# ARE WESTERN AUSTRALIA'S ELECTORAL LAWS STUCK IN A HORSE AND BUGGY TIME WARP?

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The title of my presentation is deliberately provocative.

Two of the biggest challenges that face electoral administrators today are declining participation and the need to embrace modern technology. Responding to such challenges is not made easy by the nature of our Electoral Act, which to my mind has two notable features. The first is that it dates back to 1907. The second is that it is quite prescriptive in the way it sets out to regulate electoral procedures. Although there have been amendments over the years, the way the Act is framed makes it very difficult to maximise access to, and participation in, our electoral system and to ensure its continued relevance in the eyes of a younger generation of electors who cut their teeth on modern technology.

The challenges that face legislators in modernising electoral laws are well illustrated in the following examples of social changes that have occurred over the past hundred years.

- Back in 1907, apart from walking the most common form of transport was by horse and buggy. It was difficult to travel far, or to go anywhere in a hurry. As a society, we are obviously much more mobile now than we were then. For example in 2013 over 17,000 electors were excused for not voting in the Western Australian State election because they were out of the State at the time. In many cases the only way they could have voted was by post, with the distinct possibility that their ballot material would not have arrived in time to be counted.

- For many years the vast majority of electors voted at a polling place on Election Day. Postal voting was largely confined to remote areas and early voting in person was a rarity. The picture is very different today. We have an election period that effectively runs over 2-3 weeks. At the 2013 State election there were around 80,000 early votes and 75,000 postal. This was more than double the number at the election before that and the number is likely to more than double again at the 2017 election. Nevertheless, the Electoral Act still requires people to make a declaration that they belong to one of a limited number of elector categories entitled to vote in this way.

- One of the most significant social and technological changes over the last 20 years has been the change in methods of communication. Most Australian households have at least one computer. Over 93% of households that have at least one occupant under the age of 15 have internet access,[1] with a total of over 12.5 million internet subscribers nationally. Letter writing is rapidly becoming a thing of the past, replaced by email, mobile phones and the new social media. Not everyone in the audience may have Facebook or Twitter accounts, but I would be surprised if most do not do their banking and pay their bills online. Even so, the Electoral Act makes no provision for internet voting.

- Last but not least, there has been an alarming decline in elector participation in recent years. In the lead up to the 2013 federal election the Australian Electoral Commission ('AEC') estimated that around 1.5 million Australians who were eligible to be registered on the electoral roll, weren't. The AEC has since made considerable inroads into this figure following the introduction at Federal level of a direct or 'automatic' enrolment system. However, this has not benefited State or Local Government elections in Western Australia because our State enrolment provisions have lagged behind. As a result, there is a widening divergence between the Commonwealth and Western Australian electoral rolls.

These examples all illustrate that Western Australia's electoral system is well and truly out of date and could do with a makeover. The more modern we can make the look and feel of our voting system, the easier it will be for electoral management bodies to engage with younger electors and promote higher levels of participation. The introduction of internet voting and automatic enrolment would be two good places to start.

**Internet voting**

Those who oppose the introduction of internet voting do so in the main by questioning its security. How, they ask, can we guard against the possibility of someone hacking into online election systems? Not being a technophobe, I will happily leave it to others to debate the technical security of online transactions. There are, however, two key points that I feel obliged to make in response to those who oppose the introduction of internet voting on security grounds.

The first is that, irrespective of the perceived risks, there is indisputably a growing expectation within the community that internet voting should be allowed. This is reflected in a survey conducted by the Western Australian Electoral Commission at the 2013 state election, where two-thirds of respondents indicated that in all

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[1] http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/8146.0Chapter12012-13

likelihood they would vote online if such a facility were available. In other words, the introduction of internet voting is not just about meeting security perceptions. It is also about consumer demand. It is surely only a matter of time before legislatures around the world are persuaded or forced by the weight of public opinion to introduce internet voting in some form.

The second point is that in any discussion of voting integrity, it is important to balance the potential risks of internet voting against risks that are known to exist in the system we currently have. The following examples illustrate the point.

- In the current system ballot papers have to be physically handled and counted by human beings. One only has to look at the recent Senate election in Western Australia to be reminded that human beings are just as likely as computers to make mistakes.

- A disturbing trend in recent years has been the steady increase in informal voting, roughly 6% at the last Western Australian State election. We know from ballot paper surveys that around one third of these informal votes are deliberate but that leaves two thirds that are accidental. A conventional ballot paper cannot warn the elector that the vote they are about to cast will not be admitted to the count. An electronic system such as internet voting can do just that.

- Under the existing system a proportion of postal voters are disenfranchised when their ballot papers do not make it back on time. Internet voting would alleviate that risk.

- Some critics of internet voting point to the spectre of electors voting on their home computers being bribed or coerced into voting in a particular way. It is not difficult to rebut that argument. The risk is no greater than is already the case with postal voting, which also takes place out of the public eye.

- One of the features of current system is that it is virtually impossible to prevent multiple voting. While there is no real evidence to suggest that this occurs to any extent, by virtue of its inter-connectivity an internet voting system could provide greater safeguards than we currently have.

These examples are not intended to suggest that online voting systems are infallible. They aren't. My thesis is simply that any debate about the security of online voting should not be predicated on the assumption that the system we already have is itself risk free, because it isn't. This brings me back to my earlier point: the introduction of internet voting is only a matter of time because we are rapidly approaching the stage where new generations of voters won't accept anything less.

When I gaze into my crystal ball, I see online voting being available at first only to a limited range of electors, as is currently the case in New South Wales – people with disabilities who currently rely on assistance to fill out a ballot paper (and are thereby denied a secret vote); people in remote areas; and anyone who is interstate or overseas during the election period. In the longer term, even when internet voting is available to all electors, current methods of voting would still need to be retained for an interim period to cater for the needs of all electors.

**Direct or automatic enrolment**
The other key area which I think is ripe for reform in Western Australia is the enrolment system.

By virtue of recent changes to Commonwealth legislation anyone who moves address or turns 18 can now be directly enrolled for federal purposes or have their details automatically updated. There is no corresponding provision in Western Australia's Electoral Act. As a result, there are already over 114,000 Western Australians who have been registered to vote in Federal elections by the Australian Electoral Commission but are still not eligible to vote in State or Local government elections. On current trends, this figure is expected to double by the next State election. This amounts to a large number of Western Australians likely to turn up to a polling place on 11 March 2017 expecting to vote, only to be turned away.

Some would defend the difference in Western Australian legislation by arguing that it is each citizen's individual responsibility to ensure they are registered to vote. This has parallels in other countries such as the United States. I take a more pragmatic approach. The problem, as I see it, is that many electors do not understand or appreciate the difference between Commonwealth and State enrolment provisions. Not surprisingly, they assume that having been automatically registered to vote at one level, they are eligible to vote at all levels.

A clear argument can be made out that, to avoid elector confusion and to maximise the completeness and accuracy of the roll, enrolment provisions at all levels of Australian government should be uniform. If you also accept that participation is a reliable measure of the strength of a democracy, Western Australian democracy would surely be strengthened by making it as easy as possible for eligible people to find their way onto the electoral roll. Essentially this means that Western Australia needs a direct enrolment system, the same as applies at Federal level.

**Conclusion**

Although I have focussed this paper on two key electoral reforms, there are many others that are worthy of discussion and debate, such as removing the eligibility requirements for casting an early vote; election day enrolment (for example for those who may only recently have turned 18); and re-writing the entire Electoral Act in consistent, modern language. Whatever your views may be on specific proposals, it is surely time to bring our electoral system into the 21st century.

**David Kerslake**
**Electoral Commissioner for Western Australia**

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