable levels over the recent decades.

The removal of a regional seat is the most controversial aspect of Boundaries WA proposal and will only serve to further alienate regional communities.

The support by Labor Party's (as per its submission to Boundaries WA) for the removal of parliamentary representation from seats which happen to have a high proportion of Aboriginal people is noted.

Similarly, it was the Labor Government that supported changes to the Electoral Act 1907 which facilitated the removal and dilution of regional representation which are disproportionately represented by Aboriginal electors.

It is acknowledged that the WAEC is under-resourced to appropriately engage with regional and remote residents however that should not be an excuse in our democracy for under representation.

Boundaries WA should urgently reflect on the material provided and at the very least undertake its own analysis to assess whether claims made in this submission are valid.