

Proportional Representation in Western Australia
Its Principles, History, Outcomes and Education

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Electoral Commission

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FOREWORD

Historically, proportional representation voting systems have often been of keen political interest in Western Australia. However, it was not until 1987 that legislation for the single transferable voting (STV) form of proportional representation, widely known as PR, was adopted for Legislative Council elections. Although the literature on PR, at least since the era of John Stuart Mill's *On Considerations of Representative Government* (1861), has been extensive, studies that focus on the subject matter in Western Australia have been lacking. It was on this basis that the Western Australian Electoral Commission has sponsored this publication. The initial research had been conducted under the auspices of the Western Australian Constitutional Centre.

The attempts to adopt PR for either the Legislative Assembly and Legislative Council, as well as local government, have been tracked. The relevant influences of developments around Australia are considered, while community survey findings about the electorate's understanding of PR are included. Also included are a range of appendices which encompass the proportional representation milestones in Western Australia, the Legislative Council electoral results in the State for the proportional voting system, models of the proportional representation counting methods and a short hand tabulation of the advantages and disadvantages for proportional representation in Western Australia.

The author, Harry Phillips, is a student of electoral systems and has published widely in this domain. His work has helped fill part of the PR literature void in this State but he takes responsibility for the writing, research and views put forward in this document.



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CHAPTER 1 VOTING SYSTEMS, ELECTORAL LAW AND REPRESENTATION

Voting systems have been depicted as ‘the cogs that keep the wheels of democracy properly functioning’.¹ From the beginnings of democratic forms of representative government, there has been conjecture about voting systems and controversy about the rules for converting votes into seats. John Stuart Mill (1806–1873), the distinguished English philosopher who thought ‘that the ideal type of a perfect government must be representative’² simultaneously argued for a proportional representation (PR) voting system. Mill, a prominent advocate for civic education, argued that one of the main benefits of democratic ‘representative government’, in conjunction with PR, was that it produced an ‘active self help type’ of citizen who ideally had industry, integrity, justice and prudence.³ Some of Mill’s writings will be revisited as they are important to the focus of this publication, the PR voting system in Western Australia. Firstly, from an educative perspective, it is necessary to make some general observations about representation and electoral law.

1.1 Representation

It was recently claimed that ‘the idea of representation is central to parliamentary democracy [and] without the belief that others can somehow represent them, citizens will withdraw their trust from parliamentary institutions’.⁴ At the same time it was noted that ‘today this trust is very fragile’⁵ with many challenges to the forms of representation which have evolved with Australia’s system of responsible government. This system, derived from the United Kingdom but complicated by federalism and strong upper Houses at both the national and State level, provides a wealth of material for scholars of electoral law.

Different voting systems have emerged in the Australian setting and, as a pioneering democracy, Australia has historically been at the forefront of electoral law experimentation for its representative assemblies. Representation itself, particularly people representing other people, emerged earlier, but it is essentially a modern idea. Hannah Pitkin, in *The Concept of Representation*, contended that:

*No doubt the contemporary popularity of the concept depends much upon its having been linked with the idea of democracy, as well as with the idea of liberty and justice. Yet, through much of their history, both the concept and the practice of representation have had little to do with democratization or liberty. Representation need not mean representative government. A king can represent a nation, as can an ambassador.*⁶

¹ David Farrell (2001), *Electoral Systems: A Comparative Introduction*, New York: Palgrave, p. 2

² John Stuart Mill (1966), *Considerations on Representative Government* [1861] in *Three Essays: On Liberty: Representative Government: The Subjection of Women*, London: Oxford University Press, p. 198.

³ Alistair Davidson (1997), *From Subject to Citizen: Australian Citizenship in the Twentieth Century*, Cambridge: Cambridge University Press, p. 28

⁴ Marian Sawer and Gianni Zappala (2001), ‘Introduction: Representation in Australian Politics’, in Sawer, M. and Zappala, G., *Speaking for the People: Representation in Australian Politics*, Carlton: Melbourne University Press, p. 1.

⁵ *ibid.*

⁶ Hannah Pitkin (1967), *The Concept of Representation*, Berkley: University of California Press, p. 21.

Perhaps the best known definition of representative government was formulated by John Stuart Mill who wrote:

*The meaning of representative government is that the whole people, or some numerous portions of them, exercise through deputies periodically elected by themselves, the ultimate controlling power which, in every constitution, must reside somewhere.*⁷

Mill thought that representative government was (at least in theory) the best form of government, 'as sovereignty, or supreme controlling power in the last resort, is vested in the entire aggregate of the community'.⁸ However, Mill placed limits on the exercise of this sovereignty in various ways, including restrictions on who should be entitled to vote. This right was only to be given to those who had reached certain educational standards – the greater one's proficiency in the skills of reading, writing and arithmetic, the greater the number of votes one would be entitled to cast. The legislature, in Mill's opinion, should reflect the diversity of educated opinion in society.

It is, however, important to note that Mill rejected the view often regarded as a feature of the Westminster system that the object of representative government was to govern rather than to represent. In Mill's judgment, a representative assembly as a 'congress of opinions' and an 'organ of public demands', was unfit for the function of governing, and should confine itself to watching and controlling the government. In other words, government should be conducted by a body of experts outside the legislature. Indeed, Mill saw it as a 'highly practical employment of scientific intellect, to improve the mechanics of government and the formulae for political representation'.⁹ In support of this view, Mill wrote widely on electoral law.

1.2 Electoral law (Its components)

Voting systems are necessarily part of any code on electoral law,¹⁰ which led one specialist to complain that:

*The discussion of electoral [laws] is apt to be hindered and its effectiveness seriously impaired, by the importation of three disturbing influences: party prejudice, confusion between ends and means, and sheer ignorance.*¹¹

It is contended, however, that part of the problem can be overcome by an understanding of the components of electoral law. The first consideration is the voting system (or mode of choice) that is the focus of discussion, specifically whether the voting system is:

- a) conducted by open or secret ballots;
- b) voluntary or compulsory;
- c) carried out in person or by proxy (ordinary, absentee, postal or pre-poll vote); and
- d) is one of plurality ('first past the post') or one of its variants, such as the double ballot or the alternative vote, or a proportional representation formula.

⁷ John Stuart Mill (1966), *Considerations on Representative Government* [1861], p. 211.

⁸ *ibid*, p. 186.

⁹ Cited in Harry Phillips and Campbell Rielly (1982), *Key Concepts in Politics*, Melbourne: Thomas Nelson, p. 114.

¹⁰ W.J.M. Mackenzie (1958), *Free Elections: An Elementary Textbook*, London: Allen and Unwin, p. 19.

¹¹ E and J. D. Lakeman (1958), *Voting in Democracies*, London: Faber and Faber, p. 9.

Electoral activities need regulation, which in turn requires definition of what constitutes corrupt electoral practices, rules specifying advertising, and possibly the specification of allowable expenses incurred and the donations received during an election campaign. Other important elements of electoral law are:

- the construction of constituencies (or electoral districts) and the procedures to be used for the redistribution or redrawing of electoral boundaries;
- the franchise, or the qualifications required in order to be eligible to vote; and
- the administrative machinery for the conduct of elections and the process by which the lists (or rolls) of eligible citizens are compiled.

More recently, electoral law has included the registration of political parties.¹² The registration of political parties may be seen as recognition that electoral laws have ramifications for those parties. However, electoral laws do not cover all facets of party political processes in electoral terms. For instance, the vast range of pre-selection rules adopted by various parties are not covered by legislation, although they play an important role in determining which citizens actually stand for election to parliament. Electoral systems clearly operate in a political culture in which unwritten democratic principles are invariably considered important and have a bearing upon how voting systems evolve and operate.

The PR voting system is part of the array of electoral laws operating in the electoral system within Western Australia, and more broadly within the Australian polity.¹³ Although there is an extensive literature on PR, very little attention has been given to its Western Australian history and operation. This study attempts to redress this deficiency, but acknowledges from the outset that part of the problem is a lack of understanding within the polity of how the system actually works. This is not only the case for everyday citizens, but also for many of the ‘party gladiators’ who need to comprehend the technical processes and likely outcomes for campaign strategies. Although this study is about PR in Western Australia, the concept was invented elsewhere and only adopted for the Western Australian Legislative Council in 1987, after more than a century of consideration by its advocates.

1.3 Types of Proportional Representation

A system of PR may be defined as a system of voting which includes a device for allocating seats proportionately, or in the same ratio, to the votes cast for each candidate (usually an affiliated group or party of candidates) in the constituency concerned.¹⁴ A key aspect of PR is the attempt to mirror in chamber representation as accurately as possible the share or fraction of support given to a political party, group or individual in an election. For example, if a political party gained 40 percent the vote in a five member constituency it could expect to gain two seats. This definition requires multi-member constituencies as one seat cannot be divided proportionately and the term to describe the number of grouped seats is sometimes known as ‘district magnitude’, which is generally accepted as the most important feature for determining

¹² Since 2000 in Western Australia.

¹³ Preference voting, sometimes known as the alternative vote, is used in most Australian lower Houses and is discussed in section 3.1 of this monograph.

¹⁴ Mackenzie, *Free Elections*, p. 61.

the overall proportionality of an electoral system.¹⁵ Advocates of PR generally suggest that constituencies need to have at least five to seven members.¹⁶

There are two main types of PR, 'the single transferable vote' (STV) and the 'list system'. Each has many variants, and it is possible to combine them with one another, or ingeniously mix them with either 'first past the post' or the alternative, or preference vote. One count of the number of PR systems has mentioned over 300 variations.¹⁷

(a) The list system

The list system has long been used by many Western European countries following its successful adoption in Belgium in 1899. In one sample of 59 democracies, just under one half (29) use a list system for their national elections. The main principle behind the list systems is simple enough. Each party draws up a list of candidates in each constituency. The size of the list is based on the number of seats to be filled. In its most basic form, electors vote for parties instead of candidates. The proportion of votes a party receives determines the number of seats it would receive in an elected chamber. It is generally accepted that the list systems of PR tend to produce the most proportionate results.¹⁸

In a foundation study Douglas Rae set up a model of perfect proportionality (equal ratio of vote shares to seat shares) to ascertain how the various list systems on the European 'continent' deviated from the model. The deviations arose chiefly because of the different allocations of final seats in each count. The d'Hondt list form which has been applied in Austria, Germany, Switzerland and Belgium, the home of its inventor Victor D'Hondt, was found to handicap smaller parties. The Lague method practiced in the Scandinavian countries of Norway, Sweden and Denmark has worked to the advantage of 'middle sized' parties. A separate procedure applied in Italy served to facilitate the gaining of seats by 'small parties'.¹⁹ Italy, in 1993 following a referendum, adopted plurality (first past the post) in single member districts for 75 per cent of seats in its Senate and Chamber of Deputies. In Australia the list system has not been a popular version of PR. In the late in the late 1970s and early 1980s list PR was sometimes mentioned in Western Australia but it did not gain legislative passage (see Appendix One).

(b) The Single Transferable Vote (STV) Form of PR

The single transferable vote (STV) version of PR aims to allocate seats in the legislature in the proportion or ratio to the votes cast in an election. Its origins date back to the mid-nineteenth century and the two people credited with its 'invention', apparently operating independently and without knowledge of each other, were Thomas Hare (1806–1892), an English barrister, and Carl George Andrae, a Dutch mathematician and politician. Hare's 1859 *Treatise on the Election of Representatives, Parliamentary and Municipal*, provided a considerable impetus to the debate about the electoral system in Britain and received particular prominence

¹⁵ David Farrell and Ian McAllister (2006), *The Australian Electoral System: Origins, Variations and Consequences*, Sydney: University of New South Wales Press, p. 59.

¹⁶ Mackenzie, *Free Elections*, p. 61.

¹⁷ Harry Phillips (1974), 'Challenges to the Voting System in Canada 1874 to 1974', unpublished Ph.D. thesis, University of Western Ontario, p. 20.

¹⁸ Farrell and McAllister, *The Australian Electoral System*, p. 8.

¹⁹ Douglas Rae (1971), *The Political Consequences of Electoral Laws*, New Haven, Yale University, pp. 31–39.

when the intellectual leader of British liberalism, philosopher John Stuart Mill, enthusiastically endorsed Hare's proposals. Mill, who had a short term in the House of Commons from 1865, incorporated the arguments for the principles of the STV version of PR into Chapter VII of his aforementioned seminal 1861 tract, *Considerations on Representative Government*.²⁰ However, Mill's ideas made little progress in the House of Commons, and were effectively countered in Chapter V of Walter Bagehot's entertaining book on *The English Constitution*.²¹ Bagehot, though, had different views on the purposes of parliament, arguing strongly that it was primarily an electoral college to select a government.

Although simple in principle, the STV system requires a number of different and quite complex computational arrangements. In fact Hare's original mathematics required an important modification with the insertion of the more theoretically sound 'Droop formula', named after its Belgian deviser H.R. Droop. In an abridged form, Hare's STV vote requires electors to number the candidates on the ballot paper in order of preference. A quota (in accordance with Droop's prescription) is struck by dividing the total number of valid votes cast by the number of seats to be filled, plus one, and one is added to the result.

Any candidate who obtains the quota on the basis of the first preference count is declared elected. When the quota is exceeded, all the surplus votes of the successful candidate are transferred, at a particular value, as directed by the indicated second preferences. Any number in excess of the quota among subsequently successful candidates is similarly transferred. If any seats are still vacant, the candidate with the least votes is eliminated and preferences distributed, a process continued until all seats are filled by candidates each obtaining the quota.²²

From the beginning the J.S. Mill endorsed STV version of PR had strong supporters. In fact David Farrell, an expert on electoral systems, has noted that:

*if one were to carry out a headcount of the scholars writing about electoral systems at the beginning of the twenty-first century, it is likely that many of them would rate STV very highly.*²³

It was a system which was both proportional and which facilitated an elector's capacity to vote for individual candidates who did not necessarily have a political party affiliation. But as Farrell observed, although 'STV appears attractive...one is left with the nagging question, why is it so infrequently used?'²⁴ Vernon Bogdanor, another electoral law expert, indicated that:

*apart from a brief experiment in Denmark in the 1850s, STV has been used only in countries which have at some time been under British rule. It is the 'Anglo-Saxon' method of securing proportional representation.*²⁵

Bogdanor's tabulation of forms of STV is confined to the Irish Republic for elections to both Houses of Parliament and in local elections. It has also been used to elect the Maltese Parliament, the Tasmanian House of Assembly, the Australian Senate and the

²⁰ John Stuart Mill (1966), *Considerations on Representative Government* [1861], pp. 247–271.

²¹ Walter Bagehot (1993), *The English Constitution* [1867]: With an Introduction by Richard Crossman, London Fontana Press, pp. 5–10 and pp. 165–214.

²² See Appendix Six.

²³ Farrell, *Electoral Systems: A Comparative Introduction*, p. 121.

²⁴ *ibid*, p. 122.

²⁵ Vernon Bogdanor (1984), *What is Proportional Representation? A Guide to the Issues*, Oxford: Martin Robertson, p. 76.

upper Houses in New South Wales (from 1978), South Australia (from 1975 and modified in 1982), Western Australia and the Australian Capital Territory,²⁶ with Victoria recently in 2006 legislating for its introduction. Two electoral law specialists, Farrell and McAllister (2006), recently noted that: 'Australia is the birthplace of the two main forms of preferential voting-the Alternative Vote (AV) and the Single Transferable Vote (STV)'.²⁷ The version of STV-PR introduced in 1987 to the Legislative Council in Western Australia included mechanisms that gave priority to political parties rather individual candidates. Although it was not the 'pure' form of STV Mill advocated, it was a long time coming to Western Australia, given that PR was known to legislators in colonial times at the very beginning of the representative government phase in 1870.

A more recent study on the family of STV systems of PR contended that STV-PR 'is underpinned by a number of assumptions about the nature of representation and choice that should be afforded to the voter'.²⁸ Scholar Narelle Miragliotta subsequently suggested three major elements that STV-PR required:

1. an intelligent electorate;
2. representation of diverse interests in the legislature; and
3. a candidate-centred electoral system where the voter is in control.²⁹

At the conclusion of this publication an assessment will be made as to whether STV-PR is operating within or outside the parameters of its underpinnings, guided by a number of key questions. Does the electorate understand even the main principles and mechanics of its operation? Does STV-PR produce a chamber of diverse sets of political opinion? Moreover, does this form of PR permit the voter to choose the order in which candidates are elected so as to maximise the influence of individual candidates, at the likely expense of political parties?

²⁶ The ACT adopted a D'Hont form of in 1989 before changing to a Hare-Clark version in 1993.

²⁷ David Farrell and Ian McAllister (2005), '1902 and the Origins of Preferential Systems in Australia', *Australian Journal of Politics and History*, Vol. 51, No. 2, p. 157.

²⁸ Narelle Miragliotta (2002), *Determining the Result: Transferring Surplus Votes in the Western Australian Legislative Council*, Perth: Western Australian Electoral Commission, p. 2.

²⁹ *ibid.*

CHAPTER 2 THE BEGINNINGS OF THE PROPORTIONAL REPRESENTATION QUEST IN AUSTRALIA

Despite widespread consideration of PR in the United Kingdom, there is no evidence in the representation debates for the Western Australian Legislative Council that such a voting system was seriously considered for adoption at the beginnings of representative government in 1870. Nevertheless, at least one well informed colonist wrote a learned letter to the editor of *The Inquirer and Commercial News* in July 1870 pleading for the PR voting system to be implemented in Western Australia to enable the representation of minorities. In the Eastern Colonies, a host of well known idealists, Catherine Helen Spence, Andrew Inglis Clark and Edward John Nanson, together with Thomas and Henry Ashworth, published technical articles about PR before it was briefly introduced in Tasmania in 1896. As federation arrived in 1901, Prime Minister Edmund Barton's highest hopes for 'innovative rules for representation', including PR for the Australian Senate, succumbed to emerging parliamentary realities.³⁰ The PR plan did not transpire, but its comprehensive consideration helped place the scheme on the future legislative agenda. Adoption of various electoral laws in several of the Colonies and States led to Australia often being regarded as a 'laboratory for democratic political innovation'.³¹

2.1 Letter to the *Inquirer* (1870)

Unlike most of the Eastern Colonies, Western Australia did not have a leading public figure who sought the introduction of PR. Perhaps the delay in full 'self' or responsible government until 1890 was a factor, or possibly the vast geographic expanse of Australia's 'western third' made PR's application less practical. Yet just three weeks after the first official elections in the Colony in 1870, a letter to the Editor of *The Inquirer and Commercial News*, was published under the heading of 'Representation of Minorities'. The full text of that letter is presented below, given that it is thought to be the first documented instance of an argument being presented for the adoption of PR in Western Australia, including possible organisational arrangements.

To the Editor of The Inquirer and Commercial News, Sir:

At a time when the election of representation is occupying so much of the public attention, it is well to draw special notice to a plan, proposed some years since by one of the most thoughtful and practical of English reformers, a plan which would, if adopted do away with that great political evil, the non-representation of minorities. Hitherto, in a community where one member had to be elected by, say, one hundred voters, if a majority of 55 votes returned the candidate, the remaining 45 votes were absolutely unrepresented; their votes went for nothing. By the plan now suggested every voter in the State would be represented, and no elector would be nominally represented by some one whom he had not chosen, as it now the case in ordinary elections; whilst every member of the House would be the representative of an unanimous constituency, and whilst the system is

³⁰ John Uhr (2001), 'Rules for Representation: Parliament and the Design of the Australian Electoral System', in G. Liddell and R. Bennett (eds), *Parliament: The Vision in Hindsight*, Annandale: The Federation Press, p. 250.

³¹ *ibid*, p. 256.

extremely comprehensive, and unites the good points of class representation and the good points of numerical representations.

It may be thus condensed:- 1st – The total number of the voters in the State must be divided by the number of representatives who are to be returned. This gives the number of electors who would be entitled to have a vote for themselves. Thus, if West Australia possesses, say 6,000 voters, and they have to elect 12 members, divide 6,000 voters by 12 and you have 500. 2nd – A candidate would, in this case, require to receive 500 votes to be successful, but no vote in his favour beyond the necessary quota of 500 would be counted to him. 3rd – The votes would, as at present, be given locally, but any elector would be at liberty to vote for any candidate, in whatever part of the country he might offer himself; thus, if a man did not think that his own views were represented by say of the local candidates, it would be open to him to vote for some candidate elsewhere in the country. 4th – Although the elector may have but one vote, he can, if he wishes, place in succession on his voting paper the names of as many candidates as he chooses, so that if the first, second, or third whom he names have completed their necessary 500 votes, yet his vote will count good for the fourth name mentioned on it. 5th – The voting papers would be conveyed to a central office where the votes would be counted, the number of first, second, third, and other votes given for each candidate ascertained, and the quota would be allotted to every one who could make it up until the number of the House was complete; first votes being preferred to second, second to third, and so on. The voting papers, and all the electorate of the calculation, would be placed in public repositories; accessible to all whom they concerned; and if any one who had obtained the quota was not only returned but it would be in his power to prove it.

Such is the essence of the plan proposed by Mr. Hare and warmly praised by Professor Fawcett and John Stuart Mill. The latter, who has long been considered the ablest living political economist, uses these terms, when speaking of the plan, which I have briefly condensed:- ‘Of all the modes in which a national representation can possibly be constituted, this one affords the best security for his intellectual qualification desirable in the representatives.... In no other way which it seems possible to suggest would be so certain of obtaining the very elite of the country’.

Now, Sir as the total population of this colony is only 25,000, the number of votes must be exceedingly small, probably far below that of any other country possessing representative government. The adoption of the system would here be an easy matter, and would, in my estimation, be an immense and permanent advantage to the country.

(July 29, 1870)³²

The correspondent was accurate with his population and electorate figures as he cast the application of PR in terms of the revamped Legislative Council, proposed to be comprised of 12 elected members, 3 officials and 3 colonists nominated by the Governor. The quota for election was calculated at approximately 500 votes for a single electorate covering the geographic area of the Colony. According to the correspondent's reasoning, this would lead to the election of the Colony's elite and representation of minorities. The electoral provisions adopted had provided for single member electorates and two double member constituencies (Perth and Fremantle), using the plurality, or first past the post method. Voters were asked to strike out the names of those candidates for whom they did not wish to vote.

³² ‘Representation of Minorities’, *Inquirer*, 10 August 1870.

During the period of representative government, and the introductory phase of responsible government from 1890, the adoption and continuance of plurality in single or double member constituencies was virtually taken for granted in both the upper and lower Houses. Much of the electoral law focus at that time was upon the drawing of electoral boundaries, the extension of the franchise and whether plural voting should be maintained. The latter survived until 1904 with John Stuart Mill, the advocate of PR, being a champion of plural voting. As noted earlier, Mill's advocacy was based on the educational standards achieved by a constituent rather than property qualifications. Moreover, Mill sought open voting as he believed it prompted electors to consider the community interest, which would not necessarily prevail with secret voting that allowed a voter to give more weight to personal or selfish interests. Nevertheless, in 1877 secret voting gained passage for the Western Australian Legislative Council and was widely known as the 'Australian Ballot', having been introduced in Victoria as early as 1854.

The franchise provisions in the Western Australian Legislative Council were initially based on the law for the Legislative Council in New South Wales. Initially, males with freehold property valued at 100 pound, and householders occupying premises at a rental value of 10 pound could vote. Regular debates over the extension of the franchise continued for several decades. In 1893 voting in the Legislative Assembly elections was extended to all male British subjects over twenty one years of age. Votes for women came in 1899 for the Legislative Assembly although universal franchise, without property qualifications, was not achieved for the Legislative Council until the 1964 election. Aboriginal peoples could not enrol and vote (with some minor citizenship exceptions) from 1893 until 1962, with enrolment not being made compulsory until 1983. These are all representational matters of significance which may or may not have given rise to the simultaneous consideration of voting systems, including PR.

2.2 The idealists in the Colonies

When the time came to establish the representative arrangements for the Australian Colonies (and later States), as well as the Federal Parliament, there was no shortage of electoral idealists. These idealists were greatly influenced by nineteenth century international debate about the ultimate means for the representation of the people in self government, and the advantages and disadvantages of particular voting formulas. Reid and Forrest have identified five idealists who were prominent with extensive publications. The list consists of: Catherine Helen Spence (Adelaide); Andrew Inglis Clark (Hobart); Professor E.J. Nanson (Melbourne); and brothers T.R and H.P.C. Ashworth (Melbourne). It has been recognised that:

Each, directly, and indirectly, influenced the electoral law we know today. The idealists were reformers, and they found that their innovations took many years to win acceptance. Politicians, on the other hand, were pragmatists, which meant their ideals and their advocacy of them would be embraced publicly only if they met immediate political needs, which frequently were expressed only in private...their ideals were sometimes accepted, sometimes not: their existence, and their influence, were often denied the acknowledgments they deserved.³³

³³ G.S. Reid and Martyn Forrest (1989), *Australia's Commonwealth Parliament 1901–1988: Ten Perspectives*, Melbourne: Melbourne University Press, pp. 87–88.

(a) Catherine Helen Spence

One of the best known idealists was Catherine Helen Spence (1825–1910), a renowned novelist, critic, journalist, preacher, lecturer, philanthropist and social and moral reformer. On one of her visits to Britain she ‘made the acquaintance’ of Thomas Hare and John Stuart Mill. Spence formed an Effective Voting League in South Australia and helped with the establishment of a similar organisation in New South Wales, but was unsuccessful as the first woman candidate to be a South Australian delegate to the Federal Conventions. As early as 1861 Spence published a pamphlet ‘A Plea for Pure Democracy: Mr Hare’s Reform Bill applied to South Australia’, which admittedly ‘did not set the Torrens on fire’.³⁴ Spence considered her modified Hare-Spence method of PR was ‘fair and just’, ‘honest’, ‘educative’, ‘moral’, ‘cheaper’, and would ensure that ‘minorities [would] be adequately represented’.³⁵ For Spence, minorities were necessary in Parliament, to ‘watch the majority and keep it straight’.³⁶ With her interest in civics and electoral reform, Spence considered proportional representation even more important for women than obtaining the vote. It was even thought better to be an ‘unenfranchised woman’ than a ‘disenfranchised voter’. Spence contended that only ‘effective voting’ (being proportional representation) could right the injustices of the established system of ‘defective voting’, which polarised the political community and robbed Australian parliaments of their deliberative potential.³⁷

(b) Edward Nanson

The technical dimension of PR was given sophisticated analysis by Professor Edward Nanson, who was appointed to a Chair of Mathematics at the University of Melbourne in 1875. Nanson was not, however, the only mathematician focused on the subject, others included J.B. Gregory and Professor W. Brown. Nanson, though, was known as ‘the expert’s expert’³⁸ and published several papers as an electoral reformer of the school of Thomas Hare and J.S. Mill, with a selection of ideas published in newspaper articles for the *Age* and *Argus*. In 1899 Nanson published his own tract titled *Electoral Reform: An exposition of the theory and practice of proportional representation*, which expressed misgivings about the widely employed single member plurality district system.³⁹ At Federation Nanson strongly advocated the adoption of PR for the Senate and the preferential (alternative) voting system for the House of Representatives, considering the Senate (with each State being polled as one electorate) ready made for the PR voting system. With the backing of George Turner and Alfred Deakin, two former Premiers, Nanson backed legislation to elect Victoria’s first Senators by PR and preferential voting for the first House of Representatives members.

³⁴ Susan Eade (1976), ‘Catherine Helen Spence’, *Australian Dictionary of Biography*, Vol.6: 1851–1890, Melbourne: Melbourne University Press, p. 167.

³⁵ Cited in Reid and Forrest, *Australia’s Commonwealth Parliament 1901–1988*, p. 92.

³⁶ *ibid.*

³⁷ John Uhr, ‘Catherine Helen Spence and Australian Electoral Reform’, cited in Brian Galligan and Winsome Roberts (2004), *Australian Citizenship*, Melbourne: Melbourne University Press, p. 187.

³⁸ John Uhr (1999), ‘Why We Chose Proportional Representation’, in Marian Sawer and Sarah Miskin (eds), *Representation and Institutional Change*, Canberra: Department of the Senate, p. 27.

³⁹ Reid and Forrest, *Australia’s Commonwealth Parliament 1901–1988*, p. 89.

(c) Thomas and Henry Ashworth

A ‘path finding’ Australian contribution to PR literature was made by two brothers, Thomas Ashworth (1864–1935) and Henry Ashworth (1861–1903). The publication *Proportional Representation Applied to Party Government: A New Electoral System* (1900), was longer and more comprehensive than the tracts of other idealists. Although not considered widely read, the Ashworths’ work ‘had a profound and long-standing influence upon electoral matters: their book was designed as the intellectual counterpoise to the popular works on proportional representation’.⁴⁰ The Ashworths claimed their book was prepared ‘in the hope of preventing [the] wrong’⁴¹ of block voting for the Federal Senate. Henry, a civil engineer and younger of the brothers died in 1903, but the elder publicist, Thomas, lived to fight the cause of a just electoral system, and as late as 1927 was appointed to the Commonwealth Royal Commission on the Constitution. Ashworth signed the main report and submitted a ‘Supplement and Recommendations’ which included a forceful argument for PR.⁴²

(d) Andrew Inglis Clark

The ‘idealist’ who did achieve a measure of legislative success with PR, was Andrew Inglis Clark (1848–1907), an influential barrister, politician and judge. In 1896, as Tasmania’s Attorney-General, Clark introduced legislation for a system of PR for Tasmanian elections, or more particularly for the election of the members of the Legislative Assembly for Hobart and Launceston. Before the adoption of the Hare-Clark method of PR, a majority of voters could select all the representatives and leave a very large minority totally unrepresented in the Parliament. The system lapsed in 1899 when there was an attempt to extend PR to the whole of Tasmania, although it was used to elect the six Commonwealth Senators and five members of the House of Representatives for the first Federal elections in 1901. In 1907 the Hare-Clark system of PR was revived in Tasmania for State elections after the federal electoral divisions had been determined in 1903. This method has been used in Tasmania since the 1909 State election.

2.3 Proportional representation in the Commonwealth

Section 24 of the Australian Constitution specified the ‘nexus’ between the Lower and upper Houses, whereby the number of members of the House of Representatives was to be ‘as nearly as practicable...twice the number of senators’. Although there had been some ‘scattered commentary’ about the most appropriate voting systems during the federation debates, the Constitution left the Parliament to determine such laws.⁴³ Nevertheless, electoral law specialists have indicated that many delegates expected the Federal Parliament to select a PR system for Senate elections. However, the first federal election of 1901 was held under a mix of different electoral procedures across the Commonwealth, in which each State elected its representatives to the new federal parliament according to the rules used to elect its own representatives at the State level. As discussed earlier, only Tasmania had adopted a form of PR that applied for both of the Federal Houses.⁴⁴

⁴⁰ *ibid*, p. 92.

⁴¹ Cited in Reid and Forrest, *Australia’s Commonwealth Parliament 1901–1988*, p. 93.

⁴² Uhr, ‘Why We Chose Proportional Representation’, p. 27.

⁴³ *ibid*, pp. 21–22.

⁴⁴ David Farrell and Ian McAllister (20 05), ‘1902 and the Origins of Preferential Electoral Systems in Australia’, *Australian Journal of Politics and History*, Vol. 51, No. 2, p. 162.

The main focus in the Western Australian Parliament was upon the criteria and naming of the boundaries for the five House of Representatives seats. A Select Committee recommended that five seats be drawn as nearly as possible on a population basis but coinciding with the interests of two Goldfields seats, a city interest and port interest seat, with the squatting and mining interest seat combined. There was an assumption that the voting system for the House of Representatives, as for the Legislative Assembly, was single member plurality. For the Senate there was no suggestion that PR should be adopted for the State wide vote for the six seats, while the prominent F.C.B. Vosper unsuccessfully moved that the election days for the House of Representatives and Senate be held on separate occasions. Vosper contended there was too much chance of 'confusion' with many more candidates than usual standing for office.⁴⁵ Moreover, given the need to attract a 'better class of men' to the new national parliament, a candidate who lost in one election could then nominate for 'the other place'.⁴⁶ Just one member in the Legislative Council, solicitor Hon. Frederic Whitcombe, raised objection to the block voting (six votes for six candidates) in the Senate as he believed 'it would be giving the whole of the representation in the Federal Senate into the hands of the most populous clique...'.⁴⁷

In its first year of proceedings the Commonwealth Parliament commissioned two reports to prepare the ground for the Barton government's 1902 Commonwealth Electoral Bill. Home Affairs Minister Sir William Lyne, who was controversially offered the post of Prime Minister by Governor General Lord Hopetoun, convened a committee of parliamentary experts on electoral law and practice. In July 1901, after examining best practice across Australia's electoral systems, the group reported in favour of a PR system for the Senate. No reasons were given for the recommendation, despite the fact that PR was entirely new to most members.⁴⁸ A second report was prepared for the Senate by the Returning Officer and the Statistician from Tasmania. After quoting extensively from Andrew Inglis Clark's exposition of the merits of the Hare-Clark system, its use in the electorates of Hobart and Launceston, and the first Senate election from Tasmania, the authors recommended that PR be introduced for the Senate. They were concerned, however, that there was a misplaced interest about the 'ease and convenience of the candidates' at the expense of the 'fairer representation of the elector and his greater freedom of choice'.⁴⁹

Despite the findings of the reports, the weight of the arguments presented by the idealists, and the support of prominent political leaders Edmund Barton and Alfred Deakin, the Senate rejected the PR proposal. At the same time the government's proposal for the preference (or alternative) vote was cast aside in favour of the traditional plurality formula. The debates were extensive with the fledgling Labor Party respecting the occasion 'for bringing the Constitution of Australia into operation'⁵⁰ by giving their members a free vote. The main case against PR was that strong parties would be wrecked. Moreover, there was a fear of the growth of 'cliques and minorities' that would fragment 'the symmetry of the system' of party government and there was an attempt to dismiss most of the PR advocates as

⁴⁵ Legislative Assembly (LA) Debates, 3 October 1900, p. 804.

⁴⁶ *ibid*, p. 804.

⁴⁷ Legislative Council (LC) Debates, 3 October 1900, p. 787.

⁴⁸ Uhr, 'Why We Chose Proportional Representation', p. 29

⁴⁹ *ibid*, p. 29

⁵⁰ *ibid*, p. 30.

‘faddists’.⁵¹ Outside the party political arithmetic calculations or faddist labels there was a suggestion that because many of the members were unfamiliar with the formulas, they were ‘disinclined’ to try them.⁵² However, from the beginning of federation the adoption of PR, particularly for upper Houses, was seriously considered. Perhaps the adoption of PR as early as 1902 for the Senate would have given rise to more confidence in its workings for the mainland States.

⁵¹ *ibid.*, p. 31.

⁵² See Farrell and McAllister, *The Australian Electoral System*, p. 35.

CHAPTER 3 MOTIONS FOR PROPORTIONAL REPRESENTATION IN WESTERN AUSTRALIA

At federation there was a keen debate about the merits of PR voting systems, regardless of which version was being espoused. Occasionally mentioned in parliamentary debates in Western Australia, PR was given exhaustive examination by a Select Committee of the Legislative Assembly, which had been charged with reporting on aspects of the proposed 1907 Electoral Bill. The outcome was the adoption of the preference (or alternative) vote rather than PR for Legislative Assembly elections. In both the Committee proceedings and the parliamentary debate there is evidence of confusion about the respective preference voting systems. PR was later mentioned during the divisive redistribution debate of 1910, and was the subject of a motion in 1912 seeking its adoption. The motion passed the Legislative Council but floundered in the Assembly, soon after followed by a Proportional Representation Bill, which also floundered. It appears that some Western Australian parliamentarians were keen to promote PR but the cause lacked effective, organised local advocacy.

3.1 Preferential Voting in 1907

Developments in Western Australian electoral law were particularly significant in 1907. *The Electoral Act 1907* was passed, representing a major consolidation, and preferential voting, otherwise known as the alternative vote, was introduced for the Legislative Assembly. Preference voting replaced the first past the post system and required electors to mark the ballot paper with numbers in order of preference for candidates. However, ballots marked with a single X remained valid, requiring after each count the recalculation of the absolute majority required for election. The decision to adopt the preference vote, without the compulsory distribution of preferences, had followed its recommendation by a Select Committee in the Legislative Assembly. The Committee, chaired by Attorney General Norman Keenan, was provided with extensive information by the Chief Electoral Officer, Ernst Gottfried Stenberg, who exhibited a profound knowledge of literature on electoral systems.

The Committee considered the subject matter of their inquiry under two heads:

- a) A system of preferential voting being the single transferable vote in electorates returning one member; and
- b) A system of preferential voting being the single transferable vote [i.e. STV-PR] in electorates returning two or more members.

After only a fortnight of sittings the Report to the Legislative Assembly stated:

Your Committee recommends that the system of preferential voting by means of the single transferable vote in electorates returning only one member should be included in the provisions of the Bill.

Your Committee, however, recognises that in the application of the system of proportional representation to electorates returning more than one member, there exists considerable diversity of opinion, both as to its application to the redistribution of seats and also as to the particular scheme of proportional

*representation to be adopted, and regards it as one deserving of further and more exhaustive inquiry before being embodied in our electoral machinery.*⁵³

During Committee proceedings, Ernst Stenberg as Chief Electoral Officer, devoted time to clearly differentiating between the alternative vote and PR, which, as the above terms of reference illustrate, were both labelled as the 'single transferable vote'. Stenberg's comments were favourable to the alternative vote, ahead of plurality, the second ballot and the 'contingent vote', which had been adopted in Queensland. Stenberg cited the authoritative work of Lord Avebury (Sir John Lubbeck) titled *Representation* that contained several advantages of the alternative vote in single member constituencies.⁵⁴ Many other electoral law authorities were mentioned, but mostly in relation to PR. One view attributed to Lord Avebury indicated that PR would secure three great requisites of representation namely:

*power to the majority, a hearing to the minority, and lastly, what is of scarcely less importance, the representation of every considerable party and section by its best and ablest leaders.*⁵⁵

Stenberg, circumspect about the STV version of PR, was concerned that the views of John Stuart Mill were being presented without recognition that Mill was proposing a representative assembly as a purely deliberative body, without governmental functions.⁵⁶ It was recalled that PR had been introduced for the Hobart and Launceston electorates in 1896 for the Tasmanian House of Assembly but had been abandoned with evidence that a great many voters did not understand the new arrangements, reflected in a marked increase in the informal votes when compared with earlier elections.⁵⁷ At that stage information about its re-introduction for all electorates in Tasmania in 1907 was not yet known. Of major concern to Stenberg was the uncertainty about which quota to adopt and what formula should guide the transfer of preferences. The views of a host of scholars, including Spence, Nanson, the Ashworth brothers, J.B. Gregory and Professor Jethro Brown from the University of Tasmania, were mentioned. Gregory, a mathematician who as early as 1880, devised solutions to the transfer of surplus votes conundrum, was later influential in the debate over the methodology used for the Australian Senate and the Western Australian Legislative Council.

Although PR was not adopted in 1907 Norbert Keenan, the Attorney General in charge of the legislation, spoke of the strong move throughout Australia towards bringing about proportional representation. He reminded members the existing system of plurality in single member districts frequently gave the party in power more representatives than the votes cast for its candidates entitled it to have, often leaving the Opposition weaker than the volume of public opinion would suggest. As there was 'nothing more dangerous to the community than a weak Opposition' he went on to say 'every section of the community has a right to proportional representation'.⁵⁸ For

⁵³ Report of the Select Committee of the Legislative Assembly to Which Clause 90 of the Electoral Bill was referred (1907), Perth: Government Printer, p. 3. See Legislative Assembly, Votes and Proceedings.

⁵⁴ *ibid.*, p. 4.

⁵⁵ *ibid.*, p. 32.

⁵⁶ *ibid.*, p. 22.

⁵⁷ Scott Bennett (1995), 'These New-Fangled Ideas: Hare-Clark 1896–1901', in Marcus Haward and James Warden (eds), *An Australian Democrat: The Life, Work and Consequences of Andrew Inglis Clark*, Hobart: Centre for Tasmanian Historical Studies, p. 153.

⁵⁸ LA Debates, 1 August 1907, p. 622

that reason thought Keenan ‘it is probable that in the early future a proposal may be made to...try the experiment of proportional representation in those parts of the State that lend themselves to the carrying out of such a scheme’.⁵⁹ In 1910, during the bitter Redistribution of Seats Bill, Opposition Leader and future Premier John Scaddan, believed the only way to ensure a deliberative assembly that was ‘a true reflex of the opinions of the people’ was through changing the electoral system.⁶⁰ Scaddan predicted:

Proportional representation would result in our best men representing the people in Parliament. Under proportional representation the member for Menzies would not have to run in the new Wagin seat for the next Parliament, for the Minister for Mines would not be required to get down to the depths he had reached in gerrymandering electorates to secure his return to the next Parliament. Proportional representation would secure his return.⁶¹

Despite the recommendation of the 1907 Select Committee, the Premier decided PR was too big a subject to decide upon in haste, referring to the August 1910 Royal Commission of the House of Commons that had failed to recommend PR.⁶² The Premier recommended caution, declaring:

... there is much to be said for the system, and so far as I am concerned I am rather enamoured of it from what I can read of it; still we ought to be cautious before we launch out on the system of this description and abolish the system under which we are governed.⁶³

There was clearly a belief that many of the party feuds over the drawing of boundaries would be reduced by the adoption of PR, with its multi-member constituencies. Nor would the larger electorates have the constant need for readjustment. That PR would facilitate the election of the most prominent and able members had been part of the argument for the STV version of PR, which was based on the capacity of individuals to win votes in large multi-member electorates. There was wide agreement that PR aims and achieves to a large extent Scaddan’s ‘reflex of public opinion’. The great bugbear, though, was that the scheme was too intricate.⁶⁴ However, the reintroduction of the Hare-Clark system for all members of the Tasmanian House of Assembly in 1907 had prompted a member to say:

I would consider it an insult to the Western Australian electorate to suppose that they have not the same capacity as the electors in Tasmania...I would consider it also an insult to the State Electoral Department to suppose they are not capable of organising and carrying through an election equally well as the department in Tasmania.⁶⁵

3.2 The 1912 Legislative Council Douglas Gawler Proportional Representation Motion and Bill

The often mentioned merits and defects of PR were given parliamentary focus in 1912 by the Hon. Douglas Gawler, elected in a March 1910 by-election for the Legislative

⁵⁹ *ibid.*

⁶⁰ LA Debates, 15 December 1910, p. 2471.

⁶¹ LA Debates, 12 January 1911, p. 2921.

⁶² LA Debates, 10 December 1910, p. 2539.

⁶³ *ibid.*

⁶⁴ LA Debates, 20 December 1910, p. 2561.

⁶⁵ *ibid.*

Council Metropolitan–Suburban Province. Gawler, a highly educated barrister and solicitor and Liberal Party member, put forward the following motion:

*That in the opinion of this House the proportional representation system on the Hare-Spence method should be adopted in the Parliamentary electoral system of this House.*⁶⁶

Gawler gave a lengthy, learned exposition of the benefits of PR and drew heavily on scholarly literature, including a contemporary publication titled *Proportional Representation* (1911) by John Humphreys, and a precise handbook prepared by the Chief Electoral Officer, Ernst Stenberg. Many of the ‘absurd’ outcomes of plurality in single member districts were mentioned and of particular interest was Gawler’s thesis that political party cleavage in Western Australia was between capital and labour, which had not yet learned to ‘understand’ one another. In Gawler’s view, ‘the dividing lines between parties should be those of principle and thought and not of class feeling’.⁶⁷ PR would give better representation to minorities to help them ‘take a broader view of local affairs’.⁶⁸

The PR motion was seconded by Frederick Davis, also from the Metropolitan–Suburban Province, elected at a November 1911 by-election with an astonishing two vote margin. Notably, Davis was a Labor Party member, at that time the party of government and, following Gawler, demonstrated a wide international and Australian knowledge of the subject. Importantly, Davis asked key questions about its application in Western Australia as in his view there was a requirement for at least 13 electorates for the Legislative Assembly, and a need to take into account the electorates for the Legislative Council and the Federal Parliament. Large multi-member electorates were necessary for Perth and suburbs, Fremantle and districts, and the Kalgoorlie area. For the remainder of the State, Davis argued for a minimum of three member constituencies as this provided for majority and minority representation.⁶⁹

Another speaker to the motion, Hon. Joseph Cullen, elected as a Liberal in an October 1909 by-election, supported the broad principle of PR, but did not want the House to be tied to either the flawed Hare-Spence or Hare-Clark formulas for the transfer of preference votes. Cullen raised a set of queries about PR including the prospect of less direct ‘touch’ between the member and a large constituency. Also mentioned was the necessity of each elector to cope with an enlarged ballot, the risk of delays in achieving results, the greater likelihood of informal votes and the inability of the system to cope satisfactorily with by-elections. The impact of PR upon the Capital–Labour cleavage was addressed, with Cullen arguing the upper House would be badly served if a non-party attitude to all questions and all administrations was not maintained.⁷⁰

The third Metropolitan-Suburban province member to support the PR motion was Archibald Sanderson, a prominent journalist, elected to the Legislative Council in May 1912. Sanderson was certain that some people were ‘mixed up’ between the system of PR and the system of preferential voting.⁷¹ Some of this confusion had

⁶⁶ LC Debates, 6 August 1912, p. 845.

⁶⁷ *ibid.*, pp. 845–846.

⁶⁸ *ibid.*, pp. 845–846.

⁶⁹ *ibid.*, pp. 860–861.

⁷⁰ *ibid.*, pp. 941–946.

⁷¹ LC Debates, 8 August 1912, p. 946.

again become apparent when in 1911 the Parliament legislated to make the full expression of preferences compulsory to ensure a valid vote for Legislative Assembly elections. Interestingly, Sanderson thought that PR would bring about more interest in public affairs, presumably because it would contribute to greater political efficacy as a citizen's vote would not be 'wasted'. Sanderson also expressed surprise that no reference had been made to the constitutional convention, which had been promised to deal with the Constitution of Western Australia and stated in the Legislative Council:

*Personally, I am in favour of proportional representation, and if it will have the effect of arousing interest in public affairs that will be one more reason for supporting it. I sincerely trust that if the motion is passed the Government will consider the question in connection with the Convention Bill which has been promised.*⁷²

Fellow supporter of PR, Joe Cullen, thought that linking the reform to the Convention would 'kill' the question.⁷³ Another Member, Walter Kingsmill, considered such a strategy 'would be like tying it to a corpse'.⁷⁴ Sanderson, though, was concerned about both the 'indifference and a certain amount of ignorance on the subject'. In his view, the capable Gawler needed to establish himself as president of a PR society to arouse interest both inside and outside Parliament. This action 'would be worth the support of half a dozen newspapers'.⁷⁵

(a) The advocacy deficit

The absence of a PR Society or Effective Voting League in Western Australia was a handicap thwarting its adoption. In addition both the mover and seconder to the motion in the Legislative Council, calling for the adoption of the Hare-Spence version of PR, were both newly elected members in that Chamber. An active PR society in Tasmania, coupled with the leadership of Inglis Clark, had undoubtedly contributed to its adoption in that State. In South Australia, too, where Catherine Helen Spence led an Effective Voting League it was noteworthy that PR legislation was frequently tabled in the Parliament.⁷⁶

James Cornell, had entered the Legislative Council as late as 22 May 1912 with a provocative 'class ridden' Maiden Speech calling for PR in both Houses⁷⁷ with the State voting as a whole at each election.⁷⁸ Cornell described Gawler as 'the father of proportional representation' in Western Australia.⁷⁹ However, this claim was not made during the motion for the adoption of the Hare-Spence form of PR, but in debate for the second reading of a Bill seeking the initiative and referendum for Western Australia. Indeed, Cornell spoke of the initiative and referendum being 'the natural corollary of proportional representation'.⁸⁰ He argued that if these democratic devices were adopted there would be 'very little need for proportional representation'.

⁷² *ibid.*

⁷³ *ibid.*

⁷⁴ *ibid.*

⁷⁵ *ibid.*, p. 947.

⁷⁶ Susan Magery (1985), *Unbridling the Tongues of Women: A Biography of Catherine Helen Spence*, Sydney: Hale and Iremonger, pp. 162–163.

⁷⁷ LC Debates, 4 July 1912, p. 114.

⁷⁸ LC Debates, 13 August 1912, p. 1012.

⁷⁹ LC Debates, 17 December 1913, p. 3980.

⁸⁰ LC Debates, 17 December 1913, p. 3980.

The initiative and the referendum Bill were rejected. Cornell had supported the 'Ayes' but Gawler voted with the 'Noes'.⁸¹ Cornell was eventually to become 'Father of the House' after leaving the Labor Party in 1916 to become a Nationalist. After many years as Chairman of Committees Cornell eventually had a very short term as President in 1946. He did not, however, use his lengthy service to the Legislative Council to seek PR, nor were there further claims that the initiative and referendum were the 'corollary' of PR.

The more experienced Walter Kingsmill, a former Minister and future President of the Legislative Council (1919–1922) and President of the Senate (1929–1932), spoke at length during the PR motion debate. Kingsmill considered that the need to secure a constitutional amendment would prove to be a barrier to the PR cause. In his view, the absence of the adult franchise in the Legislative Council was a 'stumbling block' or 'great cliff' for PR because 'the whole system is based upon the supposition that it is going to be applied to a popular House and not to an Upper Chamber'.⁸² In fact Kingsmill was concerned that Gawler had not considered this aspect in his speech and added 'we are dealing with this matter in a more or less abstract manner' with 'little actual experience and information to go upon'.⁸³ At the same time Kingsmill cited opinions from Catherine Helen Spence and studies by law Professor Jethro Brown based on the Tasmanian practices. The latter had warned that PR 'is one of those innovations which invite the fate of the inconsistent lover; by affecting to be kind to all parties, it secures the allegiance of none'.⁸⁴

There was recognition that some PR advocates had been labelled as 'faddists'.⁸⁵ It was claimed that the PR movement had 'grown and grown apace'.⁸⁶ One signal that the PR movement was gaining ground was the support given for the motion by Hal Colebatch who made an immediate mark on the political scene, despite having been elected to the Legislative Council as late as 1912.⁸⁷ For Colebatch, briefly Premier in 1919, the proposed system of PR would 'destroy the bitterness of party spirit [and] stimulate the dissemination of healthy political principles in all...constituencies'.⁸⁸ Another anticipated 'good effect' was that it would give sections of the community representation to which they were 'entitled'. In this context Colebatch mentioned the civil service vote and the temperance vote, which were influential interests in that era. Moreover, the chance to obtain representation would encourage people to vote.⁸⁹ Colebatch concluded with the following 'radical' observation:

I do not support proportional representation for itself alone; we must carry it further, and have elective ministries, elected also on a proportional basis. The present party system has not much to recommend it; it is not even very old...The great advantage of proportional representation, in conjunction with elective ministries, is that it would give us what we have been clamouring for—continuity of policy, and the services of the best men of each party; it

⁸¹ LC Debates, 18 December 1913, p. 4038.

⁸² LC Debates, 28 August 1912, p. 1354.

⁸³ *ibid.*, p. 1349.

⁸⁴ *ibid.*

⁸⁵ *ibid.*, p. 1012

⁸⁶ *ibid.*

⁸⁷ Brian De Garis (1962), 'A Political Biography of Sir Hal Colebatch', Unpublished MA Thesis, Perth: University of Western Australia.

⁸⁸ LC Debates, 28 August 1912, p. 1348.

⁸⁹ *ibid.*

*would destroy party rancour without interfering with healthy discussion and friendly rivalry between the advocates of different political principles.*⁹⁰

Jabez Dodd, an Honorary Minister in the Legislative Council, was supportive of endeavours to make the Legislative Council a non-party chamber. Dodd thought that with PR there would soon follow a move to introduce the democratic mechanisms of the referendum, the initiative and perhaps the recall.⁹¹ Indeed, given the supportive tone across the political spectrum, regardless of what legislation would follow, it was not surprising that the Hare-Spence motion for the Parliamentary electoral system of the State was passed on the voices in the Legislative Council.⁹² This was progress for the PR case, but its supporters would have noticed that when the message was conveyed to the Legislative Assembly it was ruled out of order on the grounds that it was not a Bill.⁹³

(b) A PR Machinery Bill

In less than one month, Jabez Dodd, in his capacity as an Honorary Minister in the Legislative Council, led the second reading debate for a PR machinery Bill. However, as a Labor member, Dodd was circumspect in his address when he commenced speaking in the following unusual terms:

*In bringing forward this Bill I would like to dissociate myself from any party feeling whatever. Further than that, I wish to say that I am satisfied with the justice of the proportional representation system, but have some doubts as to its applicability, taking the State as a whole. There is no doubt that in addressing the House on this measure one is addressing a sympathetic audience, because recently we have carried a resolution approving of the system of proportional representation, and I think all members are satisfied that there is a certain amount of injustice in connection with the present electoral laws inasmuch as they do not act fairly at times to any party.*⁹⁴

Dodd made it clear that the PR Bill was only a ‘Machinery’ Bill, which was necessarily to be followed by a redistribution of electorates and constitutional changes to the method of retiring members for the upper House. Dodd then noted that ‘when the Convention Bill comes up...it may so happen that this scheme for electing our members will be adopted’.⁹⁵ In the course of his address Dodd quoted at length from Ernst Stenberg’s Electoral Office publication on the advantages and disadvantages of PR. He was concerned that even if members devoted a week to the intricacies of the system they would not be able to comprehend its workings. This led to a suggestion that Sir Winthrop Hackett, at *The West Australian*, should allocate space in his daily paper to demonstrate to the public what the system really means.⁹⁶

As expected, Gawler rose to support the Bill and indicated that he did not wish to canvass the opinions he had previously aired during the motion on PR. It was admitted that the redistribution of electorates would pose problems, which Gawler thought should be based on population rather than community of interests. This was a

⁹⁰ LC Debates, 28 August 1912, pp. 1348–1349.

⁹¹ *ibid.*, p. 1357. The recall is a constitutional or legislative provision which gives citizens, under certain conditions, the power to remove a representative (Member of Parliament) before that person’s term expires.

⁹² *ibid.*, p. 1358.

⁹³ LA Debates, 13 November 1912, p. 3299.

⁹⁴ LC Debates, 10 September 1912, p. 1529.

⁹⁵ *ibid.*, p. 1532.

⁹⁶ *ibid.*, p. 1531.

contentious claim, particularly when coupled with suggestions that the Legislative Assembly may require an expansion in numbers from 50 to 52 or 53 members. Gawler was satisfied that 'whichever way you cut up the electorates, the minority will still be able to get representation ...'.⁹⁷ Importantly, in Gawler's view:

*one of the chief advantages of the system is that it will destroy the roads-and-bridges idea, the parochialist', [and foster a situation] where the average member will be much more likely to take an interest in the State generally rather in his own particular district.*⁹⁸

Nevertheless, when the debate on the Bill was resumed in November 1912, Cullen made it clear that PR was not going to win legislative approval, even in the Legislative Council. As he told the Council:

*whilst I voted for and supported Mr Gawler's motion as an abstract proposition in favour of proportional representation, I confess I did not expect that any concrete form would be given to the motion so soon because I looked upon it as a matter that would require very full consideration before the taking of that further step.*⁹⁹

Central to Cullen's case was the proposition that the Hare-Clark version of PR was 'more scientific' than the proposed Hare-Spence method. Cullen went on to say that 'if the Minister will take advice I think he should not press the Bill further at the present stage of immature thought upon it by the people and the country'. After the Bill had been read a second time, Cullen urged 'it should remain on the shelf...It is not well to precipitate in a matter which is complex enough to puzzle the average mind'.¹⁰⁰

The Bill was passed at the second reading in the Legislative Council, but was shelved and not presented to the Legislative Assembly. In fact, during one of the longest sessions from 27 June to the 13 December 1912, 59 Acts were passed but there were also 20 Bills that, for a variety of reasons, did not reach the Statute Book.¹⁰¹ Whilst in opposition, 'Happy Jack' Scaddan had floated the merits of PR during the bitter 1910 redistribution debate, yet upon becoming Premier, Scaddan was not in the vanguard pressing for PR. Again, during the 1913 Redistribution debate, there were references to PR. Labor 'maverick' and newcomer Edward 'Bertie' Johnston, a man of ideas arguing for free education in State schools and the University of Western Australia, was at the forefront of the PR cause.¹⁰² Nevertheless, no legislation was forthcoming although there were requests in both the Legislative Assembly¹⁰³ and Legislative Council¹⁰⁴ for Ernst Stenberg's electoral publication on PR to be placed on the table of each House. Some have suggested that the Premier Scaddan's Labor government missed an opportunity in 1913 to introduce a form of 'one vote one value'.¹⁰⁵ Perhaps the same can be said for PR. As history unfolded, 'one vote one value' in Western Australia was decades away, and it was to be the same situation for PR.

⁹⁷ LC Debates, 10 September 1912, p. 1533.

⁹⁸ *ibid.*, p. 1534.

⁹⁹ LC Debates, 20 November 1912, p. 3607.

¹⁰⁰ *ibid.*

¹⁰¹ De Garis, 'A Political Biography of Sir Hal Colebatch', p. 31.

¹⁰² See LA Debates, 28 November 1913, p. 3197; p. 3209 and p. 3217.

¹⁰³ LA Debates, 20 September 1913, p. 2821.

¹⁰⁴ LC Debates, 17 September 1913, p. 1158.

¹⁰⁵ See Phillips. H & Robinson. K. (2006), *The Quest for One Vote One Value In Western Australia's Political History*, Perth: Western Australian Electoral Commission, pp. 24–5.

CHAPTER 4 THE SLOW PUSH FOR PROPORTIONAL REPRESENTATION

For several decades the merits of PR voting systems were sometimes mentioned in the Western Australian Parliament. Edith Cowan, the first woman elected to an Australian Parliament, advocated PR in her maiden (now inaugural) speech delivered in July 1921. Cowan later spoke of support for the measure in the Legislative Assembly, along with other electoral law innovations, including compulsory voting and ‘one vote one value’. In 1923, during the Committee stage of an amendment to the *Electoral Act 1907*, a form of PR was proposed for the Legislative Assembly. The debate covered some of the known literature on the subject but the move was thwarted when the amendment was ruled to be out of order. Although there was some interest in the continued application of PR in Tasmania, and to a lesser extent its brief operation in New South Wales, most of the focus was directed at the possibility of PR’s implementation for the Australian Senate. Of significance was the attention given to PR by the Peden Royal Commission on the Constitution of the Commonwealth (1927–1929). A member of the Commission and expert on the subject, T.H. Ashworth, made a comprehensive submission during the hearings phase. Generally though, the quest towards PR in Western Australia was travelling a long and winding track.

4.1 The Proportional Representation Winding Track

It will be recalled that PR was originally proposed in 1902 as the voting system for the Australian Senate. The PR proposal was ultimately defeated and substituted by the block vote, combing plurality with multi-member State wide constituencies that continually produced distorted results. As Harrison Moore, one of the contemporary constitutional authorities, said in 1910:

*The existing system is, of course, open to the objection that it enables an organised plurality of voters to secure the whole representation, though it has only a small majority of voters, or, even in the case of a large number of candidates, is an actual minority of the electors voting.*¹⁰⁶

The growth of support for PR in the Senate has been recorded in other publications, particularly by electoral law expert, John Uhr. At various times PR for the Senate was attributed to many political leaders. Liberal Party leader Joseph Cook spoke in support of PR during the 1913 and 1914 elections. Cook could soon reference its backing by the 1915 Royal Commission on Commonwealth Electoral Law and Administration. The report recommended compulsory voting and preferential voting for the House of Representatives and also stated that ‘in view of the large area represented by Senators, a system of PR should be adopted; applying of course, to each separate State’.¹⁰⁷

During debate on the 1922 Commonwealth Electoral Bill, future Labor Prime Minister James Scullin registered his support for PR in Senate elections. For Scullin, the existing voting system for the Senate was obsolete as it produced distorted results. In Scullin’s view, a system that allowed Labor to win all 18 seats in 1910 and then only provide Labor with one seat in 1919 did not secure the representation of the electors proportionately. Scullin advocated giving voters representation on the basis of the

¹⁰⁶ W.H. Moore (1910), *The Constitution of the Commonwealth of Australia*, second edition, Melbourne, Maxwell, p. 115.

¹⁰⁷ Uhr, ‘Why We Chose Proportional Representation’, p. 33.

strength of great sections of the electors.¹⁰⁸ Thereafter, apart from a reported preference for PR by John Curtin at the 1936 party conference in the context of Senate reform,¹⁰⁹ Labor generally registered meagre support for PR proposals. As L.F. Crisp, the author of *The Australian Federal Labour Party 1901-1951* was to state:

With the exception mainly of some Tasmanian Labour¹¹⁰ men brought up in the Hare-Clark tradition, the A.L.P. has remained over the years generally hostile to the application of P.R. to the House of Representatives as being very likely to kill the virtually two-party system and the alternation in office of majority governments which make British responsible government Cabinet Government to most Australian minds the most effective and clear-cut system of government in the world. As far as the rank and file of Labour is concerned, P.R. would mean over-large Federal electorates; 'undesirable rivalry and duplication of effort on the part of members for the same electorate'; loss of the clear and responsible relationship between Member and voters (and between Labour member and ALP branches) which the single-member electorate affords; and almost certainly a greater ascendancy of the Party machine over the local branches and rank and file. Labour is for good reasons hostile to coalition government or alliances and P.R. would probably greatly increase the incidence of these, perhaps even swiftly producing a situation where Labour could never hope to win a clear-cut Parliamentary majority in the Lower House.¹¹¹

Crisp's summary of the mostly critical stances of the Labor Party on PR was mainly directed at its possible application for the House of Representatives. Crisp did not document the interest in PR in Labor circles in Western Australia for the Legislative Assembly. At the 1919 Western Australian State Labor Party Congress, a motion was tabled 'that the Congress affirm the principle of Proportional Representation'. After much debate the motion was carried 38 to 36.¹¹² Then, at the 1922 Congress, a speaker reported that the PR system had been operated to the 'injury' of Labor in New South Wales, which between 1910 and 1918 had experimented with the double ballot. In 1927, PR was abandoned in New South Wales but Labor's success at the 1924 Western Australian election made the occasional quests for a PR system, or any other voting method, less likely.¹¹³

4.2 Edith Cowan and Proportional Representation

One of the most celebrated calls for PR in Western Australia emanated from Edith Cowan, the first woman to be elected to an Australian Parliament. As a Nationalist Party candidate, Cowan's election pamphlets in 1921 and 1924 for the seat of West Perth in the Legislative Assembly, contained commitments to both PR and compulsory voting.¹¹⁴ Cowan's maiden speech, which, when delivered in July 1921 aroused widespread State and even national interest, duly referred to the need for compulsory

¹⁰⁸ Senate Debates, 14 September 1922, pp. 2283–2284.

¹⁰⁹ Uhr, 'Why We Chose Proportional Representation', p. 33.

¹¹⁰ L.F. Crisp always wrote of the Labour Party rather than the Labor Party.

¹¹¹ L.F. Crisp (1978), *The Australian Federal Labour Party 1901–1951*, Sydney: Hale and Iremonger, pp. 217–218.

¹¹² N.F. Byrne (1959), 'A Historical Survey of the Western Australian System, 1917–1956', Unpublished MA thesis, University of Western Australia, p. 59.

¹¹³ *ibid.*

¹¹⁴ Peter Cowan (1978), *A Unique Position: A Biography of Edith Dirksey Cowan 1861–1932*, Perth: University of Western Australia, p. 163 and p. 230.

voting and PR along the lines that it operated in Denmark.¹¹⁵ Given that Edith Cowan also advocated what was later called ‘one vote one value’ it is clear that she had a ‘continental view’ of representation whereby parliament reflected or mirrored the electorate’s vote. Later during debate upon referring the contentious aspects of the Electoral Districts Bill (1923) to a Select Committee, Cowan indicated she would back a move for PR but was not supportive of the Select Committee motion. Cowan believed the Committee would be a ‘waste of time’, probably in the realisation that apart from suggestions for PR, other representational matters which she advocated¹¹⁶ were lacking broad support.¹¹⁷ Cowan’s frustration is evident in a plea to the House in which she stated: ‘For goodness sake, gentlemen, cease wasting time like this: let us get on with the work of the country’.¹¹⁸

4.3 The 1923 Proportional Representation Amendment Proposal

During the long and bitter debate over the 1923 Electoral Districts Bill, a Labor member, Edwin Corboy,¹¹⁹ moved for the principle of PR to be incorporated for the redistribution of the Legislative Assembly’s 50 seats.¹²⁰ Corboy referred to the anomalies which had occurred in Senate counts and the results of recent elections in the United Kingdom coupled with extensive quotes from John Humphries 1911 treatise titled *Proportional Representation*.¹²¹ Although Corboy conceded ‘it would be foolish to claim infallibility for any system...an efficient system of proportional representation would give effect to the desire I have’.¹²² Corboy quoted from an editorial in the *West Australian*, which stated:

*An electoral system which is responsible for such outrageous anomalies is a travesty of the ideal of responsible government, and the consciousness of injustice which it inspires is calculated to undermine public confidence in the ability of Parliament to interpret the will of a democracy. The only system which can be relied upon to create a Parliament truly representative of the will of the people is proportional representation.*¹²³

Significantly, though, Premier James Mitchell (Nationalist Party) opposed Corboy’s amendment, arguing he did not believe a case could be made for PR in Western Australia. In Mitchell’s view, ‘if we had proportional representation and had to combine half a dozen electorates, it would be a difficult matter in such a scattered country to find men willing to stand for Parliament’.¹²⁴ Mitchell conceded, however, that ‘it might be argued proportional representation is a fair system’, but then added, ‘this question should be brought before the people’.¹²⁵ As Mitchell added:

¹¹⁵ LA Debates, 21 July 1921, pp. 15–19.

¹¹⁶ Such as a reduction in members of parliament and better representation for the metropolitan area with a move towards one vote one value.

¹¹⁷ LA Debates, 20 September 1923, pp. 786–787.

¹¹⁸ LA Debates, 15 January 1923, p. 2870.

¹¹⁹ Corboy had the distinction in 1919 of being the youngest member to be elected to the House of Representatives, followed in 1921 as the youngest member elected to the Western Australian Parliament for the seat of Yilgarn,

¹²⁰ LA Debates, 25 January 1923, p. 2882.

¹²¹ LA Debates, 24 January 1923, p. 2811.

¹²² LA Debates, 24 January 1923, p. 2810.

¹²³ LA Debates, 25 January 1923, p. 2882.

¹²⁴ *ibid.*

¹²⁵ LA Debates, 25 January 1923, p. 2883.

*I read the newspapers and listened to the Hon. Member, and I have not heard any mention of proportional representation from him until this Bill came under consideration. The people have not had an opportunity to consider the question, and they should be educated to a knowledge of what the change would mean. We have no right to make such a drastic change without first consulting the people.*¹²⁶

Eventually Corboy's proposed amendment was voted down, although George Lambert, the Labor Member for Coolgardie, said 'it was regrettable that such an important matter should be dismissed so lightly'.¹²⁷ Although he was not sufficiently 'enamoured' of PR as to give it whole-hearted support, Lambert did concede that 'big minorities are entitled to representation, and proportional representation is the only system under which that can be brought about'.¹²⁸ Lambert complained that:

*we are enslaved in a monkey-like fashion to a system that was adopted by our forefathers. The system of proportional representation cannot be worse than provided in this Bill.*¹²⁹

Nevertheless, when Labor colleague Rufus Underwood (Pilbara) followed Lambert in debate he felt impelled to respond with the claim 'that system [of the preference (alternative) vote] brought me here, as well as the other 49 members, and there cannot be much wrong with it'.¹³⁰ In predicting that the amendment would not be carried, Underwood was of the view that 'when one great party comes in with a sweeping majority it does not alter the policy, the conditions, or the system of government. It simply means a change in the personnel of Ministers'.¹³¹

4.4 T.R. Ashworth and the Peden Royal Commission on the Constitution of the Commonwealth

One of the most extensive treatments of PR is contained in the Peden Royal Commission on the Constitution of the Commonwealth (1927–1929). One of the Commissioners was Thomas Ashworth, an expert on PR who had published a book in 1900 (with his brother Henry) titled *Proportional Representation Applied to Party Government*.¹³² The Ashworths claimed their book was necessary because Australia was then 'threatened with the adoption of the Block Vote for the Federal Senate and in some States for the House of Representatives as well' and prepared their book 'in the hope of preventing this wrong'.¹³³ The Commissioners broadly agreed with the Ashworth prediction and contended that 'the Senate would be better qualified to act as a chamber for revision if the senators were elected under a system of PR'.¹³⁴ Given this finding the Commissioners recommended the adoption of PR on an experimental basis for ten years.¹³⁵ The recommendation related to an insertion into the Australian Constitution and faced all the hurdles of gaining constitutional change through the referendum process. Sir Hal Colebatch, who had become a Commonwealth Senator

¹²⁶ *ibid.*

¹²⁷ *ibid.*

¹²⁸ *ibid.*

¹²⁹ *ibid.*

¹³⁰ *ibid.*

¹³¹ *ibid.*

¹³² T.R. Ashworth and H.P.C. Ashworth (1900), *Proportional Representation Applied to Party Government: A New Electoral System*, Melbourne: Robertson and Company.

¹³³ *ibid.*, p. 179.

¹³⁴ Report of the Royal Commission on the Constitution (1929), Canberra: Government Printer, p. 267.

¹³⁵ Report of the Royal Commission on the Constitution (1929), Canberra: Government Printer, p. 267.

after serving as a member of the Legislative Council in Western Australia, cautioned the Commission in a detailed submission. Colebatch, it will be recalled, had spoken favourably about consideration of PR for Western Australia and considered the adoption of PR for the Senate should be legislative rather than constitutional, to enable the Parliament 'to embark upon such an experiment with its right of retreat unfettered'.¹³⁶

Although the Peden Royal Commission had recommended a ten year constitutional PR experiment for the Senate, part of Ashworth's submission pertained to changes to the voting system for the House of Representatives. In Ashworth's view, the fundamental weakness of the single member electorate [accompanied by the existing preference/alternative vote] was that it encouraged voters to subordinate national to sectional interests.¹³⁷ Ashworth added:

*another grave weakness of the single member electorate is that if more than one candidate of a party is nominated, that party's chance of success are lessened accordingly. To remedy this weakness, pre-selection has become the rule and has generated further evils.*¹³⁸

As the system brought more than one candidate into the field for each party, it set up what Ashworth described as 'an internecine struggle for first preferences'. This meant that the party became disorganised with its campaign and its strength diffused among several candidates. Ashworth judged 'preferential voting had failed completely and had intensified the subordination of national to sectional interests'. In summary Ashworth said 'preferential voting is a direct encouragement of party multiplicity; on that account it is out of adjustment with the Cabinet system'.¹³⁹

Ashworth's solution was PR, but not the Hare-Clark form which had been installed in Tasmania and briefly practiced in New South Wales. With regard to the latter Ashworth said 'experience of its application...has won for it very few advocates'.¹⁴⁰ Instead Ashworth sought a list method of PR that was familiar to many constituencies of continental Europe and presented a set of detailed rules, which he believed had the distinctive feature of being a method suitable to the parliamentary Cabinet system. This was partly because his system required each candidate to declare to the returning officer for each division of the Commonwealth,¹⁴¹ whether or not the candidate wished to be designated as either a 'Ministerialist' or an 'Oppositionist'. Although it has been claimed that the work of the Ashworths has been underestimated compared with the works of some of the other PR idealists,¹⁴² it was not surprising Ashworth's requirement of a prior commitment for every candidate to declare support for the incumbent Ministry or Opposition did not win the support of the Peden Royal Commission. Ashworth's reasoning was based on protecting the Cabinet system of government, which many considered PR may challenge because it lowered the threshold for minor parties.

Interestingly, though, Ashworth had chosen not to discuss in more length the Tasmanian experience with PR. Some adjustments were made to the original legislation

¹³⁶ Colebatch, in Report of the Royal Commission on the Constitution (1929), p. 300.

¹³⁷ Ashworth, in Report of the Royal Commission on the Constitution (1929), p. 286.

¹³⁸ Ashworth, in Report of the Royal Commission on the Constitution (1929), p. 286.

¹³⁹ *ibid.*

¹⁴⁰ *ibid.*

¹⁴¹ To be divided for electoral purposes into districts returning three, four or five members.

¹⁴² Reid and Forrest, *Australia's Commonwealth Parliament 1901–1988*, p. 93.

to replace by-elections with recounting the original ballots. In the future, a step which Ashworth would almost certainly have backed, Hare-Clark in Tasmania was modified in favour of political parties by allowing candidates to be grouped together by parties rather than alphabetically listing all candidates together. Later-still in 1979, a Private Member's Bill for the rotation of candidates' names within their party or other groupings on the ballot was passed. Although this reform, known as Robson's Rotation (after its initiator Neil Robson a Tasmanian Member of the House of Assembly), had little to do with partisan fortunes, it was thought to reduce the impact of the so-called 'donkey vote' on individual candidates. Importantly though, it has been contended that PR in Tasmania has promoted party stability by enabling one or the other of the two major parties to achieve majority control of the House of Assembly. Inglis Clarke had thought his PR system would undermine the 'accursed party system' but his forecast, like many other predictions of electoral law protagonists, had proven to be incorrect.¹⁴³

Meanwhile there were some instances where non-Labor parliamentarians sought PR for the Senate. At the time Scullin was advocating PR for the Senate, Country Party Leader Earle Page was saying that the existing Senate system following the 'preferential system' legislated in 1919 was 'recognised by everyone throughout Australia to be ludicrous'. As early as 1922, Page warned that 'the one party character of the Senate' would eventually cause great public offence when the community understood there were alternatives capable of reforming Senate representation to include 'all classes of the people.'¹⁴⁴ Page proposed a series of committee stage amendments to introduce PR for the Senate. At the same time he produced a chart of comparable countries where PR had been introduced or was in the process of being made law, particularly for upper Houses.¹⁴⁵ Perhaps of special interest was the adoption of PR in provincial Canada. From 1917, Alberta had PR for multi-member Edmonton and Calgary, with the preference vote in the other country seats of the province. Three years later Manitoba adopted the same model with the capital Winnipeg having multi-member PR and other seats determined by preference (alternative) voting.

Page's amendments, despite Scullin's support, were not adopted. Page, however, returned to contemplate PR for the Senate on other occasions. There is even evidence that he had 'on side' Stanley Bruce, his future colleague as Prime Minister. Page went as far as advocating a constitutional convention of parties interested in PR.¹⁴⁶ Nothing transpired, presumably because the idea of PR, as in Western Australia, was limited to selected individuals who could not garner a sufficient breadth of support across the party spectrum, either at the federal level or in Western Australia. Those who did read the PR literature were aware that in the Westminster world PR was not widely practiced. It was retained in Tasmania and the Republic of Ireland but was later repealed in the Canadian provinces in Manitoba (1953) and Alberta (1955). Significantly, PR was eventually adopted for the Australian Senate in 1948 for the 1949 federal election.

¹⁴³ Richard Herr (1995), 'Hare-Clark Legacy', in Howard and Warden, *An Australian Democrat: The Life, Work and Consequences of Andrew Inglis Clark*, pp. 190 and 191. Party Groupings in 1941 and Robson's Rotation in 1979.

¹⁴⁴ Uhr, 'Why We Chose Proportional Representation', p. 37.

¹⁴⁵ *ibid.*

¹⁴⁶ *ibid.*

4.5 Senate PR from 1949

The adoption of PR for the Senate for the 1949 election has been well documented and debated. There has been much dispute as to whether its introduction was driven by partisan considerations or recognition that the case for PR, mooted at federation and regularly raised, was eventually to win parliamentary passage because of some of its merits. The PR debates of 1948 will not be repeated but in an abridged form in February of the same year a Cabinet sub-committee examining proposals for the enlargement of the Commonwealth Parliament additionally recommended that a Bill proposing PR be submitted for approval. When a motion for PR was put to the Labor Caucus in the same month it was carried on the voices. Herbert Evatt, then Attorney General, introduced the legislation in the following terms:

For many years there has been a demand that the Parliament should provide a system of electing senators which would give more equitable results and enable the electorate to be more truly represented in the Senate. The Government has given careful consideration to the matter and has closely examined alternative methods. It has decided that, in relation to the election of senators, where each State as one electorate, the fairest system and the one most likely to enhance the status of the Senate is that of proportional representation.¹⁴⁷

Some Labor members were satisfied that the introduction of PR would ensure that Labor, in the short term, would hold a majority in the Senate after 1949 because of the preponderance of seats it had won at the 1946 election. Others were more sceptical, warning that it was a ‘gold brick’ proposal that would ultimately disadvantage the Labor Party.¹⁴⁸ The Leader of the Opposition, Robert Menzies, conceded a strong case could be made for PR but objected to half of the Senators being elected under one system and the other half under another. The Labor Government, refused to grant a double dissolution which Menzies had sought and subsequently Labor retained overall control of the Senate, even though it lost government at the 1949 election. Menzies, of course, soon had his way as a double dissolution election was held in 1951 with the critics such as L.F. Crisp contending that Labor should have kept away from an electoral system that promoted deadlocks or near deadlocks between the two Houses of Parliament, thereby placing the stability of government in doubt.¹⁴⁹

While there have been some challenges to the operation of PR in the Senate, it must be asserted that it gradually became institutionalised as the electoral system for the upper House. There were some important amendments to its operation in 1983 (such as ticket voting), but it broadly became a model for upper Houses in the Australian States and Territories. Forms of PR were adopted for the upper Houses in South Australia, New South Wales and eventually Victoria. In Western Australia the enabling legislation for PR in the Legislative Council was carried through the Parliament in 1986 and 1987. Its fate in Western Australia will be canvassed in the next chapter.

¹⁴⁷ Senate Debates, 16 April 1948, p. 965.

¹⁴⁸ See Reid and Forrest, *Australia's Commonwealth Parliament, 1901–1988*, p. 120.

¹⁴⁹ Crisp, *The Australian Federal Labor Party: 1901–1951*, p. 218.

CHAPTER 5 PRESSURE FOR PROPORTIONAL REPRESENTATION FOR THE WESTERN AUSTRALIAN LEGISLATIVE COUNCIL

With PR institutionalised for the Australian Senate, its possible application for the Legislative Council was often on the agenda in Western Australia. It was sometimes mentioned in the Parliament but once the Labor Party in the late 1970s and early 1980s, in the various States and nationally, altered its platform on upper houses Council from abolition to reform, motions for the adoption of PR in the Legislative Council were tabled in the same time period. Most of the motions came from Labor parliamentarians simultaneously seeking the adoption of ‘one vote one value’ principles into the Western Australian electoral system. Matt Stephens, originally from the Country Party, which thereafter became the National Party, was one member who entertained PR, at least for the Legislative Council. In general though, it was apparent that PR was not going to be introduced, with the Coalition (led by Premier Sir Charles Court) having a majority in both Houses.

5.1 The Claughton Proportional Representation and Other Electoral Matters Proposal

One signal of the growing Labor Party unease with electoral arrangements in Western Australia was contained in an attempt by metropolitan Labor MLC Roy Claughton in 1977 to amend the Address-in-Reply speech. Claughton sought to add to the motion that:

*we deplore the fact that the electoral laws of Western Australia are based on malapportionment of electorates, and that this Government has failed to introduce legislation to provide electoral reform.*¹⁵⁰

The measures sought by Claughton were the principle of ‘one vote one value’ in the Legislative Assembly, and for the Legislative Council to be a fully representative House, either by making the provinces more equal in numbers or by introducing a system of PR for the election of members of that House. The latter was presumably to be conducted on the basis of a state-wide electorate. To cover the expected geographic expanse of both single-member and multi-member electorates, country members were to be provided with assistance in the form of adequate staff, free transport for electoral purposes, better telephone arrangements (including the right for electors to reverse charges), more generous postal allowances, provision of more than one office in the electorate where necessary, and subsidised city accommodation where required for parliamentary purposes.¹⁵¹

Much of the subsequent debate was focused on the so-called ‘one vote one value’ matters with some consideration given to PR. In supporting the motion, Bob Hetherington, a former University lecturer and East Metropolitan Labor member, thought that if PR was adopted all parties would canvass votes in both metropolitan and rural areas, which would benefit the State as a whole.¹⁵² However, John Tozer, a

¹⁵⁰ LC Debates, 17 August 1977, p. 549.

¹⁵¹ *ibid.*

¹⁵² *ibid.*, p. 555.

Liberal Party MLC representing North Province, contended that if PR were adopted on a state-wide basis 'it would be quite impossible to get a northern member into this place. What in fact we would do is disenfranchise the people in all outlying areas'.¹⁵³ At the same time, Tozer was not supportive of plans to increase the number of electorate staff to help overcome representation problems that he thought would accompany the adoption of PR. Liberal MLC Bob Pike argued that for decades Labor had an unfair electoral advantage by virtue of holding all the seats in sparsely populated northern parts of the State from Carnarvon onwards. Pike thought the Labor Party had proposed 'a characteristic fraud' whereby PR would not necessarily ensure that the party or parties winning a majority of votes would obtain a majority of the seats.¹⁵⁴ Experienced Liberal MLC Norman Baxter was even more dismissive when he indicated a belief that the introduction of PR into Australian politics has been the 'greatest farce' ever perpetrated on the people of Australia.¹⁵⁵ In the short run though, it was clear that Baxter and his Coalition colleagues did not have to entertain PR as Claughton's motion was overwhelmingly defeated. It must be said, however, that it was the 'one vote one value principle', rather than PR, that was the focus of the division.¹⁵⁶

5.2 The Hetherington Labor Party Proportional Representation Bill

Within a few months of Claughton's motion, a Private Members Bill, explicitly seeking PR, was presented to the Legislative Council by Labor's Bob Hetherington. With his background as a lecturer in politics, Hetherington was rapidly gaining a reputation as an expert on voting systems, although some of his opponents took every opportunity to chastise him for any vagueness or the repeat of any learned quotations.¹⁵⁷ As he commenced his second reading speech, Hetherington sought to correct members who had made inaccurate observations about the working of electoral systems in France.¹⁵⁸ At stake was an attempt to refute the proposition that PR was associated with political instability.

The object of the Bill was to introduce a system of voting (on a state-wide basis) of PR on a list system, with half the members being elected for six year terms on election day. At the same time, if members wanted to accept the principle but adopt some other kind of PR, Hetherington would be happy to accept such an amendment during the Committee stage. Surprisingly, no attempt was made to indicate why the list version of PR was the preferred model. In fact, a key benefit arising from PR in the Legislative Council was the likelihood that it would lead to the election of members 'on strong personal votes',¹⁵⁹ an argument usually associated with STV rather than list system PR. At the same time it was contended that PR would benefit the major parties because it would ensure they appealed to 'the people as a whole', particularly if they elected representatives from the north and south of the State.¹⁶⁰

¹⁵³ LC Debates, 17 August 1977, p. 569.

¹⁵⁴ *ibid.*, p. 574.

¹⁵⁵ *ibid.*, p. 589.

¹⁵⁶ *ibid.*, p. 591.

¹⁵⁷ LC Debates, 2 November 1977, p. 2910.

¹⁵⁸ *ibid.*, p. 2904.

¹⁵⁹ *ibid.*, p. 2907.

¹⁶⁰ *ibid.*

The response by Coalition members was limited to a number of disparaging interjections. Liberal MLC, Bob Pike, who had earlier been reminded that he was once a member of the Labor Party,¹⁶¹ called upon Hetherington to be ‘honest and straightforward’ about the objective of his initiatives, which Pike thought was the elimination of the Legislative Council. Pike commented that ‘socialist parties do not like a bicameral system’, noting:

*This is your first step to the abolition of the system. Therefore, you do not fool me’.*¹⁶²

Although the Labor Party, as mentioned was to change its platform on the Legislative Council from one of abolition to reform of the Chamber, Hetherington contended he was seeking a democratic upper chamber as a House of Review. However, as there was no Coalition support, a motion was passed to adjourn the debate as more time was needed to research the Bill.¹⁶³

5.3 The Jamieson Labor Proportional Representation Bill

The following year, in September 1978, senior Labor figure Colin Jamieson, who had been the Opposition Leader as late as April of that year, moved in the Legislative Assembly for the adoption of a list form of PR for the Legislative Council. Jamieson had earlier put forward this proposition at the 1977 State election. Again, the result of the Bill would be that the whole State would become one Legislative Council province, and all members would be elected at a general election *en masse* in a list form. Transitional arrangements would be necessary for the 1980 election when 16 members would be due for re-election on a single province basis. This would be repeated again in 1983 and by that time the process would have converted to a true PR system. For Jamieson, the counting system would be similar to that used in the Senate, except that it was proposed that if any group did not obtain 50 per cent of a quota, it would no longer be eligible to take part in the further distribution, should there be a need to determine the last few positions.¹⁶⁴

Jamieson recognised that it would mean the State would have in one Chamber (the Legislative Council) a ‘one vote one value’ principle but added:

*We are a long way behind the times and modern practices...and we are way behind accepting the United Nations’ dictums on voting values. If we are not prepared to accept the proposed system in this Chamber, then surely we should be able to accept half a cake would be in the form of having a Chamber at the other end of this Parliament which is often referred to as a House of Review.*¹⁶⁵

Jamieson then warned of the possible dangers of failing to introduce more democratic voting principles when he told the Legislative Assembly:

It is high time we in this State made an effort to make sure that we are able to set an example for other people. Otherwise, all these things we hear about, such as uprisings in the streets, and the necessity to have armed people to put down trouble which might occur-and keeping in mind all the other parties which might be under the bed-could possibly manifest themselves. As the population becomes more educated, and our standards increase all the time,

¹⁶¹ LC Debates, 17 August 1977, p. 575.

¹⁶² LC Debates, 2 November 1977, p. 2909

¹⁶³ *ibid*, p. 2910.

¹⁶⁴ LA Debates, 20 September 1978, p. 3264.

¹⁶⁵ LA Debates, 20 September 1978, p. 3266.

*people understand the ramifications of Government. They understand the ramifications of democracy and they will demand their just rights to which they are entitled.*¹⁶⁶

The faith displayed by Jamieson towards the impact of civic and political education had been considerable, but there were no immediate signs of interest from the governing Coalition, led by Premier Sir Charles Court. No Coalition members participated in the debate which was adjourned on a motion by the Deputy Premier, Des O'Neil. Permission, however, was granted for a table of statistics to be incorporated into *Hansard* which postulated the impact of a list system of PR, with optional preferences for the Legislative Council based on the voting figures for the 1977 election. On this basis the Liberals would have secured 8 seats rather than 9, Labor 7 seats instead of 4, with the National Country Party limited to 1 rather than 3 seats.¹⁶⁷ Given these figures it was perhaps initially surprising that the next parliamentary consideration of PR emanated from Matt Stephens, who had been a National Country Party member until he moved after the party split in 1978 to the new National Party led by Hendy Cowan. Stephens, though, had floated the PR concept during an Address-in-Reply Speech in 1976 when he was pressing an argument that the Legislative Council should become a House of Review modelled on the Australian Senate. At the same time Stephens spoke about a deadlock breaking mechanism and a limit to the Legislative Council's power to block supply.¹⁶⁸

5.4 Stephens' Initial Quest for Proportional Representation

Matt Stephens' August 1979 motion for the appointment of a Select Committee to consider several important representational and constitutional matters, including the adoption of PR for the Legislative Council, meant that for the third year in a row during the second term of Sir Charles Court's Coalition Premiership, PR was given parliamentary attention.¹⁶⁹ Once again, though, the debate was limited in length with Stephens the only member formally addressing the motion before the Deputy Premier, Des O'Neil, once again moved an adjournment on the proposal.¹⁷⁰

On this occasion Stephens referred to the possibility of the PR voting system being introduced on either a state-wide basis or a regional basis. Whereas the Hetherington and Jamieson motions for PR were on a state-wide basis, linked to the desire to remove vote-weighting, the Stephens' option provided for PR on a regional basis. As events transpired, this was an important signal of the eventual PR legislation passed in 1987, with Stephens a significant National Party 'gladiator'. Vote weighting, the possible re-definition of the metropolitan boundary and the establishment of provincial town quotas for larger centres outside the metropolitan area, were included in the terms of reference, as was the length of the parliamentary term for the Legislative Assembly. Other matters to be considered were the better settling of deadlocks between the two Houses of Parliament, and the placement of restrictions or prohibitions upon the power of the Legislative Council to defeat bills imposing taxation and appropriating revenue.¹⁷¹

¹⁶⁶ LA Debates, 20 September 1978, p. 3266.

¹⁶⁷ *ibid* p. 3266.

¹⁶⁸ LA Debates, 14 April 1976, pp. 655–657.

¹⁶⁹ LA Debates, 22 August 1979, pp. 2101–2102.

¹⁷⁰ *ibid*, p. 2108.

¹⁷¹ LA Debates, 22 August 1979, p. 2101.

Stephens had thoroughly researched the representation literature and quoted at length the study titled *Representation* by esteemed British Professor A. H. Birch. Moreover, some of Edmund Burke's¹⁷² reflections about representation and Parliament were presented to the Legislative Assembly. In addition, Stephens mentioned some of the findings of the comprehensive 1907 Select Committee on Electoral Matters conducted by the Legislative Assembly. Stephens felt concerned about the erosion of the status of Parliament, particularly with respect to representation. At one point he quoted from an editorial in *The West Australian* of 29 March 1976, which stated:

*There is growing evidence of disquiet among Australians at the way the institution of Parliament is functioning as an arm of democracy. More and more the parliamentary system is coming under scrutiny and suspicion. The behaviour of politicians of all persuasions is one reason why the public is losing confidence in the system. But there are others—and in W.A. one of them is the nature of representation...the longer the inequities and anomalies persist the more the confidence of the people in the parliamentary system will diminish.*¹⁷³

The essence of Stephen's argument was that representational reform was necessary for the status of parliament to be restored. Stephens noted that 'over recent years the ALP has discovered the principle of 'one vote one value', at the same time as it lost the small country seats it once held'.¹⁷⁴ Stephens thought there was a need for compromise on the principle of 'one-vote one-value', but was particularly impressed with the performance of the Senate after it had adopted PR from the 1949 federal election. For Stephens, the Senate had become a House of Review with a well developed committee system. As New South Wales (in 1978) and South Australia (in 1982) had adopted PR for their upper Houses, it should be seriously considered in Western Australia. Indeed, the Legislative Council would truly become a House of Review; looking closely at legislation, overseeing some aspects of the public service and conducting enquiries where submissions are sought from the public. As Stephens added 'Let us put the Legislative Council to work; it could fulfil a valuable function'.¹⁷⁵

Stephens considered that the longer reform of the electoral system was delayed, the more difficult it would become because 'attitudes towards reform, no matter how well intentioned, run aground on the rock of party advantage'.¹⁷⁶ This was why he sought a Select Committee to invite public submissions and reach compromises between the parties. Although no action took place, Stephens again returned to the issue of electoral reform in the next term of Parliament, with a motion for a referendum on PR for the Legislative Council. Stephens proposed that a referendum take place conjointly with the next general election, due in early 1983, for the voters of Western Australia to express an opinion on the following two questions:—

- (1) Should the present system for electing Members to the Legislative Council of Western Australia be continued?

Or

¹⁷² Edmund Burke (1729–1797), the famous British conservative thinker.

¹⁷³ LA Debates, 22 August 1979, p. 2103.

¹⁷⁴ *ibid.* p. 2103.

¹⁷⁵ *ibid.* p. 2107.

¹⁷⁶ *ibid.* p. 2107.

- (2) Should the system for electing Members to the Legislative Council of Western Australia be altered so that the State shall be divided into three multi-member constituencies, namely the Metropolitan area, the North West–Murchison-Eyre area, and the Agricultural, Mining and Pastoral Area with each of those areas returning 18, 4 and 12 members respectively, all of whom shall be elected by proportional representation.¹⁷⁷

In moving the motion, Stephens acknowledged that his interest in electoral law had begun to kindle soon after entering Parliament in 1971 and reminded the House that he had first mentioned electoral reform in a speech to the House in April 1976, and in 1979 had sought a Select Committee on matters of electoral reform, including PR in the Legislative Council. With Stephens' multi-member proposal, some vote weighting (as took place in Canada, New Zealand and even Great Britain, 'the home of parliamentary democracy') could be retained, but he did not support 'serious malapportionment'.¹⁷⁸ Indeed Stephens queried if suburbs like Kalamunda, Dale, Mundaring and Darling Range, which were basically dormitories for the metropolitan area, should be regarded as country seats. As Stephen's said 'it is dishonest to regard those seats as country seats'.¹⁷⁹ Given that the Court government had introduced the referendum procedure in 1978 to be exercised if either the Office of the Governor were removed, or either House was abolished or reduced in membership, Stephen's thought it should be the method by which the voice of the people should be heard.

If the Government was not prepared to accept his proposal as a government measure, Stephen's was hopeful a free vote on the measure would be permitted. However, the signs were not positive as Labor's Arthur Tonkin, who had shared Stephens' interest in electoral law as well as entry date to Parliament in 1971, reluctantly seconded the motion, only to ensure that it would not immediately lapse.¹⁸⁰ Tonkin took advantage of the occasion to speak disparagingly about the members of the Court Government who were prepared to uphold the existing electoral provisions. Government members, he declared 'must hang their minute heads in shame'.¹⁸¹ Tonkin then moved an amendment to the motion which had the effect of altering the referendum question to having PR on a State-wide basis, with half of the Legislative Council retiring in conjunction with each General Election for the Legislative Assembly.¹⁸² Predictably, though, the debate was adjourned on motion by Bill Hassell, the Minister for Police and Prisons.¹⁸³

Later in 1982, Stephens directed a Question Without Notice to the new Premier, Ray O'Connor (who had taken over from Sir Charles Court early in 1982), in which he questioned whether the benefits of PR, which had been demonstrated in elections to the upper House in South Australia, had become known to the Premier. Moreover, Stephens questioned whether the Premier would provide an opportunity for a debate on the motion on the notice paper relating to PR. In reply, Premier O'Connor said he had received a document on the subject from the Member for Morley (Arthur Tonkin)

¹⁷⁷ LA Debates, 13 May 1982, p. 1938.

¹⁷⁸ *ibid.*, p. 1939.

¹⁷⁹ *ibid.*, p. 1940.

¹⁸⁰ *ibid.*, p. 1941.

¹⁸¹ *ibid.*

¹⁸² *ibid.*

¹⁸³ *ibid.*, p. 1942.

and was attempting to ascertain how best to handle private members' business to provide some opportunity for the matter to be discussed.¹⁸⁴

5.5 Stephens and Proportional Representation in 1984

In late 1982, Parliament was dissolved for the 1983 election at which the O'Connor Coalition government lost office to Brian Burke's Labor Party. As will be evident in the next chapter, this led to heightened interest in electoral law in which the idea of PR for the Legislative Council was given consideration. Stephens, though, revisited the PR concept during the first term of Burke's government. In August 1984, Stephens moved the second reading address for a Parliament (Legislative Council Representation and Elections) Bill. He again proposed PR for the Legislative Council, but slightly modified his 1982 proposal to read as three electoral regions known as metropolitan, north-west and agricultural/mining and pastoral, returning respectively 16, 4, and 12 members, with half the members retiring at each election. This would reduce the Legislative Council from 34 to 32 members with an attendant referendum. At the same time, the Bill also sought to remove from Parliament the power to fix the boundaries of the metropolitan area and the north-west. Any future alterations that became necessary were to be effected by the Electoral Commissioners, who were charged with reviewing the boundaries after every alternative election. Although the Commissioners were to have the power to make the final decision, they were to take into account the opinion of either House of Parliament as expressed in a resolution.¹⁸⁵

Again, a key objective of the Bill was to produce an upper House similar to the Senate. However, rather than having members representing States within a federation, the members of the Legislative Council would represent regions within the State. This was a guarantee that the regions would always have representation in the Western Australian Parliament.¹⁸⁶ As early as 1976, Stephens had made a rare claim for a parliamentarian that the multi-member constituencies, which existed for the Senate and were part of his design, would remove the necessity for close links between parliamentarians and their electorates.¹⁸⁷ This would be advantageous as members could devote more time to the research and review of legislation and help foster confidence in the governmental system. By 1984 Stephens was of the opinion that the likelihood of a closely balanced Legislative Council would enable it to function more closely as a genuine House of Review and expressed the view that:

*it may also see the Councillors change from being members who are an extension of Assembly members, to members who are fully engaged in researching and reviewing the legislation passed in the Legislative Assembly.*¹⁸⁸

However, debate on Stephens' 1984 proposal was adjourned before a vote was recorded.¹⁸⁹ Nevertheless, while presenting legislative proposals from the Opposition benches was unlikely to succeed, Stephens was destined to become a central figure in the Labor government's focus on electoral reform, which included a policy of PR for the Legislative Council.

¹⁸⁴ LA Debates, 10 November 1982, p. 5061.

¹⁸⁵ LA Debates, 22 August 1984, p. 1145.

¹⁸⁶ *ibid.*, p. 1144.

¹⁸⁷ LA Debates, 14 April 1984, p. 658.

¹⁸⁸ LA Debates, 22 August 1984, p. 1145.

¹⁸⁹ *ibid.*

CHAPTER 6 **ARTHUR TONKIN AND OTHERS ON PROPORTIONAL REPRESENTATION IN BURKE'S FIRST TERM (1983–1985)**

The Labor Party victory at the February 1983 state election, led by Brian Burke, signalled a concerted attempt to achieve its party platform of electoral reforms, several of which had been unsuccessfully debated in the Parliament for more than a decade. Although the focus of this tract is upon the PR voting system, it should be recognised that other measures, particularly 'one vote one value' considerations, were part of the package that Arthur Tonkin, the dedicated Minister for Parliamentary and Electoral Reform, placed before the Parliament. In August 1983 a PR Bill was tabled in the lower House for the Legislative Council with a state-wide electorate. The number of members was to be reduced from 34 to 22, with half of the membership being elected at each election. After a drawn-out passage in the Legislative Assembly, the measure was defeated in the Legislative Council. In September 1984 Labor again moved for a PR voting system in the Legislative Council. On this occasion it was proposed to elect 32 members in four regions, again coupled with half-house elections. However, once again the proposal did not win legislative approval.

6.1 The 1983 Quest for Proportional Representation in the Legislative Council

When in August 1983 Arthur Tonkin moved the Act Amendment (Constitution and Electoral) Bill to introduce a PR voting system for the Legislative Council,¹⁹⁰ he claimed that:

*the people of Western Australia have never been consulted about the laws by which they choose their representatives in Parliament and by which they are governed. The present electoral system was forced upon them. This Government intends to put an end to this imposition. Under our proposal, the people of Western Australia will be heard.*¹⁹¹

One explanation for the reference to consultation stemmed from the constitutional need to conduct a referendum due to the PR proposal being accompanied by a proposal to reduce the membership of the Legislative Council from 34 to 22 members, with one state-wide electorate similar to the representational arrangements for the Senate. Such a system, with a quota of 8.34 per cent required to gain a seat, would have removed the possibility of either malapportionment or gerrymander. If a 34 seat Chamber had been maintained, the quota would have been as low as 5.56 per cent, giving minor parties and Independents a greater chance to gain representation. In 1978, a 'manner and form' amendment¹⁹² by Sir Charles Court's government had entrenched a constitutional requirement that the reduction in numbers of either House of Parliament, in addition to the abolition of the Office of Governor, be subject to approval by referendum after the passage of the legislation by an absolute majority of

¹⁹⁰ The speech reportedly took some 73 minutes.

¹⁹¹ LA Debates, 3 August 1983, p. 689.

¹⁹² Manner and Form amendments refer to restrictive procedures purporting to limit the ability of Parliament to repeal or amend legislation or constitutional provisions.

the full membership of both Houses. Tonkin may have been aware that the prospect of such reforms passing through the Legislative Council was 'virtually zero', but throughout this phase of attempted electoral reform he was invariably convinced about their fairness and rightfulness.

Tonkin was confident the State was moving into a 'more mature phase reached by other countries under the Westminster system many decades ago'.¹⁹³ In the late 1970s and early 1980s the Labor Party had altered its platform on upper Houses in the various States, and nationally, from one of abolition to one of reform.¹⁹⁴ If the legislation was passed it was believed the legitimacy of the Legislative Council would be enhanced as the correlation between seats and votes would be manifestly fairer. Tonkin declared that:

*Laws made by a minority as so often happens in this Parliament, have no legitimacy in a democracy. It is a matter of great importance to this Government that Parliament is seen as being fair and democratic.*¹⁹⁵

On another occasion Tonkin linked the reform with the Australian tradition of egalitarianism, as to be against equality was to reject the notion of a 'fair go'. In fact, Tonkin argued that the 'fair go' ethic evident in Australians' approach to sport should be applied also to Parliament, and that PR achieved this aim.¹⁹⁶

If the PR voting system was introduced for the Legislative Council with a state-wide multi-member electorate, this would simultaneously be associated with the 'one vote one value principle' which Tonkin contended could be traced back to the Chartists in 1838.¹⁹⁷ Tonkin thought there was 'nothing profound about one vote one value' and attacked the emphasis which had been given to geography in Western Australia since the beginnings of representative government in 1870 when, in his opinion, 'the ground rules for discrimination were laid'.¹⁹⁸ In one statement Tonkin noted:

*Although I am aware that distance and isolation do pose problems for some people in large areas of our State, the disadvantage of geography is by no means the only handicap sent to try us. Unemployment, poverty, illiteracy, race, etc. make just as great an impact on people's lives and these disabilities do not necessarily coincide with geography.*¹⁹⁹

Indeed, Tonkin went on to mention an electoral system that intellectual Humphrey McQueen had designed to compensate for other sorts of disadvantage besides that of geographical isolation. In McQueen's view:

*A true policy for electoral equality would provide one vote for capitalists, 10 votes for male workers, 15 votes for female workers, 20 votes for working-class housewives, 50 votes for recently arrived migrants and 100 votes for aborigines.*²⁰⁰

¹⁹³ LA Debates, 3 August 1983, p. 690.

¹⁹⁴ Pepperday, 'Improving Democracy Through Elite Power Struggle: The Introduction of Proportional Representation in the Western Australian Legislative Council', p. 2 (Of Appendix).

¹⁹⁵ LA Debates, 3 August 1983, p. 694.

¹⁹⁶ See Anthony Sayers (1986), 'The Debate Over Representation in Western Australia 1983–1985: The Proposals for Reform of Labor's First Term', Unpublished BA Thesis, University of Western Australia, p. 52.

¹⁹⁷ LA Debates, 3 August 1983, p. 696.

¹⁹⁸ *ibid.*

¹⁹⁹ *ibid.*

²⁰⁰ LA Debates, 3 August 1983, p. 696.

Such considerations were broadening the debate on PR. Nevertheless, some attention was given to more practical aspects of the system which had emanated from its adoption by the Senate in 1949, with Tonkin reminding members that Australia's first Prime Minister, Edmund Barton, had sought PR for the Senate as early as 1902.²⁰¹

(a) Practical considerations

Tonkin considered that the elected Senate on a PR basis had a far better record of effective review and scrutiny than the State upper House.²⁰² The Legislative Council could become a genuine House of Review as members could become statesmen, partly because less time would be required to 'kiss babies'.²⁰³ It was even contended 'that fewer councillors may come to mean better quality councillors'²⁰⁴ as every elector in the State would be able to have a say in who is elected from a very wide choice. Following what had taken place in the Senate the 'quality members' could be expected to participate in a committee system as this was 'a proven method of uniting members of opposing parties into productive policy units'.²⁰⁵

In drafting the legislation it was necessary to recognise that casting a valid vote had proven a problem for electors. Referring to the 1983 Senate election in Western Australia, in which 30 candidates were listed on the ballot paper for a 7.8 per cent informal vote, Tonkin observed 'it is not so funny that an invisible candidate called Mr 'Informal' can gain a quota because voters have difficulty filling in the lengthy ballot paper.'²⁰⁶ To help alleviate this problem there were to be different regulations, which shifted the emphasis as to whether the voter's intentions were clear. Secondly, a valid vote was to require the expression of only 11 preferences, as this was the number of candidates to be elected for each half House election. Finally, the filling of casual vacancies was also addressed to hopefully avoid the controversies associated with the filling of casual vacancies during the 1972 to 1975 period of the Whitlam Labor Federal government. The reforms provided for reference back to the original ballot paper so that appointments to fill casual vacancies would preserve the party composition as it was determined by the people at the last election.²⁰⁷

Addressing some of the technical problems was, however, pre-empting the adoption of the PR proposal in a state-wide referendum. Tonkin, despite the poor record of national referendums, was confident that voter support would be gained, for the reduction in the number of members of the Legislative Council from 34 to 22, accompanied by the PR voting system on a state-wide basis. Moreover, Tonkin stated:

I am firmly convinced that the effectiveness of the review function of an upper House does not depend on sheer numbers. Experience will have to demonstrate this, but fewer councillors may come to mean better quality councillors'.²⁰⁸

Of course this would be difficult to prove, but Tonkin called 'on all members to give the people, the men and women of Western Australia, a fair go'.²⁰⁹ He then added

²⁰¹ *ibid.*, p. 700.

²⁰² *ibid.*, p. 699.

²⁰³ *ibid.*

²⁰⁴ *ibid.*, p. 700.

²⁰⁵ *ibid.*, p. 699.

²⁰⁶ *ibid.*, p. 698.

²⁰⁷ *ibid.*

²⁰⁸ *ibid.*, p. 702.

²⁰⁹ LA Debates, 3 August 1983, p. 702.

'History will judge us. If we fail, history will find that we have not been equal to the test...'²¹⁰

The Deputy Leader of the Opposition, Bill Hassell, signalled that the Liberal Party would strongly oppose the legislation. Hassell speculated whether the legislation was really a 'stalking horse' for the future abolition of the Legislative Council. Notwithstanding the State Labor Party's modification of its platform for reform of the upper House, the Federal platform, as approved by the ALP in 1982, still read as 'the reform of State upper Houses and, ultimately, their abolition'.²¹¹ Hassell, too, was concerned about the technical aspects of the legislation and vagueness concerning the voting powers of the President in a newly constituted upper House. Hassell queried the fate of the Labor Party's plan, published in *The West Australian* on 9 February 1982, of a proposed electoral reform convention to be convened by the Chief Justice. At the time it was suggested that the aim of the Convention would be to try to find common ground between the parties on a 'desirable degree of Parliamentary and electoral reform'.²¹²

(b) Regional considerations

If an Electoral Reform Convention had been conducted it is doubtful as to whether common ground could have been achieved. Hassell believed that:

proportional representation based on a State-wide electorate would make parliamentarians remote from their electors and would remove them from direct contact and direct accountability'.²¹³

Pre-selections, too, would mean that people who lived in the respective provinces would not be able to exercise meaningful influence as the process would be dominated by central party headquarters. In fact, PR threatened to be totally unacceptable to country people who demand adequate legislation.²¹⁴ Although the Labor Government had planned to increase the resources available for upper House country members, even making the suggestion that rural electorates be allocated two offices, Dick Old²¹⁵ was annoyed the Government had offered what he considered 'a sop' of two offices for each country member.²¹⁶

The debate, though, was significant for an indication of support for PR announced by National Party members, Hendy Cowan and Matt Stephens. Importantly, the form of PR, which Cowan and Stephens advocated, was to be based on a number of regional electorates, rather than a state-wide electorate. Moreover, Cowan did not favour the reduction in the membership of the Legislative Council as this would lift the quota for election 'to a level which will obliterate the minor pressure groups'.²¹⁷ To give this claim substance Cowan reminded the Legislative Assembly that Sir Donald Eckersley, one of the best known members of the rural community, could not obtain a seat for the National Party in the Senate on a double dissolution basis.²¹⁸ Cowan did

²¹⁰ *ibid.*

²¹¹ LA Debates, 13 September 1983, p. 1739 and p. 1795.

²¹² *ibid.*, p. 1747.

²¹³ *ibid.*, p. 1751.

²¹⁴ *ibid.*, p. 1755.

²¹⁵ Dick Old had been a Country Party and National Country Party member before joining the Liberal Party.

²¹⁶ LA Debates, 13 September 1983, p. 1758.

²¹⁷ *ibid.*, p. 1797.

²¹⁸ *ibid.*

not accept the Government's explanation that one of the reasons for nominating 22 seats was the adoption of this size of upper House in South Australia with state-wide PR. Cowan, could, however, see the possibility of PR for the future with *The West Australian* newspaper 'being a great advocate of electoral reform'.²¹⁹ Further, recent decisions of the High Court indicated that a challenge to the electoral system in Western Australian might result in the Court making some 'corrections'.²²⁰ In this context, there were references to the International Covenant on Civil and Political Rights and the United Nations Declaration of Human Rights, which could be interpreted to favour 'one vote one value' principles. It also underscored that much of the debate was about 'one vote one value' considerations, rather than an evaluation of the merits of PR.

In fact, the fate of Arthur Tonkin's state-wide PR Bill was nearly prematurely sealed by a vote in the Legislative Assembly. As the Bill did not receive the necessary constitutional absolute majority it was deemed to be defeated.²²¹ Transport Minister, Julian Grill, had inadvertently failed to attend the division in the Legislative Assembly. However, the Standing Orders of the Legislative Assembly provide for a vote to be rescinded during the same session, if the concurrence of an absolute majority of the Whole House was obtained. This course of action was taken and the Bill was again fiercely debated with an absolute majority of the full membership being finally achieved in on 22 September 1983.²²²

(c) Concerns about complexity

In the Legislative Council the Hon. Ian Medcalf, a former Liberal Party Minister and Leader of the Opposition in the upper House, was concerned about the complexity of the legislation, which was not accompanied by an explanatory memorandum. In fact the Bill amended no less than five Acts of Parliament: the *Constitution Act 1889*, the *Constitution Acts Amendment Act 1899*, the *Electoral Districts Act*, the *Electoral Distribution Act 1947* and the *Salaries and Allowances Act 1975*. Medcalf believed that the Labor Party should attempt to seek a parliamentary consensus on the legislation, such as had taken place in 1963 when unanimous agreement was achieved between the political parties on full adult franchise and compulsory voting for the Legislative Council.²²³ In Medcalf's opinion, the proposal represented:

*the tunnel vision of a city dweller who cannot understand the vastness of this State...electoral laws are not the place in which to experiment with loose practices such as are proposed...Representatives will no longer be representatives with a local link as spokesmen for their districts: They will be nothing more nor less than members of the party, centrally selected and answerable to the party machines.*²²⁴

Another concern was that stability would disappear 'because a single Independent or a minor party may control the outcome of voting in the Council.'²²⁵ South Australia was given as an example where the balance of power in that State's 22 member upper House had been gained by minor parties and Independents after the introduction in 1982 of state-wide PR.

²¹⁹ *ibid*, p. 1796.

²²⁰ LA Debates, 13 September 1983, p. 1798.

²²¹ LA Debates, 14 September 1983, p. 1898.

²²² LA Debates, 22 September 1983, p. 2409.

²²³ LC Debates, 27 October 1983, pp. 3874–3875 and p. 3895.

²²⁴ *ibid*, pp. 3878–3880.

²²⁵ *ibid*, p. 3880.

Medcalf repeated the claim that the real long term goal of the ALP was abolition of the Legislative Council, which had an important review role by placing the brakes on hasty legislation.²²⁶ However, Labor MLC Lyla Elliott was dismissive of the House of Review claims in periods of Coalition government.²²⁷ Elliott further claimed public opinion was strongly in favour of the Bill and on this occasion paid 'tribute to *The West Australian* newspaper for the role it...played in helping to educate the Western Australian public on the gross malapportionment that exists in this State'.²²⁸ Elliott considered one of the problems of the past was that the people had not understood the electoral system, whereupon electors tended to turn off when the complexities of the issue were mentioned.²²⁹

Not surprisingly, Labor's Bob Hetherington, one of the masters of the complexities of electoral systems, chose to give a long speech on the legislation. He made an important observation when he said 'I do not mind if people disagree with our proposals for proportional representation. There are arguments for and against it'.²³⁰ Hetherington floated the possibility of the West German voting system, which combined single member constituencies (with plurality) in combination with the application of PR to ensure a correspondence of seats and votes.²³¹ Later, in 1996, this formula was adopted in New Zealand. However, it did not prompt interest in Australia, although it would have eradicated what another Labor member (Garry Kelly) described as 'shamocracy' – Labor not gaining seats in the Legislative Council in proportion to its share of the vote.²³² The PR formula being promulgated was the same that as applied to the Senate. To overcome the problem of informal ballots which had bedevilled the Senate STV system of PR, electors were to be required only to indicate preferences for 11 candidates to ensure a valid vote for the eleven seats contested at each half Council election. This was to be simultaneously conducted with the Legislative Assembly at a General Election.

According to Liberal MLC, Norman Moore, 'the real sham of this legislation [was] that it [was] not accompanied by a Bill to reform the Legislative Assembly'.²³³ Although there was a proposal for the adoption of optional preference voting in the Legislative Assembly, there was no plan to reduce the number of the seats in the lower House. To facilitate the departure of many MLCs who would not survive the reduction of the membership of the Legislative Council from 32 to 22 members, a range of retirement benefits were also part of the legislative package. Of course the hurdle of a referendum to approve the reduction of membership had to be negotiated, but not before the Bill's passage through the Legislative Council. Not unexpectedly, the Legislative Council rejected the measure, leaving the new Labor Government apprehensive as to whether it would pursue its agenda on the matter. Interestingly, when President Clive Griffiths announced the result of the division as 13 for the Ayes and 19 for the Noes it was met by an interruption from the public gallery, resulting in a warning from the President regarding comments from the gallery.²³⁴

²²⁶ *ibid*, pp. 3882–3883.

²²⁷ LC Debates, 27 October 1983, p. 3889.

²²⁸ *ibid*, pp. 3901–2.

²²⁹ *ibid*, p. 3901.

²³⁰ *ibid*, p. 3915.

²³¹ *ibid*, p. 3921.

²³² *ibid*, p. 3886.

²³³ LC Debates, 9 November 1983, p. 4189.

²³⁴ *ibid*, p. 4232.

6.2 The 1984 Fair Representation Bill

Within less than a year the indefatigable Arthur Tonkin, as the Labor Parliamentary and Electoral Reform Minister, was to introduce what was officially designated as the 'Fair Representation Bill 1984'. The blueprint for the Bill had been released as early as 10 April 1984, and to overcome earlier criticism an explanatory memorandum accompanied the legislation. Nevertheless, much to Tonkin's disappointment, the Opposition did not seek to engage in any earnest consultation for the preparation of what he described as a 'compromise Bill'.²³⁵ A key objective was the introduction of the 'one vote one value' principle in the Legislative Assembly, together with optional preferential voting, with PR again sought for the Legislative Council. However, in two important respects the PR proposal was different from its immediate predecessor. Firstly, it was not accompanied by a proposal to drastically reduce the size of the Legislative Council, although a referendum was still required as the number of seats was to be reduced from 34 to 32 seats. Secondly, the state-wide electorate provision, despite its adoption in both South Australia and New South Wales, was rejected in favour of four regional electorates in concert with the STV form of PR.

Members were also aware that National Party member, Matt Stephens had only a month earlier introduced a Bill, which proposed a regional version of PR. In addition, outside the Parliament, the Australian Democrats floated a four region scheme as an alternative worth consideration.²³⁶ Other jurisdictions mentioned as having successful PR models were Norway, Ireland and Tasmania. Each had been investigated and found to be very effective, with a high level of acceptance in their respective communities. Indeed the Fair Representation Bill contained the best features of these systems, 'bar one', which was vote weighting.²³⁷

The four regions proposed were: North Metropolitan; South Metropolitan; Agricultural; and Northern. The first three regions were to have 10 members, with five to be returned at each election. The fourth was to have two members, with one returned at each election. It was proposed that all boundaries for both Houses would be drawn by independent Electoral Commissioners, with allowance for public suggestion and scrutiny. Members of the Legislative Council were to be elected for two Assembly terms, with the longest serving half of the Council retiring with all Assembly members at each general election. The structural vote weighting was to be achieved by contiguously linking the Legislative Assembly seats to the Legislative Council regions. According to Tonkin, the quota to elect a member in the metropolitan region would be about 47,200, some 39,600 in the agricultural region and 22,000 in the northern region.²³⁸ As Sayers aptly observed, 'both the adoption of regions and the retention of a larger number of Councillors were related responses to the criticism that the first proposal removed the geographical link between electors and representatives'.²³⁹

In leading the Liberal Party response, former Minister Andrew Mensaros expressed appreciation for the explanatory materials and the more conciliatory approach. However, Mensaros immediately indicated that the regional PR model was unlikely to win favour when he began speaking of the 'Unfair' rather than 'Fair' Representation

²³⁵ LA Debates, 25 September 1984, p. 1692.

²³⁶ *ibid.*, p. 1688.

²³⁷ *ibid.*, p. 1688.

²³⁸ LA Debates, 13 September 1984, p. 1691.

²³⁹ Sayers, 'The Debate over Representation in Western Australia 1983–1985', p. 41.

Bill.²⁴⁰ Of particular concern was how the referendum would be phrased given the likelihood of the term 'fair' being included in the question. During his long address, Mensaros had incorporated into *Hansard* several tables in which he attempted to demonstrate that despite electoral district weighting, Western Australians had been delivered fair electoral outcomes broadly in correspondence with their voting patterns. Of course, this claim was limited to the Legislative Assembly, but Mensaros' calculations indicated that the PR model contemplated for the Legislative Council would advantage the Labor Party.²⁴¹ He had a host of other objections to the legislation associated with the change to PR, including simultaneous elections of both Houses, the granting of a deliberative and casting vote to the President of the Legislative Council and the grouping of candidates in party lists on the Legislative Council ballot paper.²⁴²

The new Labor MLA for Gosnells, Pam Henderson, was disappointed that the Liberal Opposition had not accepted the 'substantial' concessions offered by the modified regional PR package.²⁴³ Yet, the regional PR model was not satisfactory to Matt Stephens, who had been floating the idea for the Legislative Council since 1976 and had proposed similar legislation only two months earlier.²⁴⁴ Once again former political historian and frequent Liberal Party speaker on electoral matters, Jim Clarko, repeated his opposition to PR with a reminder that the Labor Party did not propose such a voting system for the Legislative Assembly.²⁴⁵ Although the necessary constitutional majority was achieved in the Legislative Assembly it did not augur well for the Bill's passage through the Legislative Council, particularly when senior Liberal Party spokesperson Ian Medcalf complained about the poor consultation process, and Minister Tonkin's failure to warn the Opposition about an impending Royal Commission to inquire into deadlocks between the two Houses. In addition, Tonkin had sought to conduct a Parliament Week without asking the Opposition for any co-operation. Although the Opposition did not object to the educational objectives of the Parliament Week, it held reservations about the occasion being used to promote the Government's electoral and parliamentary reform platform.²⁴⁶ In fact, Jim Clarko later spoke about Labor Party Week, as it was deemed as an effort to promote the Labor Party's electoral position.²⁴⁷

A key objection to the legislation was that it was accompanied by an overall reduction in country representation in the Parliament. As Medcalf told the Legislative Council:

Another reason we cannot accept this Bill is that it provides for an overall reduction in country representation in both Houses, from 47 seats to 31 seats. We do not find that acceptable. There are basically good reasons why there must be effective representation and a weighted vote for people in the remote and isolated parts of the State.

We have a situation in Western Australia which is unprecedented and is not paralleled in any part of Australia. There are many penalties for people

²⁴⁰ LA Debates, 16 October 1984, p. 2430.

²⁴¹ *ibid.*, p. 2441.

²⁴² *ibid.*, pp. 2443–4.

²⁴³ *ibid.*, p. 2451.

²⁴⁴ *ibid.*, p. 2462.

²⁴⁵ *ibid.*, p. 2461.

²⁴⁶ LC Debates, 8 November 1984, p. 3725.

²⁴⁷ LA Debates, 23 July 1986, p. 2338.

*living in isolation. There is a need for greater representation for people in those isolated areas.*²⁴⁸

Before the final vote was taken, with a predictable rejection of 13 Ayes and 18 Noes,²⁴⁹ leading Labor spokesperson Joe Berinson, MLC warned:

*I have some news for the Opposition: One way or another its time is running out. There is an important difference between the efforts of this and earlier Labor Governments. Earlier Labor Governments accepted reform and when defeated accepted that philosophically, stoically, or in any other way.*²⁵⁰

Berinson noted that the Fair Representation Bill was unusual as it was not to take effect until it had been ratified by referendum. Clearly, the Labor Party was confident that a referendum to reduce the membership of the Legislative Council would succeed. Then, in November 1985, the Burke government extended the referendum strategy by introducing a Bill to provide for its application on the question of equal electoral rights.²⁵¹ However, the Bill lapsed in the Legislative Council after Parliament had been prorogued for the 1986 State election. The Government, too, had to be aware of the outcome of the daylight saving referendum in 1984 (as well as 1975) which had been rejected on the basis of a very decisive rural vote overwhelming a narrow metropolitan approval. Nevertheless, this did not deter Burke from saying that the election held a few months later in early 1986 was to be a 'quasi-referendum' on electoral reform.²⁵²

In the lead up to the election Arthur Tonkin signed a compact with the Australian Democrats whereby in exchange for their preferences, Labor would introduce a PR Bill for 34 members in six regions, three country and three metropolitan, with whole-house elections.²⁵³ Given the parliamentary stance of Matt Stephens on PR, combined with reports that the leader of the newly formed National Party, Hendy Cowan, was also a PR supporter for the upper House, there were clear signals that a re-elected Burke government would move in this direction. A possible key to success was whether the National Party or Australian Democrats would gain a balance of power position in the Legislative Council after the 1986 election.

²⁴⁸ LC Debates, 8 November 1984, p. 3726.

²⁴⁹ *ibid*, p. 3776.

²⁵⁰ *ibid*.

²⁵¹ LA Debates, 26 November 1985, p. 5067.

²⁵² See Pepperday (2002), 'Improving Democracy Through Elite Power Struggle: The Introduction of Proportional Representation in the Western Australian Legislative Council', p. 38.

²⁵³ *ibid*, Appendix 5.

CHAPTER 7 THE ADOPTION OF PROPORTIONAL REPRESENTATION FOR THE WESTERN AUSTRALIAN LEGISLATIVE COUNCIL

In February 1986 the Burke Labor Government was returned to office with a comfortable majority in the Legislative Assembly. Although within reach of gaining its first majority in the Legislative Council with 14 members in the 34 seat Chamber, Labor was again said to be in government but not in power. However, the National Party, which had floated a regional PR model in the previous Parliament, held four seats in the upper House, giving rise to the possibility of a ‘deal’ on electoral reform. It will be recalled that a compact had been negotiated by Labor with the Australian Democrats Leader, the former Senator Jack Evans, to introduce PR in the Legislative Council, which (it was claimed) enabled Labor to win two province seats from the Liberal Party.²⁵⁴ The Australian Democrats were hopeful that PR may eventually provide them seats in the Legislative Council,²⁵⁵ whereas the National Party could envisage holding a balance of power in that House.

7.1 Mal Bryce replaces Arthur Tonkin as Electoral Reform Minister

Pepperday (2002) suggests that although Arthur Tonkin signed off on the compact with the Australian Democrats on behalf of the Labor Party, the strategy was originally advocated by Michael Beahan,²⁵⁶ John Cowdell,²⁵⁷ and ministerial advisor Graham Hawkes, in concert with the Australian Democrats Senator Jack Evans. Premier Brian Burke and other Labor Party members were either lukewarm or disapproved of the idea.²⁵⁸ Some 10 days after the 1986 election a significant development took place when Tonkin, much to his chagrin, received a letter from Premier Burke appointing him as Minister for Police (and Water Resources and Consumer Affairs), whilst the Electoral Reform and Parliamentary Affairs portfolio fell to Mal Bryce, who was the Deputy Premier.

It could be claimed that Mal Bryce had also been a keen advocate of electoral reform, yet Tonkin was generally regarded as the campaign leader on electoral matters. Tonkin penned a letter of resignation from the Cabinet to the Premier, broadly complaining of placing ‘pragmatism’ above principle. There was much angst in the Labor Party over the episode with a ‘spin’ being put forward that it was raising the profile of electoral reform by passing it to Deputy Premier Bryce. Bryce was considered to possess better negotiation skills and the ability to compromise, as necessary, to achieve progress on electoral reform.²⁵⁹

²⁵⁴ Pepperday (2002), ‘Improving Democracy Through Elite Power Struggle: The Introduction of Proportional Representation in the Western Australian Legislative Council,’ p. 47.

²⁵⁵ As had occurred in the Commonwealth Senate.

²⁵⁶ State Secretary of the Labor Party and future President of the Senate.

²⁵⁷ Assistant Secretary and future President of the Legislative Council.

²⁵⁸ Pepperday (2002), pp. 46–47.

²⁵⁹ There was evidence of support for the preparedness of Bryce to consult on electoral reform. See Gordon Masters (MLC), LC Debates, 11 November 1986, p. 3909.

7.2 The Labor Government's Legislation and Perspective

The Acts Amendment (Electoral Reform) Bill 1986 contained a range of modifications from the proposals tabled in the previous Parliament. These major compromises demonstrated the Government's willingness to make progress on electoral reform. PR was to operate in six regional electorates from the next general election (scheduled for 1989), whilst all Legislative Council members' terms were to expire on 21 May, four years after their election. Significantly, the number of MLCs would remain at 34. The Government previously sought to dissolve the Legislative Council at the same time as the Legislative Assembly, but relented in favour of fixed terms for the Legislative Council.

An independent Western Australian Electoral Commission (WAEC) was to be established, with the new office of Electoral Commissioner to assume responsibility for the drawing of electoral boundaries, together with the Chief Justice and State Statistician (rather than Surveyor General). A redistribution would take place after every second election, with the Electoral Distribution Commissioners to have a 15 per cent margin of allowance of electors, rather than the standard 10 per cent proposed in 1984. In addition, the Commissioners were to give consideration to the trend of demographic changes. The WAEC, modelled on the Australian Electoral Commission, was envisaged to have functions that included the promotion of public awareness of electoral and parliamentary matters and the provision of electoral information and advice.

The Legislative Assembly was to have maximum four year terms, and initially, optional preferential voting rules were planned for introduction in both Houses.²⁶⁰ A formal vote was to require the indication of preferences for at least as many candidates to be elected. In the course of parliamentary passage these provisions were amended with a compulsory distribution of preferences being maintained in the Legislative Assembly (with the existing preference or alternative vote in single member constituencies). The PR formula for the Legislative Council, adopted during the Committee stage in the Legislative Council, was to be the STV model. However, as it was based on the 1983 Senate PR form, it virtually heralded a list type of voting mechanism. The Senate permitted the so called 'ticket vote' for a political party 'above the line', whereas the Western Australian ballot paper permitted 'ticket voting' with the various political parties listed vertically, rather than horizontally, on the ballot paper.

One modification adopted in Western Australia was the opportunity given to Independents to register a preference schedule. This meant that an Independent could print a 'How to Vote' card with a '1' beside the line to guide electors to cast a registered preference schedule. However, in Western Australia only one preference schedule could be registered with the Electoral Commission, whereas for the Senate up to three schedules could be registered before polling day. Presumably this was because at the time ticket voting was introduced in Western Australia there were no Australian Democrats in the Legislative Council. In the Senate, though, the Australian Democrats had been able to exercise a balance of power situation as they sought to share their preferences between Labor and non-Labor parties. The ticket voting idea, introduced federally in 1983 by the newly elected Hawke Labor Government, had largely arisen from recommendations of a Joint Select Committee on Electoral

²⁶⁰ LA Debates, 8 July 1986, p. 1431.

Reform.²⁶¹ There had been much concern about increasing levels of informal and ‘donkey voting’,²⁶² due to growing numbers of candidates, and the onerous task facing voters in numbering every square, using consecutive numbers as high as 70 or 80. It was estimated that three quarters of informal votes were accidental.²⁶³

Minister Mal Bryce claimed that the legislation would:

*be attuned to the needs of our modern, developing State...faithful to the principles of honesty, fairness and legitimacy which are the corner stones for the operation of democratic elections’.*²⁶⁴

After acknowledging that ‘all parties advocate a system of multi-member regional electorates and proportional representation for the Legislative Council’,²⁶⁵ Bryce went on to say:

*The political influence of city and country will be balanced by the combined effects of proportional representation and by each having an equal number of regions. This feature enables the proposed system to pass the test that an electoral system should not allow control to be won from a narrow sectional base.*²⁶⁶

Bryce also claimed that as each region was to return either three or seven members, the arrangement would guarantee ‘an important democratic principle that the party of a group that wins the majority of the votes in a region will win a majority of seats’.²⁶⁷ The first draft of the Bill was accompanied by a Schedule which indicated that, apart from either three or seven members, each of the Legislative Council regions would have a varied number of contiguous Legislative Assembly Districts. A projected total enrolment of each region was included, based on figures for 20 May 1986. It was proposed that each region would have identifiable members in the Assembly, and in the Council be elected by, and accountable to, the electors in that region.

²⁶¹ Parliament of the Commonwealth of Australia, *Joint Select Committee on Electoral Reform*, First Report, September 1983, Parliamentary Paper No. 227/1983.

²⁶² Whereby the voter indiscriminately numbers every square consecutively, from top to bottom, or even bottom to top. Evidence suggests that the ‘donkey vote’ may be worth some 2 per cent of total votes.

²⁶³ Parliament of the Commonwealth of Australia, *Joint Select Committee on Electoral Reform*, First Report, September 1983, Parliamentary Paper No. 227/1983, p. 62.

²⁶⁴ LA Debates, 8 July 1986, p. 1428.

²⁶⁵ *ibid.*

²⁶⁶ *ibid.*, p. 1432.

²⁶⁷ *ibid.*

Table 1: Proposed Composition of Legislative Council Regions – 1986²⁶⁸

| Name of Region | No of MLC's | No of LA Districts | Projected Enrolment |
|---------------------|-------------|--------------------|---------------------|
| Country | | | |
| North East | 3 | 4 | 62,300 |
| Agricultural | 3 | 4 | 62,300 |
| South West | 7 | 10 | 155,800 |
| Metropolitan | | | |
| North Metro | 7 | 13 | 202,500 |
| East Metro | 7 | 13 | 202,500 |
| South Metro | 7 | 13 | 202,500 |
| Total | 34 | 57 | 888,500 |

Labor speakers reiterated that they had made several concessions to enhance the prospect of the legislation winning parliamentary approval, although there were expressions of disappointment that the Opposition parties had failed to recognise the changes made by the Government.²⁶⁹ With regard to PR, government MLA Yvonne Henderson observed that 'no-one could deny that a system which allows people to get a proportion of the seats in direct ratio to the votes they gain in the election is the fairest system'.²⁷⁰

Newly elected MLA for Victoria Park, Dr Geoff Gallop, a political scientist, emphasised that changes to electoral systems not only change governments, but the Parliament overall. Moving towards the principle of 'one vote one value' was to be commended, but where this principle was qualified, most obviously in elections for the upper House, compensation was gained by the introduction of multi-member electorates and PR. This meant that voters for smaller parties could expect some seats if they could gain a quota. Moreover, the Bill created a system that encouraged participation in politics by making it easier for people to record a valid vote and by allowing the WAEC to foster citizenship education in the community.²⁷¹

Labor MLA for Bunbury, Phil Smith, gave strong support to the introduction of PR as it would facilitate the election of smaller parties. In Smith's view:

this method would ensure that the Council is a genuine House of Review and not a line-up of Government and anti-Government people'.²⁷²

Labor's PR expert Bob Hetherington MLC had a similar view and recalled his 1978 Bill to change the method of election of the Legislative Council to state-wide PR.

²⁶⁸ Source of data LA Debates, 8 July 1986, p. 1432.

²⁶⁹ LA Debates, 23 July 1986, p. 2353.

²⁷⁰ *ibid*, p. 2354.

²⁷¹ *ibid*, p. 2342.

²⁷² *ibid*, p. 2365.

Hetherington spoke of his delight about deliberations at a recent ALP State Executive policy committee meeting, where the focus was a reformed Legislative Council as a useful body. This led Hetherington to declare:

*I assure the Leader of the Opposition that as far as I am concerned I want to see a reformed Legislative Council, and I want to see the Council retained.*²⁷³

The latter observation had obviously been made to try and remove lingering doubts about Labor's stance on upper Houses, which had been changed from abolition to reform.

Future Labor Premier Carmen Lawrence MLA, who was well informed about the PR literature, thought that the vote weighting conceded in the upper House (in association with PR) gave adequate redress to the perceived difficulties in country areas. Lawrence added, however, that it could not be allowed to interfere with the party or group in the House that forms the Government – the Legislative Assembly.²⁷⁴ This too, was the perspective of Garry Kelly, MLC (Labor, South Metropolitan) when he told the Legislative Council that:

*The Bill before the House is a compromise document. The Government has come a long way by taking on board some of the Opposition's criticisms of past legislation introduced by the Government as long as those criticisms did not strike at the very heart of the principle attempted to be achieved by the Government—that is, a fairer electoral system in which the will of the people is reflected in the distribution of seats in both Houses of this Parliament.*²⁷⁵

Kelly's claim was that although his Labor government had moved a long way with many compromises, the conservative parties had 'not moved more than one millimetre from their previous stance on electoral reform'.²⁷⁶ This interpretation was not unanimous as it was widely conceded that the conservative parties had made some concessions, particularly with regard to PR in the Legislative Council in a regional system. Agreement, too, could be ascertained on the establishment of an independent Electoral Commission and many of the redistribution provisions. Clearly though, there were divisions on electoral reform within the Liberal Party and a lack of a united front between Liberal and National Party members of the Parliament.

7.3 The Liberal Party Perspective(s)

The electoral reform debate had filled a significant number of *Hansard* pages, and in 1986 South Metropolitan Liberal Party MLC Phillip Pental perceptively recognised how:

*The debate now under way is perhaps of more historic significance than any other on the subject of constitutional change in Western Australia in the past generation. That historic significance and more importantly, the future impact, is in danger of being submerged or even lost. For the first time in a quarter of a century, each party is prepared to acknowledge the need for change. But it is more than that. Each party, has, for the first time in a generation, actually formulated its own package of electoral change. To my personal knowledge the Liberal Party has shifted very substantially.*²⁷⁷

²⁷³ LC Debates, 12 November 1986, p. 4042.

²⁷⁴ LA Debates, 23 July 1986, p. 2381.

²⁷⁵ LC Debates, 12 November 1986, p. 4035.

²⁷⁶ *ibid.*, p. 4033.

²⁷⁷ LC Debates, 12 November 1986, p. 4039.

In opening the Liberal Party's response to the Acts Amendment (Electoral Reform) Bill in the Legislative Assembly, Barry MacKinnon confessed that it was not an easy debate for the party. MacKinnon had replaced Bill Hassell as Liberal Party Leader in November 1986, and indicated the Liberals would not initially oppose the Bill but would place their cards on the table through debate and move amendments at the Committee Stage. Although the Liberals would not support any move to form a Select Committee of the House to examine the Bill or any other electoral legislation, Mackinnon was prepared to back regional PR, accepting that the Legislative Council had an important House of Review role.²⁷⁸

To support this view the Opposition considered that 50 per cent of the Legislative Council members should be elected at each successive election on the basis of three and six year terms. McKinnon confessed that he had a good deal of sympathy with four year terms but his party saw it as 'healthy to go regularly to the electors'.²⁷⁹ One impediment to the Liberals and National Party adopting a common position on the regional composition of the Legislative Council was disagreement on half House elections. The animosity between the two parties, combined with a mutual dislike between the Leaders, contributed to making negotiations a lost cause.²⁸⁰

A key Liberal Party spokesperson on electoral matters, Jim Clarko, gave the Minister credit for producing some literature on electoral issues, yet called the information 'Burke's stew' as it appeared to contain a mix of previous Labor electoral Bills.²⁸¹ Significantly, Clarko declared:

I am...opposed to the proportional representation voting system set down in this Bill. With regard to the metropolitan area, it proposes that there will be three council regions instead of the current five. I wonder how big will be the region representing my area'.²⁸²

It was Clarko's opinion that PR would provide 'a greater opportunity than ever before for minority parties to win seats in the Legislative Council...at the expense of both the Liberal...and...National Part[ies]'.²⁸³ Clarko believed the bill was 'designed to give the Labor Party control of the Legislative Council'.²⁸⁴

Gordon Masters MLC, as the Liberal Leader of the Opposition in the Legislative Council, also subscribed to the view that Labor saw political advantage in its move. This claim was based in part on a Government response to a question posed by Liberal colleague David Wordsworth MLC concerning which local government authorities would be encompassed in the mooted country regions.²⁸⁵ At the same time Masters confessed there had been considerable debate in the party room with strong reservations being held by some members about the direction of change.²⁸⁶ Masters, though, believed there should be a single metropolitan region, noting the commonality in the way people live, specifically referring to schools and transport facilities.²⁸⁷

²⁷⁸ LA Debates, 23 July 1986, p. 2321.

²⁷⁹ *ibid.*, p. 2329.

²⁸⁰ See Pepperday (2002), 'Improving Democracy Through Elite Power Struggle: The Introduction of Proportional Representation in the Western Australian Legislative Council,' p. 39.

²⁸¹ LA Debates, 23 July 1986, p. 2334.

²⁸² *ibid.*, p. 2335.

²⁸³ *ibid.*, p. 2336.

²⁸⁴ *ibid.*

²⁸⁵ LC Debates, 11 November 1986, p. 3947.

²⁸⁶ *ibid.*, p. 3906.

²⁸⁷ *ibid.*, p. 3913.

It was a perspective that was not likely to be widely endorsed within the Liberal Party, although Masters' commitment to half of the members facing election at any one time to enhance stability was in concert with Liberal Party thinking.

Perhaps the champion of the status quo was Central Province Liberal, Mick Gayfer MLC, who doubted whether there was anything the three parties with representation in the Chamber would come to total agreement on:

What we are doing here is playing a glorious charade to the Press, or to somebody who might read Hansard, or for some other reason. I do not believe we are achieving anything at all.

*I have represented country politics for almost 27 years, and on some occasions have not even been opposed. I could take members to my office and show them that I have not received any letter whatsoever from any of my constituents at any time protesting about the present electoral arrangements. Why should I upset the complacency of my electors? I do not intend to.*²⁸⁸

Gayfer was commended for his contribution by long standing South-West province Liberal member, Vic Ferry. He, too, had never received a single communication for electoral system change in the Legislative Council and was strongly of the view that there should remain a system of direct election to the Legislative Council, with each province having two members.²⁸⁹ Ferry considered that:

if a referendum of the people of Western Australia were to be held for them to decide whether they wanted a Legislative Council,...the people would overwhelmingly support the retention of the existing arrangement'.²⁹⁰

Nevertheless, Ferry was interested in what was going to be the eventual outcome as he saw himself at odds with some of his colleagues, the Labor Party and even the National Party.²⁹¹

7.4 The National Party Perspective

As predicted in several circles, the fate of regional PR (and a range of other electoral reform measures) in the Legislative Council was likely to depend on the stance adopted by the National Party in that House where it held the 'balance of power'. In 1984 National Party MLA Matt Stephens unsuccessfully sought a Select Committee on regional PR in the upper House, yet in 1986 he indicated he would not oppose the second reading of the Bill but would oppose any suggestion that the Bill be referred to a Select Committee, as all the information was now available.²⁹² Stephens supported four year fixed terms for the Legislative Council and recognised the two broad regions of economic interests within the State, observing that:

The metropolitan area is clearly defined, and there are agricultural...forest...mining...and pastoral regions. Additionally, there is the northern area of the State which covers a vast area and has an exceedingly sparse population. One need not create a rigid differentiating line, because there is some overlapping; for example, some mining is carried

²⁸⁸ LC Debates, 12 November 1986, p. 4045.

²⁸⁹ *ibid*, p. 4045.

²⁹⁰ *ibid*, p. 4046.

²⁹¹ *ibid*, p. 4048.

²⁹² LA Debates 23 July 1986, p. 2359.

*on in agricultural areas and some agriculture in mining areas. However...one can dissect the State into distinct regions.*²⁹³

National Party leader, Hendy Cowan MLA, recognised the Nationals were perhaps the first conservative party to endorse PR for the Legislative Council, to ensure the upper House was to be a proper House of Review. For Cowan, changes were needed but protection of the weighting of rural votes was necessary.²⁹⁴ Eventually though, the composition of the crucial regional boundaries for the PR voting system was moved by the Nationals during the Committee stage in the Legislative Council. As National MLC Eric Charlton proposed:

...The electoral regions known, respectively as the North Metropolitan Region and the South West region shall each return 7 members to serve in the Legislative Council.

*...The electoral regions known, respectively as the South Metropolitan Region, the East Metropolitan Region, the Agricultural Region and the Mining and Pastoral Region shall each return 5 members to serve in the Legislative Council.*²⁹⁵

The pattern was said to be similar to that sought by the Labor government, except the metropolitan and city numbers added up to 17: 17 instead of firstly 21:13 and then 19:15. The Liberals, too, had spoken of 20:14 split.²⁹⁶ Importantly, in the Committee stage, the metropolitan boundary had been determined as defined in the Schedule for the *Metropolitan Regional Planning Authority Act 1959*. Given that the Senate system of ticket voting was previously approved, PR of the STV variety finally won legislative approval in Western Australia.

What was also adopted, although without possible knowledge of the consequences, was the newly adopted Senate system of transfer of preference votes, technically known as the Gregory Inclusive Method. Until 1984 the Senate had used a sampling method of the transfer of preferences, but the new system was thought to be more technically accurate. However, even this more specific method of preference transfer was to eventually provide administrative problems for the newly created WAEC.

²⁹³ LA Debates, 23 July 1986, p. 2356.

²⁹⁴ *ibid*, p. 2333.

²⁹⁵ LC Debates, 26 May 1987, p. 1320.

²⁹⁶ See Pepperday (2002), 'Improving Democracy Through Elite Power Struggle: The Introduction of Proportional Representation in the Western Australian Legislative Council,' p. 39.

Table 2: Proposed Composition of Legislative Council Regions – November 1987²⁹⁷

| Name of Region | No of MLC's | No of LA Districts | Projected Enrolment |
|---------------------|-------------|--------------------|---------------------|
| Country | | | |
| Mining/Pastoral | 5 | 6 | 60,545 |
| Agricultural | 5 | 7 | 80,080 |
| South West | 7 | 10 | 99,456 |
| Metropolitan | | | |
| North Metro | 7 | 14 | 279,262 |
| East Metro | 5 | 10 | 196,592 |
| South Metro | 5 | 10 | 193,439 |
| Total | 34 | 57 | 909,374 |

Although PR had been introduced, as Pepperday observed:

*Few members recognised the implications. All parties did discuss, on a couple of occasions, the possibility of minor parties winning significant representation and the newspapers speculated on it however the pre-eminence of the one vote one value issue distracted most MPs from appreciating the impact of the much more important proportional representation.*²⁹⁸

Outcomes of electoral law changes often defy the predictions made by parliamentarians, who frequently make their claims from a partisan perspective. Furthermore, discussion of representation principles often lacks cohesion and consistency. Although the passage of the legislation is usually hard fought and lengthy, there is rarely, if ever, any consideration of a sunset clause to assess the reliability and validity of the assertions which have been articulated. Surprisingly, though, a comprehensive review of PR was soon to be undertaken. This did not take the shape of a Select or Standing Committee Report of the Parliament; rather it occurred as part of the deliberations of a Royal Commission and the subsequent Commission on Government.

²⁹⁷ Source of data, *Electoral History in Outline* (1990), Perth: Western Australian Electoral Commission, p. 17.

²⁹⁸ Pepperday (2002), 'Improving Democracy Through Elite Power Struggle: The Introduction of Proportional Representation in the Western Australian Legislative Council,' p. 54.

CHAPTER 8 THE 'WA INC. ROYAL COMMISSION' AND THE COMMISSION ON GOVERNMENT PERSPECTIVES

The 1992 *Royal Commission into the Commercial Activities of Government and Other Matters* (widely known as the WA Inc. Royal Commission), provided an opportunity for an evaluation of the applicability of the regional PR voting system for the Legislative Council.²⁹⁹ The Royal Commission was given broad terms of reference to report upon whether changes in the law, administration or decision-making procedures of the State were necessary or in the public interest, and its comprehensive review included the role and system of voting of the Legislative Council. Subsequently, one of the terms of reference for the 1995 *Commission of Government* (COG), was a review of 'the electoral system of representation for the Legislative Council'.

8.1 The WA Inc Royal Commission Perspective

The 'WA Inc' Royal Commissioners³⁰⁰ regarded the Legislative Council as a House with a 'vital, if unrealised place in our constitutional fabric' as it could be 'primarily responsible for the systematic oversight and review of the public sector as a whole'.³⁰¹ Among other things, the Commission recommended that:

*The Legislative Council be acknowledged as having the review and scrutiny of the management and operations of the public sector of the State as one of its primary responsibilities.*³⁰²

Although the Legislative Council was not to be regarded as 'the public's sole guardian', it was considered to have the capacity to exploit its procedures and committees and regulate its sittings to enhance its oversight and review role.³⁰³ In the Commissioners' view, Members of the Legislative Council did not have 'immediate constituency concerns' and were consequently better placed to accommodate the proposed review role. There was, however, no suggestion that the House be denied a legislative role.³⁰⁴

The Commissioners had witnessed the results of the 1989 Legislative Council election with the major parties, Labor and Liberal, respectively gaining 16 and 15 seats, and the National Party the remaining three seats, and developed their argument that the upper House should represent minority interests, noting:

This State has given a regional emphasis to the electoral system for the Council. There are democratic arguments which are compelling, which suggest that while a majoritarian approach should prevail in the Legislative Assembly, minority interests with significant popular support should have popular representation in the Council. The argument here for proportional

²⁹⁹ *Report of the Royal Commission into Commercial Activities of Government and Other Matters* (1992), Part 1, Volume 1, Perth: Western Australia, p. 12.

³⁰⁰ Chairman Geoffrey Kennedy, Ronald Wilson and Peter Brinsden.

³⁰¹ *Report of the Royal Commission into Commercial Activities of Government and Other Matters* (1992), Part 11, Perth: Western Australia, pp. 5–6.

³⁰² *ibid.*, pp. 5–7.

³⁰³ *ibid.*

³⁰⁴ *ibid.*

*representation is difficult to deny, the more so given the pluralist character of our society.*³⁰⁵

Clearly the Commissioners believed there should be re-consideration of the regional basis for the PR system, which had been legislated in 1987, as predictions of minority party representation had not come to pass. Perhaps the Commissioners had in mind state-wide PR or metropolitan and country wide constituencies when they suggested:

*...that regional interests represent only one variety of the community interests which should be able to secure representation in the Council. We acknowledge that proportional representation now provides one element in the electoral system for the Legislative Council. We consider, however, that the effect on it of the present regional division of the State strongly inhibits the possibility of significant minority interests obtaining representation in the House, representation which we believe should be promoted on democratic grounds.*³⁰⁶

Accordingly, the Royal Commission recommended that:

*The Commission on Government review the electoral system for representation in the Legislative Council.*³⁰⁷

8.2 The Commission on Government and the PR Question

Although the WA Inc. Royal Commission sought the creation of a Commission on Government (COG) 'by legislation [and] without delay', it was not until late 1994 that it was established to begin its deliberations.

The COG soon produced Discussion Paper Number One, which included attention to 'Our Present System of Government', as well as 'Our Present Electoral System'.³⁰⁸ In the same month, (March 1995) Discussion Paper Number Three was produced, titled *Electoral System—Legislative Council and Electoral System—Legislative Assembly*. The papers included results from the 1993 State Election, which returned the Court/Cowan Coalition to government with a majority in the Legislative Assembly. In addition to the old party pattern of 15 Liberals, 14 Labor and 3 National Party representatives in the Legislative Council, there was a 'breakthrough' with the election of a Greens (WA) candidate and an Independent (who was the former Liberal Member, Reg Davies).

The Discussion Papers included the assertion that given the great number of electoral systems throughout the world 'there is no perfect electoral system'. There was, however, an indication of the criteria being employed by the COG with their examination of Western Australia's electoral law. Upon examination of Commissions of Inquiry in New Zealand (1986), Queensland (1990) and Canada (1991), a number of features considered 'essential for a fair and democratic electoral system' were tabulated as follows:³⁰⁹

- Free, Honest, Regular and Fair Elections;
- Adequate Representation for a Wide Variety of Interests;

³⁰⁵ *Report of the Royal Commission into Commercial Activities of Government and Other Matters* (1992), Part 11, Perth: Western Australia, pp. 5–8.

³⁰⁶ *ibid.*

³⁰⁷ *ibid.*

³⁰⁸ Commission on Government: Discussion Paper No. 1, March 1995.

³⁰⁹ Commission on Government: Discussion Paper No. 3, March 1995, p. 22.

- A Simple Voting System;
- Fairness Between Political Parties;
- Effective Government; and
- Legitimacy.

The reference to a wide variety of interests had particular relevance but ‘fairness’, ‘simplicity’ and ‘legitimacy’ were also relevant for PR. Considerable attention was given to the ‘one vote one value’ issue, and many of the standard arguments for PR were repeated. Sometimes ignored is the friction that can develop within political parties for reasons other than the obvious struggle for ranking positions on the ballot paper. Workload distribution for members serving the same region can also be a source of friction. This is particularly the case when at least one of the party members in the region has ministerial responsibilities.

Of special interest was the presentation of state-wide PR accompanied by simulated models based on the 1993 upper House vote. There was a suggestion that state-wide PR may provide minorities with the opportunity for more effective representation. The COG questioned whether the representation of Aboriginal and other minority interests were sufficiently catered for under the existing electoral system and whether there should be seats set aside for indigenous representatives in Parliament. Moreover, the COG considered whether ethnic and community interests should be guaranteed a specific proportion of the seats in the Legislative Council and if so, how this should be determined.³¹⁰

The COG’s final report on PR was prefaced with the recommendation that the Legislative Council’s role as a House of Review be enhanced.³¹¹ After careful consideration the COG did not seek state-wide PR, although it contended the present (1987) regions for the Legislative Council should be abolished as there was thought to be no justification for weighting on a geographical basis. At the same time, elements of the existing regional model were retained and five regions with seven members in each region were recommended. This would lead to a Legislative Council of 35 members and had the additional benefit of removing the anomaly of a House with an even number membership having a Presiding Officer with a casting but not deliberative vote. It was thought a membership of 35 would ensure that the casting vote of the President would enhance, rather than reduce, the proportionality of the House.³¹²

A seven member electorate was thought to produce diversity of representation without unduly burdening electors with the indication of their preferences. This was thought to overcome the New South Wales problem of the so called ‘tablecloth ballot’, producing on occasions over 250 candidates for a state-wide electorate, at one election returning a candidate with just 0.2 per cent of the vote.³¹³ Furthermore ‘it would provide a balance between geographic constituency concerns and the views and ideas of more broadly based interests’.³¹⁴

³¹⁰ *ibid*, pp. 20–21.

³¹¹ Commission on Government: Report No. 1, August 1995, p. 346.

³¹² *ibid*, p. 338.

³¹³ Graeme Orr (2004), *Australian Electoral Systems—How Well Do They Serve Political Equality? Democratic Audit of Australia*, Report No. 2, Canberra: Australian National University, p. 23.

³¹⁴ Commission on Government: Report No. 1, August 1995, p. 338.

Electors, too, were to be permitted to exercise an optional expression of preferences, meaning that a valid vote could still be cast without having to mark preferences for each and every candidate. This would minimise any increase in informal voting which may arise from the abolition of ticket voting, and it was the view of the five Commissioners that voters, rather than political parties, should indicate how their preferences should be distributed.

8.3 Robson Rotation

Consistent with the view that voters should be sovereign when distributing the preferences, the COG recommended the introduction of the so called Robson Rotation method for designing ballot papers for the election of members to the Legislative Council. Robson, a former Tasmanian parliamentarian, had devised a system adopted in Tasmania (and later in the Australian Capital Territory) which involved printing different batches of ballots, with different orders of candidates. The model proposed for Western Australia would involve the grouping of political party candidates, with a draw for the allocation of groups on the ballot paper, and all candidates being randomly rotated within their grouping. This would ostensibly force all candidates to compete actively for votes and enhance the ability of members to act independently of their party. Additionally, it was reasoned that Robson Rotation would mean that the effects of the so termed 'donkey vote' would be evenly distributed, as the advantage of having top place on the ballot paper would be shared between all of the candidates.³¹⁵

The COG recommended that four year fixed terms for Members of the Legislative Council be retained and sought to retain the present method to fill casual vacancies and avoid costly by-elections. If a member resigned or died prior to a scheduled election, the ballot papers would be recounted from the previous general election for that region. The recount was to be carried out as in the standard procedure used in the general election. First preference votes were to be tallied, candidates elected and excluded, and preferences distributed. The count was to continue until the required number of candidates was elected. This procedure was expected to return a member from the same party and not alter in mid-term the balance of numbers in the chamber.

A Joint Standing Committee of the Parliament (the Joint Committee), with cross-party representation, examined the host of COG recommendations, and supported the view that 'the Legislative Council's role should be recognised as that of a House of Review and an appropriate electoral system should be adopted to embrace this role'.³¹⁶ Fixed terms, long opposed by the Liberal Party, were also unanimously approved. Significantly, PR was ratified with the existing by-election mechanism, which was widely regarded as a practical solution to the occasional resignation or death of a member.

The COG objection to a state-wide constituency was supported, yet the Joint Committee did not endorse the proposal for PR to operate on the basis of five regions each returning seven members, instead recommending that 'an electoral system of regional proportional representation should be adopted for the election of 34 members

³¹⁵ *ibid.*, p. 348.

³¹⁶ Joint Standing Committee on the Commission on Government (1995), Fourth Report, Perth: Parliament of Western Australia, p. 8.

to the Legislative Council based on groupings of Legislative Assembly'.³¹⁷ It was contended that the COG plans:

*would render the regions larger, with less community of interest and less effective representation of the electorate and could also lead to a 'hung' parliament.*³¹⁸

Presumably the Joint Committee was expressing a desire for the status quo, with the option of a marginal modification to the regional boundaries.

In a further expression of the desire of the incumbent parliamentarians to retain the key features of the existing PR system, the Joint Committee was unanimous in its rejection of the COG proposals to introduce both optional expression of preferences as well Robson Rotation. It was considered that ticket voting, with the requirement that a voter mark only one box for a vote to be valid, made 'the casting of a vote simple, clear and fast', as evidenced by the fact that 91.48 per cent of voters in the 1993 election exercised the option of ticket voting. The Joint Committee's report cited Professor David Black of Curtin University who made the point:

*...you may as well stay with the ticket voting because all that happens otherwise is a few more people get it wrong and they are virtually unable to vote.*³¹⁹

Similarly, the Joint Committee considered Robson Rotation 'may significantly increase the number of informal votes, thereby disadvantaging voters and effectively disenfranchising them' and believed the adoption of Robson Rotation 'would negate the Commission on Government's own recommendation on "How to Vote" cards'.³²⁰ With regard to the latter, the COG recommended 'there should be no change to the existing rules for the distribution of how to vote cards'.³²¹ The COG had heard arguments from the Labor and Liberal parties that 'how to vote cards' were informational, but Greens MLC, Jim Scott, thought their distribution 'was basically undemocratic', partly because Independents and minor parties did not have the resources to issue the cards.³²²

Significantly, PR for the Legislative Council with a House of Review model, with minor modifications to the regional boundaries, could be deemed to have reached the status of 'settled policy' for the contemporary political parties in the Western Australian Parliament. Nevertheless, it should not be presumed that there was complete party agreement on all elements of the Joint Committee review of the COG recommendations. A Minority Report, signed by Labor Party MLAs Geoff Gallop and Larry Graham and MLCs John Cowdell and Mark Neville, indicated grave concern 'that the Parliamentary Committee has in a haphazard and pre-emptory fashion set aside the findings of the Commission on Government'.³²³ The dissenting Committee members thought that given most of the electoral reform recommendations were also part of the WA Inc Royal Commission's program of electoral reform, their 'wholesale

³¹⁷ *ibid.*

³¹⁸ *ibid.*, p. 9.

³¹⁹ *ibid.*, p. 10.

³²⁰ *ibid.*, p. 11.

³²¹ Commission on Government: Report No. 1, August 1995, p. 319.

³²² *ibid.*, p. 318.

³²³ Joint Standing Committee on the Commission on Government (1995), Fourth Report, Perth: Parliament of Western Australia, p. 13.

rejection [was] a serious blow to the standard of public life in Western Australia'.³²⁴ There was, it appeared, some unfinished business on electoral reform when Labor's Geoff Gallop became Premier in 2001, with John Cowdell, elected as President of the Legislative Council for the 36th Parliament beginning in 2001.

³²⁴ *ibid.*

CHAPTER 9 RETENTION AND MODIFICATION OF REGIONAL PROPORTIONAL REPRESENTATION

By the end of the 1990s, PR had become ‘settled’ policy for the Legislative Council in Western Australia, more recently modifications to its operation have been made and others considered. Conjecture about the PR count after the 2001 Western Australian general election led to a careful study of the PR formula and some proposals for a change to the method of counting votes. Legislative amendments were introduced but not passed by Parliament before the 2005 State election. However, the same amendments were again tabled in the Parliament in August 2006 with passage being given to a change from the Inclusive Gregory System to the Weighted Inclusive Gregory Method. Perhaps unexpectedly in 2007 the Government also adopted the Weighted Inclusive Gregory version of STV-PR for multi-ward local government elections but it was repealed in 2009 when local government elections for both single and multi-member roles were to be conducted on the basis of plurality (first past the post).

A legislative modification to the regional basis of PR (from May 2009) followed the 2005 election when, as an element of the ‘one vote one value’ legislative package, the Gallop Labor government expanded the membership of the Legislative Council from 34 to 36 members, with each region comprising six members. The number of metropolitan to country members was set at 18:18, thus retaining the same vote weighting ratio for the upper House. As always, though, an understanding of the PR system remained elusive for the wider public, meaning that a challenge for institutions with civic education responsibilities remained to be addressed.

9.1 The 2001 Mining and Pastoral Region and Agricultural Region Result

After more than a decade in which three elections occurred without unfavourable attention to the workings of the PR system, the count in 2001 attracted significant criticism. The catalyst was the outcome of the vote, specifically in the Mining and Pastoral Region and to a lesser extent the Agricultural Region, with the main concerns focused on the method used to transfer surplus votes of elected candidates, the Inclusive Gregory System.

State wide Greens (WA) had received only 8 per cent of the primary vote, which returned five Greens members, or 14.7 per cent representation in the upper House. In Parliament, there were assertions that the WAEC had failed to correctly apply the processes set out in Schedule 1 of the *Electoral Act 1907*, when Murray Nixon, a Liberal Party MLC who lost his Agricultural Region seat, contended that PR was not yielding proportionate outcomes of seats and votes, as had been expected. Nixon complained that the Agricultural Region was most disproportionate as the Greens (WA), with 4.57 per cent of the primary vote, received the same representation as the Liberal Party (30 per cent), One Nation (22 per cent), the Labor Party (20 per cent) and the Nationals (19 per cent). Concerned about the manner in which the counts were

being conducted, Nixon believed the upper House 'was better served when it had smaller electorates and fewer members'.³²⁵

Conjecture also surrounded the count in the Mining and Pastoral Region with the following as depicted by electoral law specialists David Farrell and Ian McAllister:

*One of the One Nation candidates, John Fischer, was excluded in count 234 as a result of receiving 4397 vote transfers from the exclusion of Mark Nevill (Independent). Fischer's final tally of 11,874 votes gave him a surplus of 3813 votes to be distributed among the remaining candidates. This surplus transfer would determine which of the two remaining candidates-Robin Chapple (Greens) or Greg Smith Liberal-would be elected: only 214 votes separated them. In the event more of Fischer's transfers went to Chapple (1949 votes) than to Smith (1233) and Chapple was elected.*³²⁶

Liberal MLC Greg Smith, who lost his seat to Robin Chapple, Greens (WA), argued that the wrong candidate had been elected on the grounds that the Inclusive Gregory method had been used. Subsequent inspection revealed that the transfer of some surplus votes of elected candidates had actually increased in value and in Smith's view, the Parliament needed to rectify the situation as all other single transferable vote schedules that he had examined throughout the world did not produce this anomaly. Smith proposed to petition the Court of Disputed Returns, yet did not take this course of action, ostensibly because he did not have the necessary funds to finance the case in the event that he should lose. A later request for the Government to provide funding for Smith to be adequately represented was unsuccessful.³²⁷

Nevertheless, the WAEC argued it had correctly applied the Schedule. Dr Ken Evans, the incumbent Electoral Commissioner contended that the formula used (the Gregory Inclusive System) allows some ballots to increase in value in certain circumstances when the preferences are redistributed to candidates remaining in the count. In Evan's view, the small increase that occurred in the Mining and Pastoral Region in the 2001 election had no material impact on the outcome.³²⁸

9.2 The Miragliotta Monograph

As a direct result of the 2001 election conjecture, and given the dearth of research and lack of any comprehensive academic work on the transfer of preference votes with the STV versions of PR, the WAEC sought a research paper on the subject by a scholar in the field of electoral systems. Dr Narelle Miragliotta, from the University of Western Australia, was chosen to author a monograph, titled *Determining the Result: Transferring Surplus Votes in the Western Australian Legislative Council*. After a thorough review of the PR literature, including its operation in other jurisdictions, the study profiled the five most recognised methods for transferring the surplus votes of elected candidates:

- the Random Selection method;
- the Gregory System;

³²⁵ LC Debates, 2 May 2001, p. 38.

³²⁶ Farrell and McAllister, 'The 1983 Change in Surplus Vote Transfer Procedures for the Australian Senate and its Consequences for the Single Transferable Vote', p. 487.

³²⁷ LC Debates, 19 February 2002, p. 7433.

³²⁸ Ken Evans, 'Foreword' in Narelle Miragliotta (2002), *Determining the Result: Transferring Surplus Votes in the Western Australian Legislative Council*, Perth: Western Australian Electoral Commission, p. iii.

- the Inclusive Gregory System;
- the Inclusive Weighted Gregory system; and
- the Meek Method.

Firstly, as Miragliotta indicated, there exist a number of similarities with each of the methods in relation to the transfer of votes of a candidate elected on first preference votes. For example:

*The number of ballot papers to be transferred is calculated by subtracting the total number of votes received by the candidate elected on first preference votes from the quota. The resulting figure determines the number of ballot papers available for transfer to candidates who remain active in the count. Similarly, each of these methods handle the transfer of votes from candidates who have been excluded from the count in much the same fashion. The ballot papers of a candidate who has been eliminated are always transferred at the same value at which that candidate received them.*³²⁹

Importantly, though, as Miragliotta, demonstrated:

*There are, however, significant differences in the manner in which the various methods deal with the surplus votes of a candidate elected as a result of votes from other candidates. Each of the methods vary not only in respect of which parcel of ballot papers when transferring surplus votes, but also what values are attributed to these votes at the point at which they are passed on to the continuing candidate.*³³⁰

This monograph does not repeat ‘chapter and verse’ Miragliotta’s findings, although some of the observations with ramifications for the PR law in Western Australia will be considered. For instance, in November 2003, Minister for Electoral Affairs Jim McGinty, in his second reading speech to the Electoral and Constitutional Amendment Bill 2003, signalled that following the Miragliotta review the government would legislate to change from the existing ‘Inclusive Gregory Method’ to the ‘Weighted Inclusive Gregory Method’.

McGinty acknowledged that in certain cases a ballot paper, upon transfer, could increase in value and although this had occurred in the Mining and Pastoral Region in 2001, it had no overall impact on the result. He nevertheless undertook to correct the anomaly to ensure transferred ballot papers could not increase in value. It was recognised that the adoption of the ‘Weighted Inclusive Gregory Method’ would necessitate more complex calculations, but as the Legislative Council count had been automated since 1996 the new method could be adopted without unduly impacting on the timeliness of the election result.³³¹

The new provision, and some other electoral system changes, did not gain parliamentary passage at that stage in 2003. However, in August 2006 McGinty re-introduced legislation to adopt the ‘Weighted Inclusive Gregory Method’.³³² What, then, did the Miragliotta study indicate for both the ‘Inclusive Gregory Method’ and the ‘Weighted Inclusive Gregory Method’? Firstly, it will be recalled that when STV-PR was adopted for the Legislative Council in Western Australia it was based on

³²⁹ Miragliotta (2002), *Determining the Result: Transferring Surplus Votes in the Western Australian Legislative Council*, Perth: Western Australian Electoral Commission, p. 19.

³³⁰ *ibid.*

³³¹ LA Debates, 20 November 2003, p. 1345.

³³² LA Debates, 23 August 2006, pp. 5080–5081.

the 1984 Senate legislation.³³³ Until 1984 the Senate had relied on a random selection method for the transfer of ballots. As far back as 1948 it had been thought that the sampling differences associated with the random selection of ballot papers were mathematically negligible. Indeed the sampling system it relies on was regarded as sufficiently sound for it to be constitutionally entrenched in New South Wales for its state-wide PR formula for its Legislative Council. Sampling, though, does introduce an element of chance to the election outcome and essentially discriminates against those voters whose ballot papers are transferred to the elected candidate ahead of his or her attaining a quota.³³⁴ As Miragliotta recognised these deficiencies, it is perhaps unsurprising that the random sample method was not presented by Minister McGinty to overcome the identified anomaly with the Inclusive Gregory Method.

(a) Inclusive Gregory Method

The key to the inclusive Gregory method is that all of the votes of a candidate elected with an excess of the quota are considered when transferring surplus ballot papers, not just the last parcel of votes credited to the elected candidate. In Miragliotta's words:

*the transfer value is derived by dividing the elected candidate's surplus by the total number of ballot papers received by that candidate. This is multiplied by the number of votes for each continuing candidate for whom a second preference is indicated to determine the number of votes to be transferred.*³³⁵

In mathematical terms the transfer value formula reads as follows:

$$\frac{\text{Elected candidate's surplus}}{\text{Total number of ballot papers received by the elected candidate}}$$

The explanation of the formula was accompanied by tabulations of the apparent advantages and disadvantages of the Inclusive Gregory Method which have been summarised below:

(i) Advantages of the Inclusive Gregory Method³³⁶

- This method is designed to guarantee that all the surplus ballot papers, are considered when calculating the transfer value.
- Does not privilege votes received late in the count.
- Count can be verified manually.
- Allows each elector to contribute to the election of the number of candidates to be elected.

(ii) Disadvantages of the Inclusive Gregory Method

- There is the possibility that under certain circumstances the vote values of some ballot papers transferred previously in the count will be passed on at a higher value than that at which they were received. This may occur if the surplus of an elected candidate contains votes from a previously elected candidate with a smaller surplus. The increase in value of some ballot

³³³ And South Australia from 1982.

³³⁴ Miragliotta (2002), *Determining the Result: Transferring Surplus Votes in the Western Australian Legislative Council*, Perth: Western Australian Electoral Commission, p. 21.

³³⁵ *ibid*, p. 24.

³³⁶ *ibid*, pp. 23 and 44.

papers, under these conditions, runs counter to the concept of the *single* transferable vote.

- There is a risk that any large parcel of ballot papers received under an existing transfer value will be over-represented in the surplus.

(b) The Weighted Inclusive Gregory Method

With Minister Jim McGinty giving indication of a possible move to the Weighted Inclusive Gregory Method, questions were raised as to how it differed from the Inclusive Gregory Method. The model was devised by the PR Society of Australia during the 1980s but no other jurisdiction has implemented this formula. While the method requires all ballot papers of an elected candidate to be transferred, it simultaneously ensures that the value of ballot papers does not exceed 1.00. This is done by applying different fractional values to each of the parcels of votes that make up the elected candidate's total vote. In mathematical terms the transfer value formula reads as follows:

Elected candidate's first preference votes and/or votes received from excluded candidates:

$$\frac{\text{Elected candidate's surplus}}{\text{Total number of votes received by the elected candidate}}$$

Ballot papers transferred to the elected candidate received under a pre-existing transfer value:

$$\frac{\text{Elected candidates surplus}}{\text{Total number of votes received by the elected candidate}} \times \text{current transfer value}$$

Once again the apparent advantages and disadvantages of the Weighted Inclusive Method were tabulated by Miragliotta, summarised below.

(i) Advantages of the Weighted Inclusive Gregory Method³³⁷

- Ensures that all votes, and not just the last parcel of ballot papers credited to the contestant at the point at which he or she was elected, are included in the surplus ballot papers.
- Avoids the situation whereby incoming values of transferred surplus votes might increase in value.
- All transfer values are included, although there is no possibility that previously transferred ballots will increase in value.

(ii) Disadvantages of the Weighted Inclusive Gregory Method

- The counting process is considerably more involved than two variants of the fractional method. It would require many additional calculations in order to finalise the results. It would be extremely difficult to calculate transfer values under this method in a timely fashion without the assistance of computers.
- Rules are less transparent and understandable to the voter.

³³⁷ See Miragliotta (2002), *Determining the Result: Transferring Surplus Votes in the Western Australian Legislative Council*, Perth: Western Australian Electoral Commission, pp. 25 and 44.

(c) Other Fractional Methods

The Miragliotta Study also described the main features of what have been called the Gregory Method and the Meek Method. The Gregory Method has a long history, with a century long application on a state-wide basis for the Tasmanian House of Assembly. The Australian Capital Territory also adopted the formula following a referendum to replace the D'Hondt system of PR with STV-PR in 1992. This method has 'often been colloquially referred to as the 'last parcel method' owing to the practice of including only the last batch of ballot papers that gave rise to the elected candidate's surplus'.³³⁸

The Meek method was initially developed in 1969 by British mathematician Brian Meek. A more contemporary version of fractional transfers has been formulated and used for the District Health Board and Territorial and Regional Councils in New Zealand and has two characteristics which distinguish it from other transfer methods, for example:

- it has the capacity to ensure that an elected candidate continues to receive votes from excluded and other elected candidates until all vacancies have been filled; and
- it can recalculate the quota needed for election during the count to take into account those ballot papers which are non-transferable.

However, the Meek method's iterative features would possibly reduce its transparency and manageability and pose a problem for both electors and party officials.³³⁹

9.3 Weighted Inclusive Gregory Method for the Legislative Council and Local Government (2007 only)

As mentioned in 2003 the Government had allowed the proposed legislation to adopt the Weighted Inclusive Gregory Method of STV-PR in the Legislative Council to lapse. However, in August 2006 Jim McGinty as Minister for Electoral Affairs again signalled its introduction in a Bill encompassing such contentious matters as public funding and prisoner's voting rights.³⁴⁰ When Sue Ellery as the Parliamentary Secretary for Electoral Matters in the Legislative Council introduced the second reading in the upper house she indicated, with a reference to the Miragliotta review, that the 'anomalies' that arose in 2001 'could be corrected by the addition of the 'weighted inclusive Gregory' method, which ensures that ballot papers are transferred based on the value at which they are obtained and cannot, therefore, increase in value'.³⁴¹ As this formula had not been used in any legislative elections throughout the world it was not surprising that it was given careful consideration in both chambers.

Significantly, in October 2006 the Labor Government moved to extend the use of STV-PR to the growing number of multi-member wards in the State's 144 local government authorities. A year earlier the Local Government Minister, John Bowler, had announced that a review of structural and electoral reform of local government would be undertaken by the Local government Advisory Board (LGAB). Yet, when

³³⁸ Miragliotta (2002), *Determining the Result: Transferring Surplus Votes in the Western Australian Legislative Council*, p. 22.

³³⁹ *ibid*, p. 36.

³⁴⁰ LA Debates, 23 August 2006, p. 5080.

³⁴¹ LC Debates, 20 September 2006, p. 6313.

this body reported in April 2006 it had recommended ‘that the current provisions for the ‘first past the post system of voting be retained’.³⁴² This had created the impression that a change in the voting system was not on the agenda so when the parliamentary announcement of a voting system change was made it created an immediate reaction. The Western Australian Local Government Association (WALGA) quickly expressed forthright opposition to STV-PR for this tier of government, partly on the basis that it would bring party politics into local government.³⁴³

When the legislation reached the Legislative Council it was agreed to divide the Local government Amendment Bill into two separate Bills. The first, upon assent, became the *Local Government Amendment Act 2006*, which formalised the widely agreed provision to change the date for ordinary local government elections to the third Saturday in October. The second, the Local Government Amendment Bill (No. 2) 2006, which focussed on the voting system, was referred to the Standing Committee on Environment and Public Affairs for inquiry and report no later than 3 April 2007. After submissions and hearings which comprehensively surveyed the issues it was recommended that preference (alternative) vote be adopted for single member wards and STV-PR be adopted in multi-member wards. To ensure consistency with the earlier amendment for the Legislative Council the weighted inclusive Gregory method of STV-PR would be employed. The majority perspective on the Committee, whilst recognising the absence of consultation with local government bodies, argued that the electoral changes would ‘more democratically represent the views of electors’. It would not increase factional or party politics because political party representation did not extend to local government as it did in some other States.³⁴⁴ What had been forgotten was the inclusion of proportional representation for multiple member vacancies in the draft bill for the new *Local Government Act 1995* to replace the existing preferential system.³⁴⁵ Yet when Paul Omodie, as the Liberal Party Local Government Minister in the Richard Court government, spoke in the second reading debate he quickly said ‘another change is that the first past the vote system will be adopted for counting votes. This will be simpler system for returning officers and all concerned.’³⁴⁶

The 2007 Standing Committee minority report favoured the retention of plurality voting which had been introduced in 1995 and favoured by the LGAB. It was said ‘no public benefit or improved democratic voting outcomes have been demonstrated or identified’. Moreover, the future use of different voting systems for local government authorities were unlikely to improve voter turnout and likely to cause ‘confusion’ for voters.³⁴⁷ Although there was opposition to the changes they gained little traction in the media. Remarkably, though, only one round of local government elections were

³⁴² Local Government Structural and Electoral Reform in Western Australia: Ensuring the Future Sustainability (2006), Perth: pp. 1–2.

³⁴³ ‘Why does the State Government want Party Politics in Councils?’, Western Australian Local Government Association, in the *West Australian*, 10 October 2006, p. 11 and Graham Mason, ‘Councils cry foul at voting switch,’ *West Australian*, 5 October 2006, p. 43.

³⁴⁴ Standing Committee on Environment and Public Affairs (2007), Local Government Amendment Bill (No.2) 2006, p. 42.

³⁴⁵ A Draft Bill for a New Local Government Act: Summary of Significant Findings, Department of Local Government, December 1994, p. 9.

³⁴⁶ LA Debates, 31 August 1995, p. 7550.

³⁴⁷ Standing Committee on Environment and Public Affairs (2007), Local Government Amendment Bill (No.2,) 2006, pp. 43–44.

conducted under this legislation in October 2007. In 50 local authorities (cities, towns and shires) where the proportional representation formula was applied there were a total of 78 polls in the multi-member wards.³⁴⁸ With the increasing use of postal voting there had been concerns about the likelihood of confusion with the count, however, this did not transpire. Turnout did not improve nor was there manifest evidence of political party tickets. The Western Australian Electoral Commission produced an explanatory document explaining the steps in the counting process (see Appendix Six). In addition an interesting colour script was placed on the Commission's website. For the multiple award contests the votes were counted using a computer program developed and distributed by the Commission (CountWA). In some cases ballot preferences were transmitted electronically from Perth to the local government offices for inclusion in the count.

With a change of government in September 2008 the Barnett 'alliance' government immediately moved to abandon the proportional representation (and preference vote) experiment. During 2009 the plurality (first past the post) formula was re-instated for both single and multi-member wards for local government elections. It meant that almost 'under the radar' the 2009 local government elections were back to the earlier model which the Liberal-National Coalition had introduced in 1995. More interest was directed at turnout figures and postal voting. Indeed the bigger picture of local government amalgamation began to be the focus. If there was electoral system reflection it was at the State tier of government 'one vote one value' legislation for the Legislative Assembly and the changes to the regional composition of the Legislative Council?

9.4 The 2005 One Vote One Value Legislation and Regional PR Modifications

Much of the Gallop Labor government's electoral reform focus had been on the achievement of 'one vote one value'. In 2005 a Bill that had not satisfied constitutional requirements in the previous Parliament was re-introduced under a new title and the 'one vote one value' legislation (*Constitution and Electoral Amendment Act 2005*) passed the Legislative Assembly, save some consideration for a 'large district allowance'. A key feature of the new Act was that the membership of the Legislative Assembly was increased from 57 to 59 seats and the Legislative Council expanded from 34 to 36 seats. However, the six region model, with contiguous lower House districts, was retained with PR in the Legislative Council.

Significantly, each region was to have six members with the number of metropolitan and country members being set 18:18, thus maintaining the vote weighting ratio for the upper House.³⁴⁹ The amendments modified the regional base STV-PR, and led to speculation about the likely electoral consequences for political parties as the percentage thresholds to gain a seat would all be changed from the 2005 Legislative Council election. Of course the actual numerical quotas would vary widely as the Metropolitan seats will have more than twice the number of electors because vote weighting has been maintained in the upper House. It could be expected that a similar correspondence of votes to seats would prevail and that once again the last seat in each region will be keenly fought. As expected ticket voting with electors able to

³⁴⁸ Local Government Postal Elections Election Report 2007, Western Australian Electoral Commission, Appendix 10 Election Results, pp. 51–132.

³⁴⁹ These changes were scheduled to come into effect for the 2009 State election.

place the numeral 1 in the square for their preferred party candidate group (or Independent) would continue to be at a rate of 95 per cent and beyond for the major parties and less than 90 per cent for minor parties and Independents. The informal vote would be around 3 per cent.

While it was expected that the new Weighted Gregory Inclusive Method of vote transfer would enhance technical certainty there was unease in Labor circles that winning the 'one vote one value' struggle in the Legislative Assembly may have meant trading away a reasonable prospect of Labor being successful in the Legislative Council. In fact it was thought that an olive branch may have been given to the Liberal and National parties in the upper house to readily gain an advantage of seat numbers, with the very good prospect of achieving a majority. Moreover, some Greens WA supporters queried whether the Greens should have been prepared to forego their commitment of 'one vote one value' for the revised regional model in the Legislative Council. Electorally, while the lowered quota in four regions may aid the Greens, the increased quota in North Metropolitan and the South West regions, held by incumbent Greens, would make their re-election more difficult. Campaign strategies would in all likelihood be similar to the past with the distribution of resources for candidates, and placement of the party ticket, often remaining contentious for all parties.

Table 3: Thresholds of Representation for PR (STV) 1989 and 2009³⁵⁰

| Region | Number of seats 1989 (Enrolment) | Minimum percentage quota (Quota) | Number of seats 2009 (Enrolment) | Minimum percentage quota (Quota) |
|---------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|
| Metropolitan | | | | |
| North Metro | 7 (293,872) | 12.50% (32,457) | 6 (332,146) | 14.29% (40,034) |
| East Metro | 5 (203,972) | 16.67% (30,318) | 6 (327,550) | 14.29% (39,514) |
| South Metro | 5 (207,752) | 16.67% (30,790) | 6 (331,344) | 14.29% (40,034) |
| Country | | | | |
| South West | 7 (105,880) | 12.50% (11,987) | 6 (178,801) | 14.29% (22,000) |
| Agricultural | 5 (83,041) | 16.67% (12,460) | 6 (84,553) | 14.29% (10,432) |
| Mining and Pastoral | 5 (63,422) | 16.67% (8,322) | 6 (76,005) | 14.29% (7,773) |

Before documenting the first electoral outcome of the modified six seat regional model for the 2009 Legislative Council election, following a resume of the previous polls from 1989, the educational challenge of PR will be examined. This will be part of the focus for the next chapter particularly as STV-PR appears to be here to stay for the upper house in Western Australia as no major, or even minor, political party in the State has sought its repeal in a concerted manner.

³⁵⁰ Derived from 1989 and 2008 Western Australian State General Election Results and Statistics, Perth: Western Australian Electoral Commission.

CHAPTER 10 KEY CONSIDERATIONS OF PR IN WESTERN AUSTRALIA

It will be recalled, following the Miragliotta framework, that the three major considerations or elements upon which STV-PR is based have been depicted as ‘an intelligent electorate’; ‘representation of diverse interests in the legislature’; and ‘a candidate-centred electoral system where the voter is in control.’³⁵¹ Has this proven to be the case with Western Australia’s experience of PR in the Legislative Council?

10.1 An intelligent electorate

When John Stuart Mill was active in his promulgation of STV-PR he was simultaneously aware of the need for better civic education, even suggesting that additional votes be granted to citizens who could demonstrate high levels of political literacy. In contemporary Australia there has been a concerted drive to enhance citizenship education but the notion of additional votes for citizens based on superior political literacy has never been entertained. In one landmark report undertaken by the Senate, *Education for Active Citizenship* (1989), a series of measures were recommended aimed at overcoming a ‘crisis which Australians cannot afford to ignore’.³⁵² A range of national and State initiatives were implemented to address the ‘civic deficit’. One comprehensive documentation of civic education at the national level appeared in a report entitled *Whereas the People*,³⁵³ produced by the Prime Ministers’ Civics Group, which argued that ‘citizenship should be the mortar which holds together the bricks of our contemporary, multicultural Australia’.³⁵⁴

In 2005 a national project was undertaken to develop *Statements of Learning* in civics and citizenship (and other subjects). These Statements describe the essential skills, knowledge, understanding and capacities that all young Australians should have the opportunity to learn by the end of years 3, 5, 7 and 9. A national testing program was instituted from 2004 to assess civic knowledge, citizenship in a democracy and the skills and values needed for developing the disposition for participation in a democracy. Such tests, on a sampled basis, are conducted across Australia on a three year cycle for years 6 and 10. Ironically, though, there is no particular emphasis on the understanding of how the electoral system works. Perhaps this aspect of the testing should be given a higher priority.

Earlier in Western Australia the 1992 WA Inc. Royal Commission whilst making observations about pre-requisites for effective action in a modern representative government stated:

No single agency or measure alone can ensure a society sufficiently informed about its civic institutions. It is in the character of a democratic community that many should be expected to contribute to this task. There are roles for

³⁵¹ See Miragliotta (2002), *Determining the Result: Transferring Surplus Votes in the Western Australian Legislative Council*, p. 2. See conclusion of Chapter 1.

³⁵² *Education for Active Citizenship in Australian Schools and Youth Organisations* (1989), Report of the Senate Standing Committee on Employment, Education and Training, Canberra: Australian Government Publishing Service, p. 6.

³⁵³ *Whereas the People... Civics and Citizenship Education Report* (1994), Civics Expert Group: Canberra: Australian Government Publishing Service.

³⁵⁴ *Civics and Citizenship Education : Summary of the Report of the Civics Expert Group* (1994), Canberra: Australian Government Publishing Service, p. 13.

*our schools, universities and professional and public interest groups, to say nothing of the responsibility of the media.*³⁵⁵

In Western Australian schools, active citizenship was incorporated into the curriculum and a number of agencies were ascribed educational charters to address citizenship education. The Western Australian Constitutional Centre was opened in October 1997, the Western Australian Parliament (in tune with the Commonwealth) enhanced its educational role, and the Francis Burt Law Education Centre was opened. When the WAEC was established 1987 to conduct elections and assist in the redistribution of electorates, it also received educational responsibilities. While conducting enrolment, redistributions and managing the electoral law may readily be achieved, the educational challenge could be regarded as a formidable task, particularly as the scale of the exercise expands as citizens are subject to both obligatory enrolment and compulsory attendance at the voting booth. The WAEC had taken its educational responsibilities very seriously, as had been the case with the Australian Electoral Commission. An important aspect of the resources devoted to education was symbolised by the opening of the Electoral Education Resource Centre in Subiaco on 15 May 1992 by civic education advocate, Dr Geoff Gallop, then the Education Minister and Minister for Parliamentary and Electoral Reform. Then in 1997 when the Western Australian Constitutional Centre was opened in West Perth at the old 'Hale School site,' the Electoral Commission transferred its operations from its previous Subiaco location.

There is a dearth of research on the levels of understanding of the principles and workings of voting systems employed throughout Australia. Some citizenship studies suggest that such an understanding is regarded as an ideal, even a desired pre-requisite, of citizenship. Only a few experts can cope with the complexities of explaining the transfer of preference formula for PR. With these issues in mind, this study commissioned some public opinion research to assess broad community understanding of the PR voting system.

A total of 403 respondents participated in a state-wide survey in July 2006 with the results being obtained from both regional (84) and metropolitan (319) respondents in line with the general population proportions applicable to each.³⁵⁶ As Table 4 indicates, some 53 per cent of respondents believed they had a very good, good or fair understanding of the PR voting system for the Legislative Council in WA (and Senate). About one third of respondents admitted their understanding of PR was either poor or very poor whilst nearly 13 per cent of the sample admitted to being in the 'don't know category'. On balance the level of understanding was marginally higher for male respondents with the best results being recorded for both male and respondents were in the 18 to 19 or over 65 years of age category. As to be expected respondents with university degrees, particularly post graduate degrees, claimed better levels of understanding for the PR system.

When respondents were asked what level of understanding they considered the community held of the PR system, the overall findings as illustrated in Table 5, indicate that respondents assigned a lower level of understanding of PR to the broader electorate than they held for themselves. Certainly the 'don't know' scores were markedly higher for the electorate than for individual respondents. The goal of a

³⁵⁵ Report of the Royal Commission into Commercial Activities of Government and Other Matters, Part 11 (1992), pp. 5–12.

³⁵⁶ Survey conducted by Asset Research for author Harry Phillips.

better understanding of STV-PR is a desirable community educational outcome with much ground to cover. It appears that only mandatory civic education as is sometimes advocated, which included voting system information, would significantly improve the levels of understanding. Indeed the 1912 call for Sir Winthrop Hackett, then editor of *The Western Australian*, to allocate editorial space to educate the public about what the PR system really means, is still pertinent.³⁵⁷

Table 4: Public Understanding of the Proportional Representation Voting System in Western Australia

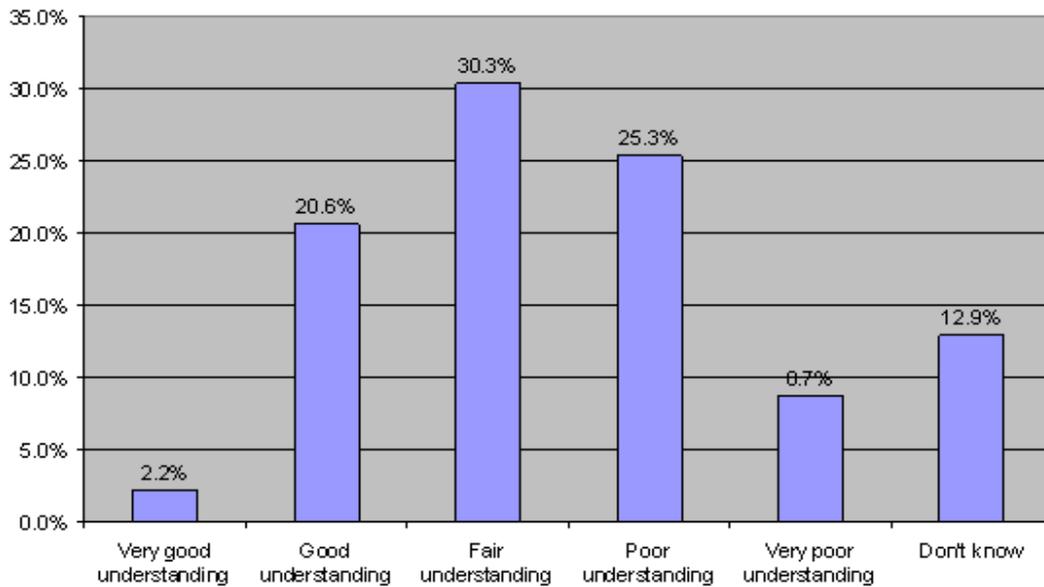
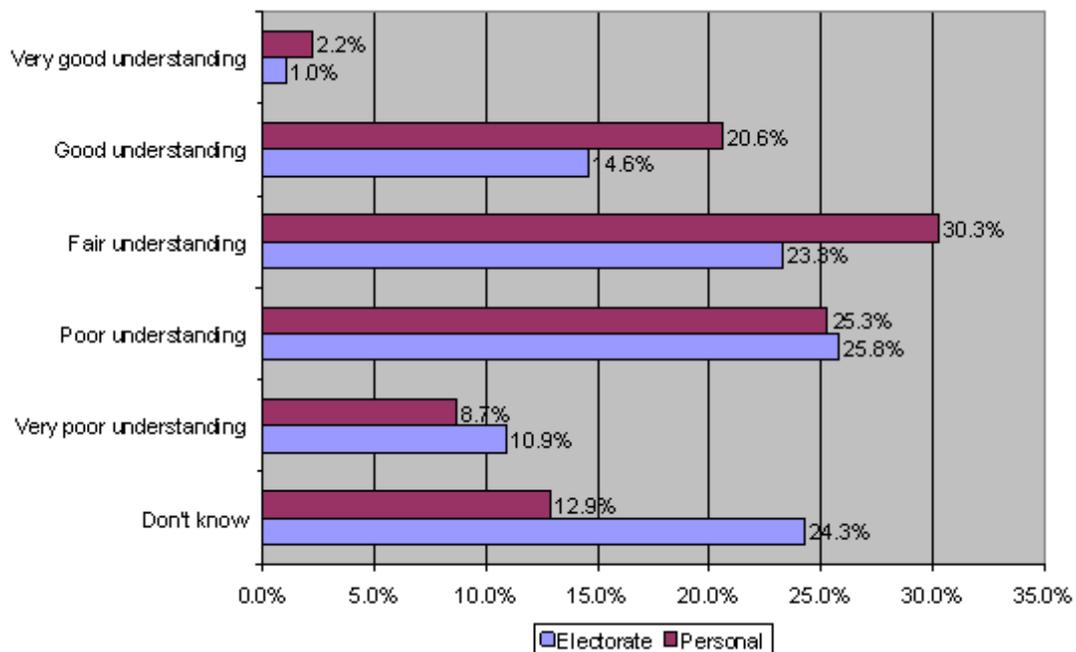


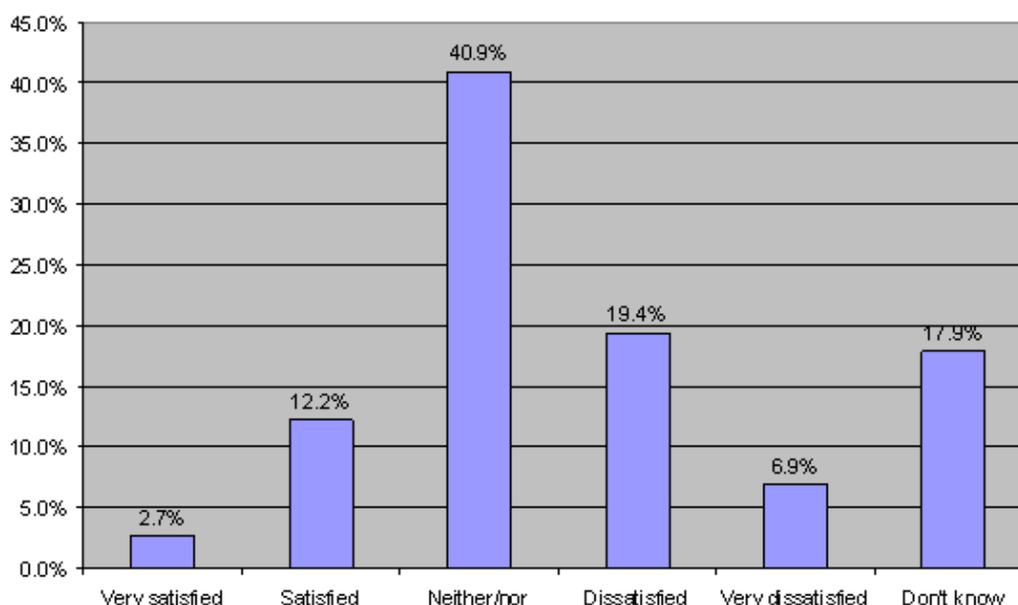
Table 5: Comparison of Electorate and Personal Understanding of the Proportional Representation Voting System in Western Australia



³⁵⁷ LC Debates, 10 September 1912, p. 1531.

Apart from whether electors believe they have an understanding of the PR voting system it is further queried whether they are satisfied with the system. The results presented in Table 6 show that the largest proportion of respondents (40.9%) are neither satisfied nor dissatisfied with the PR voting system. Only 14.9 per cent registered being very satisfied or satisfied, whereas 26.3 per cent were dissatisfied or very dissatisfied with the PR voting system. It is postulated that a broad lack of understanding may undermine satisfaction with PR, indeed if a campaign was mounted to abolish PR it would most likely be faced with an absence of community knowledge of the system. However, the survey results suggest there would be a base to begin to magnify the opposition to PR. Perhaps a likely pre-requisite for abolition would be the adoption of such a platform by one of the major political parties which may be considering a reform package for the Legislative Council. Nevertheless, the adoption of such a platform is not on the Western Australian political horizon at this juncture.

Table 6: Satisfaction with the Proportional Representation Voting System



10.2 Representation of diverse interests in the Western Australian Legislative Council

As STV-PR was designed to ensure that different shades of political opinion are represented in Parliament in proportion to their strength in the electorate, it can be asked if this criterion has been achieved in the Western Australian experience. On a comparative basis with other STV-PR jurisdictions Farrell and McAllister ranked Western Australia quite low in their evaluation of proportionality. Broadly though, proportionality was above that of the Legislative Assembly and similar to half senate elections.³⁵⁸

(a) 1989 – Legislative Council Election

When the 1989 results are combined across the regions there was high proportionate correspondence of votes to seats (see Appendix Three). Labor, with 41.33 per cent of the first preference vote gained 16 (or 47.06 per cent) of the seats; Liberal, with 41.05 per cent of the vote gained 15 (or 44.12 per cent) of the seats; and the Nationals

³⁵⁸ Farrell and McAllister (2005), *The Australian Electoral System*, p. 89. See also Appendix Three.

with 5 per cent of the vote gained 3 (or 8.82 per cent) of the seats. No 'minor party' gained a seat in the Legislative Council in 1989, although the newly emergent Grey Power Party gained 4.02 per cent of the first preference vote ahead of the Australian Democrats who achieved only 3.32 per cent of the first preference count. On this occasion the Greens (WA) secured just 1.91 per cent of the state-wide vote.

Whether the results would have differed if state-wide rather than regional PR had been adopted is a moot point, but the first election under the very different voting system had not returned vastly different outcomes to its predecessor. As predicted, the percentage of informal votes in the Legislative Council was comparatively low at 2.76 per cent but had jumped in the Legislative Assembly from 2.63 per cent in 1986 to 7.35 per cent in 1989. In all likelihood this was due to voter confusion between the different voting systems for the two Chambers, as in the absence of ticket voting in the Legislative Assembly it was necessary to cast preferences for all of the candidates to ensure a valid vote in the lower House.

(b) 1993 – Legislative Council Election

In 1993 the major parties again secured a seats ratio which corresponded to the votes cast, although the Labor Party had a better bonus in terms of a gap between the percentage of votes and percentage of seats secured. This outcome was obtained despite the fact that the Labor Party's North Metropolitan vote had dropped to 28.58 per cent. An error on the official 'how to vote' ticket meant that Labor was deprived of the ticket vote option (as also happened with the Greens (WA) in the East Metropolitan Region). In North Metropolitan, Independent former Liberal MLC Reg Davies was elected with 16,721 votes, or 6.12 per cent of the first preference vote. This was less than half a quota, which had been set at 34,161 votes for the seven seat region.

Close inspection of this count also showed that Davies received fewer votes than the Greens (WA) Party candidate Brenda Roy with 7.74 per cent of the vote. However, in the five-seat South Metropolitan Region, Greens (WA) candidate Jim Scott was elected with only 5.51 per cent of the first preference vote. The 11,191 votes that Scott had registered was only one third of the quota, calculated at 33,876 votes. Scott's victory was significant as it was the first occasion in the Legislative Council that a so termed minor party candidate was successful under the STV-PR system. On that occasion Scott had benefited from the registered preference patterns of the Labor and Liberal surpluses. Some minor parties and Independents, who were eliminated during stages of the count, had also directed their preferences to the Greens (WA) ahead of the major parties. These preference patterns enabled Scott to obtain a quota.

An interesting emerging trend was the propensity of voters for the major parties to cast a higher percentage (about 95 per cent) of ticket votes than for the Greens (WA) and other minor parties which had ticket voting readings close to or below 90 per cent. Ticket voting for the National Party was also in the vicinity of the 95 per cent received for the Liberal and Labor parties. Reading the state-wide percentages, the National Party had gained 8.82 per cent of the seats for a mere 3.99 per cent of the vote. This was largely due to the concentration of the National Party vote in the Agricultural Region and South West Region, where it was possible to respectively achieve quotas after preferences had been distributed.

(c) 1996 – Legislative Council Election

By 1996 there was conjecture about whether the minor parties could achieve a 'balance of power' in the Legislative Council similar to the Senate, where the Australian Democrats had become influential after gaining representation due to STV-PR voting system. The major parties did gain seats closely in proportion to their vote percentages, although the reading for the Liberal-National Coalition was complicated by a decision to run joint tickets in the South West and Agricultural Regions. Greens (WA) Jim Scott was again returned in South Metropolitan with a low percentage of the first preference vote, well below the quota. On that occasion, though, Dr Christine Sharp (South West Region) and Giz Watson (North Metropolitan) also gained election for the Greens. Significantly, two Australian Democrats gained seats, Helen Hodgson in North Metropolitan and Norm Kelly in East Metropolitan, which meant that initially the 'balance of power' in the Legislative Council did fall to the minor parties, as the governing Liberal and National Party had won 17 seats in the 34 member Chamber. With the nomination of the Liberal's George Cash as President, Coalition numbers on the floor of the Council were reduced to 16 members. Although the re-election of the Court-Cowan Coalition had been widely predicted, it had inaugurated a new era of Western Australian politics with the Coalition no longer having a majority in the upper House. It had become obvious that STV-PR was having an impact on the political party composition of the Legislative Council. At the same time it was proving difficult to predict the eventual winner of the final seat in each Region due to the need to trace a formidable transfer of preferences from a range of parties.

The four year fixed term for MLCs following the December 1996 election was not to begin until 22 May 1997, and the re-elected Court-Cowan Coalition government in the Legislative Assembly took advantage of the interim period (and their majority in the Legislative Council) to secure passage of its controversial 'third wave' amendments to the industrial relations law. Whether the Liberal Party was considering its 'mandate' on a state-wide basis is not clear, but it had interestingly secured a 6 per cent higher vote in the Legislative Council than in the Legislative Assembly, where it had obtained 39.90 per cent state-wide return. The recognition of future uncertainty associated with the minor party 'balance of power' in the Legislative Council, which could be attributed to STV-PR, led to some of the most bitter scenes in the history of the Western Australian Parliament. The sequence of events has been chronicled elsewhere but the disruption to proceedings meant that the Legislative Council had to adjourn to an adjacent room for the final passage of the contentious industrial relations legislation.³⁵⁹

When the Legislative Council did adjust to regional PR it, as predicted by some earlier advocates, it more discernibly became a House of Review, characterised by an expanded committee system. The latter stage of the period was complicated by the resignation in August 1999 of the Labor Party's Mark Nevill MLC, from the Mining and Pastoral Region. Nevill was to become an Independent and it was his vote, for instance, that gave the Coalition government the numbers, notwithstanding opposition from the Democrats and Greens (WA), to carry its legislation providing for the sale of the governmental gas utility known as AlintaGas.

³⁵⁹ David Black and Harry Phillips (1997), 'Western Australia, Political Chronicle, January to June 1997', *Australian Journal of Politics and History*, Vol. 43, No. 3, pp. 418–419.

(d) 2001 – Legislative Council Election

After three Legislative Council elections with STV-PR, the major parties appeared to be securing a share of seats broadly in the same ratio as their share of the vote. The Greens (WA) and the Australian Democrats also gained representation, although they had been ultimately reliant on the transfer of major party surpluses to achieve the necessary quota. As mentioned earlier, the 2001 outcome produced some unexpected results with the Liberal Party receiving a very poor return of seats for votes in both the Mining and Pastoral and Agricultural Regions. The Australian Democrats lost both of the seats held in the previous parliament as a consequence of a poor primary vote.

Another striking feature was the success of the One Nation Party in winning a seat in each of the three non-Metropolitan Regions. In two of the three regions they polled a quota in their own right and won the third with considerable assistance from Independent Mark Nevill's preferences. However, the prospect of One Nation holding 'the balance of power' evaporated with the unexpected success of the Greens (WA) in each of the Agricultural (former Senator Dee Margetts) and Mining and Pastoral Regions (Robin Chapple), where they polled little more than a quarter of the quota in each Region on first preferences. Ironically, the unexpected success of the Greens resulted from the decision of One Nation to preference them ahead of the Liberals in each of the Regions concerned. It is likely that One Nation supporters would have been surprised and even displeased to know their preferences handed the 'balance of power' in the Legislative Council to the Greens. State-wide the Greens (WA), with 8.00 per cent of the vote, had obtained 14.71 per cent of the seats. In the South Metropolitan Region, Jim Scott retained his seat although he had only secured 0.54 per cent of a quota, whereas in the same Region Labor gained just two seats for gaining 2.58 quotas in the Region.

Ultimately, the refusal of the outgoing Liberal President George Cash to accept re-nomination to the President's position left Labor and the Greens (WA) one short of an absolute majority on the floor of the Legislative Council, with Labor nominee John Cowdell being elected as President. Even so, the newly elected Labor Government, with Dr Geoff Gallop as Premier, was left as the best placed Labor Government in the State's history to seek passage of its electoral reform legislation through the upper House. It could be argued that STV-PR, as often predicted, had slowly improved Labor's position in that Chamber.

Following the 2001 General Election there was an unexpected development when Alan Cadby, a Liberal Member of the Legislative Council, resigned from his party in mid-2004 as a result of pre-selection process that had placed him in an unwinnable place on the party ticket for the North Metropolitan Region in the forthcoming 2005 State election. Cadbury was publicly known as a supporter of the Labor Party's quest for a 'one vote one value' legislation. Eventually Labor with its 16 votes, plus 2 Green votes and then Alan Cadby's vote meant that a constitutional majority of 19 could be achieved in the Legislative Council for the 'one vote one value' legislation in the Legislative Assembly which was expanded from 57 seats to 59 seats. In addition the Legislative Council was expanded to 36 seats (from 34) comprised of six regions with six seats in which STV-PR was still to be retained as the voting system. However, the expanded Legislative Assembly and Legislative Council was not to be contested until the election after that conducted in 2005, which actually took place in 2008 but had been expected to be held 2009.

(e) 2005 – Legislative Council Election

Labor won 16 (or 47.06 per cent) of the 34 Legislative Council seats for 43.36 per cent of the state-wide vote in the 2005 election. The Liberal Party, in contrast to 2001, won 15 (or 44.12 per cent) of the seats for 37.11 per cent of the state-wide vote. On this occasion the Greens (WA) were reduced to 2 (or 5.88 per cent) of the seats for a reduced 7.52 per cent of the total vote for all Regions. Once again the Labor Party, with 16 seats, combined with the Greens (WA) for a legislative, but not constitutional, majority of 18 seats after electing Labor's Nick Griffiths as President. Broadly, though, proportionality was to prevail without the unusual results that had characterised the 2001 count. It has remained open to conjecture as to whether the repeat of the election of members far short of a quota in 2005 should have prompted a re-examination of Colin Jamieson's PR Bill of 1978, which included a provision that no party could secure the election of a candidate without having obtained half a quota.

In 2005 there was an instance of a registered political party grouping, namely the Public Hospital Support Group (and Fremantle Hospital Support Group) restricting the fielding of their candidates to the Legislative Council given the possibility that their party may be able to win a seat with a low first preference and quota. During the media coverage of the election there was even some speculation by leading ABC psephologist Antony Green that the Fremantle Hospital Support Group may have been able to gain a South Metropolitan Region seat with 1.31 per cent of the valid vote for the region and only 0.08 of a quota.³⁶⁰ Success was not achieved and it is widely accepted that political parties need to simultaneously offer candidates in the respective Legislative Assembly districts if for no other reason that 'how to vote cards' have to be distributed to potential votes. Limiting candidates to the Legislative Council has not been an outgrowth the regional STV form of PR in Western Australia.

Of interest in 2005 was the comparability of the Green vote in both the Legislative Council and the Legislative Assembly, where the percentages were respectively 7.52 per cent and 7.57 of the valid vote. These returns do not support the 'Senate (or upper House) Switchers' thesis that a body of softly committed electors vote differently for each House.³⁶¹ In fact at the initiative of Judy Ballantyne, the Director of the Western Australian Parliamentary Library Service, commissioned Antony Green to analyse the results of the 2005 General Election. His paper included a section which compared the percentage of the vote in the Legislative Council and Legislative Assembly districts. The rare wide deviations between the political parties could be attributed to the vote of independent candidates such as Dr Elizabeth Constance (Churchlands) or Dr Janet Woollard (Alfred Cove). Generally, though, the correlations of the vote between the political parties in both the lower and upper house were very high. With such publically available statistics it was now open for more commentators to address this aspect of an election count which party strategists had sometimes undertaken the past. In the 2005 General Election it was notable that one of the highest differentials in the respective House votes was in the district of Victoria Park where Premier Geoff Gallop received a primary vote of 57.3 per cent in comparison to the Legislative Council Labor vote of 52.8 per cent.³⁶²

³⁶⁰ Monica Videnieks, Ruth Williams and Steve Pennells (2005), 'Council spot tipped for hospital group,' *West Australian*, 28 February 2005, p. 8.

³⁶¹ Ernie Chaples (1997), 'The Australian Voters', in Rodney Smith (ed), *Politics in Australia*, St. Leonards, Allen and Unwin, pp. 360–361.

³⁶² Antony Green (2006), *Western Australian State Election 2005, Analysis of Results for the Western Australian Parliamentary Library*, pp. 45–47.

(f) 2008 (for 2009) Legislative Council Election

The outcomes of the 6 September 2008 State Election for the Legislative Council³⁶³ had a major bearing on the composition of the government for the 38th Parliament of Western Australia. It soon became clear that the Labor Party, headed by Premier Alan Carpenter, had lost its majority with only 28 of the 59 seats in the Legislative Assembly. For several days negotiations took place with the National Party Leader Brendon Grylls and President Wendy Duncan as to whether a coalition government could be formed between Labor and the Nationals. Liberal Leader Colin Barnett was also negotiating with the Nationals seeking to form an ‘alliance’ government. With only 24 seats the Liberals were confident in gaining the support of the Nationals and the three Independents (Constable, Woollard and Bowler) to win a vote of confidence on the floor of the House. Eventually, just such an agreement was formalised and on 23 September 2009 the Liberal/National ‘alliance’ took office. Crucial in persuading the Nationals were indications from the unofficial Legislative Council count that combined, the Liberals and Nationals (16 and 5 seats respectively) would command a majority in the new 36 member Legislative Council. Labor could not secure such an alliance in the Council after the appointment of a President, and would need the Greens (WA) and Nationals’ support to pass legislation in that House.³⁶⁴

In terms of proportionality, the Liberal Party gained 36.60 per cent of the State-wide vote to take 44.44 per cent of the upper House seats. Main rivals Labor, with 36.56 per cent of the vote received just 30.56 per cent of the seats. While the theory that PR would tend to benefit Labor in the upper House did not hold true, a demonstration of perfect proportionality befell the Greens (WA) with a widely distributed 11.08 per cent of the vote yielding 11.11 per cent of seats. However, the Nationals with a more confined rural region support base gained 5.32 per cent of the vote for a 13.89 per cent share of the seats. This was a reminder that despite the 2005 ‘one vote one value’ legislation, the 2007 electoral redistribution retained vote weighting in the Legislative Council with a 18:18 ratio of metropolitan and country seats. In fact for the Agricultural Region there were only four contiguous Legislative Assembly seats as compared with 6 in the Legislative Council.

The results of the 2008 Legislative Council poll prompted Labor’s North Metropolitan member Edward (Ed) Dermer, who began his parliamentary career filling a casual vacancy in December 1996, to comment about an usual feature of the poll in an Address-in-Reply debate. Dermer observed that despite such a tight result in the Assembly there was an overwhelming majority for the governing ‘alliance’ parties in the Council. He had observed that since 1997 no government had had an assured majority for its legislation in the Legislative Council, which meant there was a salutary check on government. In fact Dermer considered that ‘perhaps a proportional representation-based upper House is Parliament’s best defence in the dynamic that exists between Parliament and government...part of the variation of the Westminster system that we benefit from.’³⁶⁵ After reminding members that there are ‘very good arguments put to suggest that a proportional representation election is a more valid basis for representation than single-vacancy election,’³⁶⁶ Dermer sought to identify the main reasons for the unusual outcome when compared to that of the House of

³⁶³ For the assumption of seats on 22 May 2009.

³⁶⁴ See Harry Phillips (2009), ‘The 2008 Western Australian State Election: The Snap Poll Blunder’, *Australasian Parliamentary Review*, Autumn, Vol. 24, No. 1, p. 238.

³⁶⁵ LC Debates, 11 March 2009, p. 1581.

³⁶⁶ *ibid*, p. 1580.

government. He recognised the ‘extraordinary campaign of the National Party’ with its royalties for region policy as well as their success in gaining a public perception as a separate entity from the Liberal Party. Importantly, too, Dermer attributed part of the National Party result to the ‘malapportionment’ factor whereby:

*one-quarter of the population that lives outside the metropolitan area is represented by one half of the members, and the three-quarters of the population that lives in the metropolitan area is represented by the other half of the members....an explanation for why the National Party will have five members, when its overall state-wide proportion would suggest that it should have two members.*³⁶⁷

Another key feature of the 2008 election was the first legal challenge to an upper House result since the adoption of proportional representation in 1987. An order by the Court of Disputed Returns for another election could involve a total region rather than a single district, and on 8 December 2008 Anthony Fels, the unsuccessful Family First candidate for the Agricultural Region, lodged a petition challenging the election of the Nationals’ Mia Davies. Fels claimed that the 5,405 ballot papers within the Central Wheatbelt District were delivered in unsealed ballot boxes and packages, and that Davies’ candidature and post-election employment was variously in breach of the *Constitution Acts Amendment Act 1899*, and the *Electoral Act 1907* together with its regulations.³⁶⁸ Davies had reportedly earlier sought advice on the matter and been informed by then Department of the Premier and Cabinet Director Mal Wauchope that she was free to assume her post.

On 4 December 2008 the Legislative Assembly had concurred with a motion in the Council that the relevant section 38 [of the *Constitution Acts Amendment Act 1899*] ‘be disregarded’ in the case of Mia Davies, enabling her to be re-instated as the member elect.³⁶⁹ Interestingly, the Court of Disputed Returns adjudication frankly stated that ‘read literally, the resolution of the Legislative Council, with which the Legislative Assembly concurred, does not make sense’.³⁷⁰ Eventually though, Fels’ petition was dismissed on a technicality with the Nationals holding the Agricultural Region seat, an obvious relief for the youthful Davies. Of some comfort to the Electoral Commission was that the distribution of surplus votes according to the newly adopted Weighted Inclusive Gregory Method had worked smoothly.

10.3 Candidate Centred Voting System

One of the key attractions of STV-PR is that it was predicated on the capacity of the voter to choose individual candidates. It is designed to select candidates in order of merit and to thereby minimise the influence of political parties in this process. The impressive list of advocates of STV-PR, from John Stuart Mill onwards, found this feature to be particularly attractive. For instance, it was said of the notable Tasmanian PR supporter Andrew Inglis Clark that:

he appear[ed] to have recognised fully that the single transferable vote electoral system would work against political parties and would enable the

³⁶⁷ Ibid, pp. 1581–1582.

³⁶⁸ See Petition, Hon. Anthony Fels, *Government Gazette*, WA, 20 January 2009, pp. 137–139.

³⁶⁹ See LA Debates, 4 December 2008, pp. 1001–1007. See also LC Debates, 3 December 2008, pp. 824–831.

³⁷⁰ Fels v Davies [2009] WASC 138, p. 7.

*individual to enjoy the broader scope for pursuing his/her own interest in finding parliamentary representation.*³⁷¹

This ‘pride of place’ given to the so called rational individualism of the single transferable vote has even given rise to images of a political market place. The description unfolds in the following terms:

*The individual voter has, in effect, a unit of political currency which the voter controls until it is finally spent. If the voter casts a vote (attempts to spend a “political dollar”) on a candidate who is unsuccessful, the vote is refunded to the voter to spend again. This continues until ultimately either the voter gives his/her vote to the last successful candidate or supports the last losing candidate. No intermediary such as a political party has control of this vote at any point until it is finally spent. The conscience of the individual and his/her preferences alone determine how the political currency of the vote is to be spent.*³⁷²

Although the advocates of STV-PR have usually given centrality to candidate choice, the legislation in Western Australia and other jurisdictions (see Appendix Two) militated against this feature of the system being operative. The 1987 introduction of STV-PR in Western Australia was very closely modelled on the 1984 Senate Gregory Inclusive schedule, which maintained the opportunity of political parties to group their candidates under their party label in a pre-determined order. Whilst voters, in theory, had the scope to distribute their preferences in their own order of choice, they could also vote ‘above the line’ by designating a mere ‘1’, which effectively meant in practice that an elector was voting for the political party nominated plus the registered preference schedule of that political party. Above 90 per cent of electors had consistently voted ‘above the line’, meaning that Western Australia had adopted a political party dominated voting mechanism.

While it should be recognised that such a system had given political parties scope to facilitate representation to particular groups in the society (such as women or ethnic groups), Western Australia had only slightly modified the Senate STV-PR (Gregory Inclusive) law to give electors the option of voting ‘beside the line’ rather than ‘above the line’. This would minimise the percentage of informal votes, but it retained the political party dominance of the mechanism with their capacity to both determine the order of candidates on the ballot paper and register the party preference pattern with the WAEC.

The COG sought to break the stranglehold of the political parties with the debunking of ‘beside the line’ voting and the choice of an optional expression of preferences of candidates in party groupings. To maximise the candidate centred STV-PR formula the Robson candidate rotation system was also sought by the COG. Not surprisingly, there was no legislative response after the Joint Parliamentary Committee on the Commission of Government recommendations rejected the innovations to the existing STV-PR.

The determination of the political parties to maintain ticket voting meant that STV-PR in Western Australia was not operating in the candidate centred mode that its original promoters had envisaged. There have been some constant variations in the use of

³⁷¹ R.A. Herr, ‘Hare-Clark: The Electoral Legacy’, in Marcus Haward and James Warden (1995) (eds), *An Australian Democrat: The Life, Work and Consequences of Andrew Inglis Clark*, Hobart: Centre for Tasmanian Studies, p. 183.

³⁷² See Herr, ‘Hare-Clark: The Electoral Legacy’, p. 184.

ticket voting between the supporters of major and minor parties. At the 2005 election, Labor and Liberal voters in each region regularly used the ticket option on some 97 per cent to 98 per cent of occasions, whereas voters for Greens WA, the Australian Democrats, Family First, Christian Democrats, the New Country Party, One Nation, the Fremantle Hospital Support Group and Independent Groupings were less likely to ticket vote, frequently at a rate below 90 per cent. In 2008 similar patterns emerged with the State-wide ticket vote at 96 per cent. This was virtually the same as 2005 which nevertheless was a 5 per cent rise from 1989. Liberal voters in all six regions were above 97 per cent with Labor voters only falling below that reading in the Agricultural region with a high 95 per cent figure. National Party voters were a few percentage points lower with their use of ticket voting but higher than the Citizens Electoral Council and Christian Democrat supporters. The Greens WA ticket vote percentage was about 90 per cent in every region with Family First recording a consistent 92 or 93 per cent except for East Metropolitan with an 85 per cent figure. One Nation had a 83 per cent figure in East Metropolitan but in other regions it was about 88 per cent.³⁷³ Broadly, though, it could be speculated that minor party supporters, and particularly Independent voters, were both more fluid in their preference patterns and more candidate centred in their voting behaviour. It was still a far cry from candidate centred voting.

The opportunity to register only one schedule of preferences with the WAEC, unlike the 2006 Victorian upper House provision for three registered preference schedules, is another explanation for the different party rates of ticket voting. To date there has been no legislative move to introduce a reform instituted in New South Wales ahead of the 2003 election. In New South Wales, voters still have the option of simply placing '1' in a party box, however, this vote would flow only to candidates listed for the specified party. The vote 'exhausts' rather than flows on to other parties in accordance with a registered group. If this option is chosen it can lead to the vote becoming exhausted and failing to contribute to any candidate being elected. Voters, too, are given another option in NSW, which is to rank order the party boxes appearing above the line, in which case preferences flow accordingly, rather than in concert with deals done by parties. These options do not preclude voters for the Legislative Council indicating their preferences between candidates by choosing the below-the-line method. This is the traditional form of STV-PR, whereby voters can rank candidates in any order they please, disregarding the order in which they appear on party lists and voting across party lists if desired. In this form in New South Wales, voters must only rank order a minimum of 15 candidates to cast a valid vote. This partial preferential system was the basis of the recommendation made in 1995 by the COG in Western Australia.

By 1995 there had developed a realisation that STV-PR with party list voting was a far cry from the version of PR which has emphasised individual candidates. Campaigns for the seats in a region were being conducted on a party basis. Just occasionally, though, the primary votes of a candidate who is ranked down the party list can be significant in a close contest, leading to the election of a member. Arguably, this was the case for the Hon Barry House in 2008 when he was ranked number three in the Liberal Party list. Only a handful of personal number one votes crucially helped him to take the sixth seat for the South West Region. One outcome of this result was the elevation of Barry House, first elected in a by-election in 1987 for

³⁷³ See Antony Green (2009), 2008 Western Australian Election, 6 September 2008: Analysis of Results, Report prepared for Western Australian Parliamentary Library, pp. 36–43.

the South-West Province (before the introduction of PR), to be President of the Legislative Council. Nevertheless the earlier prediction that MLCs may lose their close links with their electorates was perhaps being realised. Margaret McAleer, the first Liberal party politician to sit in the Legislative Council in 1974 and who traversed the introduction of multi-member PR in 1989 soon developed reservations about the system. Before her death in 1999, McAleer had indicated that the larger regional electorates militated against her belief ‘that parliamentarians should be tied quite closely and firmly to the electorate... [b]ecause one is spread so thin one misses the contact with individuals, schools, organisations and whole communities that I once had’.³⁷⁴

Phillip Pental, a Liberal MLC from 1980 to 1993, was elected before PR but then held his seat with its introduction, observed that PR changes the party dynamics as it became imperative for each member to ensure that their respective political party registered them in a favourable position on the party list for their region.³⁷⁵ Maintaining individual links with the electorate tended to become a secondary consideration and MLCs could readily become more remote from their electorates. Pental resigned from the Legislative Council and successfully won the seat of South Perth in the Legislative Assembly at the 1993 State election for the Liberal Party. Later, in 1995, he became an Independent and successfully retained the single member constituency of South Perth at the 1996 and 2001 polls. Pental conceded that the introduction of PR in the Legislation Council has contributed to strengthening its role as a ‘house of review’ with an expanded committee system and is on record as suggesting that the both houses should be renamed the House of Review, and the House of Assembly.³⁷⁶

10.4 PR and Women

Another feature of PR, particularly in its literature, were numerous references the election of women. As early as 1898, Catherine Helen Spence campaigned for PR and linked its operation to new voters: the women of South Australia (and New Zealand), who could change the ‘neck and neck’ party competition for ‘all and nothing’, to peaceful co-operation under a PR law.³⁷⁷ Furthermore, the peak woman advocacy body between the wars, the Australian Federation of Women Voters, patiently pursued the goal of PR.³⁷⁸ However, the *Hansard* record of debates in Western Australia did not encompass the proposition that women would be more likely to be elected with PR formulas, although Edith Cowan in 1921 had included PR in her election platform.

For nearly two decades electoral law research in other jurisdictions has suggested that PR with multi-member constituencies facilitates the election of women ahead of single-member formulas such as plurality and the alternative or preference vote. One researcher, Rob Salmond, who examined returns covering 21 advanced industrialised

³⁷⁴ See Margaret McAleer, ‘Reflections’, in David Black and Harry Phillips (2000), *Making a Difference: Women in the Western Australian Parliament 1921–1999*, Perth: Parliament of Western Australia, p. 99.

³⁷⁵ Interview with Hon. Phillip Pental, 16 June 2006.

³⁷⁶ *ibid.*

³⁷⁷ Marian Sawyer (2001), ‘A Matter of Simple Justice? Women and Parliamentary Representation’, in Marian Sawyer and Gianni Zappala (eds), *Speaking for the People: Representation in Australian Politics*, Carlton South: Melbourne University Press, p. 173.

³⁷⁸ *ibid.*, p. 173.

democracies over a period of 50 years with data from 281 elections, contended that electoral systems indicated that the choice of electoral system does matter for women's representation in Parliaments but not as substantially as much of the earlier research has suggested. Nor did the gradual increase in women's representation have a linear pattern.³⁷⁹ Some of the associated reasoning as Reynolds has argued is that any single member district system 'creates an incentive for party bosses to stand lowest-common-denominator candidates in geographical districts: these rarely turn out to be women or minorities'.³⁸⁰ A related claim, as presented by Salmond holds:

*...that single member district elections tend to produce more-adversarial district level campaigning than PR elections. Indeed, in order to win a local single member district election, a candidate must ensure that all other candidates are losers. Not so under PR rules. Men, some argue, are better-or at least accustomed to this gladiatorial type of political battle than women making them (all else being equal)) more attractive candidates for parties in single member district systems.*³⁸¹

Marian Sawer, an Australia electoral systems expert, has observed how:

*the disadvantage experienced by women in becoming elected representatives under single-member systems is so consistent as to suggest that the choice of such an electoral system is a form of indirect discrimination against women in public life.*³⁸²

For Sawer, this appears to be in contravention of Article 25 of the International Article of the UN Convention on the Elimination of All Forms of Discrimination against Women.³⁸³ Further, 'women are particularly disadvantaged in Victoria, Queensland and the Northern Territory, where there is no House of Parliament elected by proportional representation'.³⁸⁴

The essence of Sawer's claim is that in single-member systems, political parties are more likely to pre-select a 'common denominator', whereas under multi-member PR, parties are more likely to select a balanced ticket which mirrors to some extent the different elements of the electorate. Sawer supported her claim by citing the opinion of British political scientist Vernon Bogdanor, who has contended that:

*...under a single-member constituency system it is the presence of a candidate who deviates from the identikit norm (whether female or black) that is noticed, in a party list system it is the absence of a woman, the failure to present a balanced ticket, that will be commented upon and resented.*³⁸⁵

It is conceded that although other socio-economic factors in the political culture, such as the proportion of women in the paid work force, or the proportion of women with

³⁷⁹ Rob Salmond (2006), 'Proportional Representation and Female Parliaments', *Legislative Studies Quarterly*, Vol. XXX1, No. 2, May, p. 176.

³⁸⁰ Cited in Rob Salmond (2006), 'Proportional Representation and Female Parliaments', *Legislative Studies Quarterly*, Vol. XXX1, No.2, May, p. 177.

³⁸¹ Rob Salmond (2006), 'Proportional Representation and Female Parliaments', *Legislative Studies Quarterly*, Vol. XXX1, No.2, May, p. 177.

³⁸² Marian Sawer (1997), 'Loading the Dice: The Impact of Electoral Systems on Women,' <http://www.wel.org.au/issues/constit/mosdice.htm> (18/04/2006), p. 1.

³⁸³ *ibid.*

³⁸⁴ *Ibid.* From November 2006 Legislative Council elections in Victoria have been conducted under multi-member PR STV.

³⁸⁵ Vernon Bogdanor (1984), *What is Proportional Representation? A Guide to the Issues*, London: Martin Robertson, p. 115.

higher education are significant variables, the electoral system is a predictor of the level of parliamentary representation. According to Sawer, 'all the countries in the world where women currently form over 30 per cent of parliamentarians (for example Sweden, Norway, Denmark, Finland and the Netherlands) have electoral systems based on proportional representation'.³⁸⁶

What, though, has been the situation in Western Australia? Its Parliament has a history of notable 'firsts' for women. In 1921 Edith Cowan, a PR advocate, was the first woman elected to an Australia Parliament and in 1949 Florence Cardell-Oliver was the first woman to become a Cabinet Minister. In 1990 Dr Carmen Lawrence became the first woman Premier of an Australian State and in 2001, Carol Martin was the first Aboriginal woman to be elected to an Australian Parliament. Of course each of these 'firsts' were associated with women elected to the Legislative Assembly, with its single member preference (alternative) voting system. No quarter was given these pioneer women in securing such posts, indeed electing women to the Western Australian Parliament had been a rarity, particularly for the Legislative Council.

Before the introduction of PR for the 1989 election in the Legislative Council only six women had gained election to the Legislative Council. Under PR the ratio of women elected to that chamber has steadily increased, rising from 5 in 1989, down to 4 in 1993, then a rise to 7 in 1996. On that occasion one woman member was an Australian Democrat and the other a Greens (WA) representative. PR's propensity to facilitate 'minor' party membership was apparently working to enhance the membership of women. In 2001 the number of women elected to the upper House jumped to 10, of whom 3 were Greens (WA) members.³⁸⁷ Following the 2005 election the number of women in the 34 member upper house had reached 12 (6 ALP, 5 Liberal Party and 1 from the Greens WA). After the poll for the 2009 Legislative the number of women in the Legislative Council had further risen to 16, (6 ALP, 5 Liberal, 4 Greens (WA) and 2 National) in the expanded 36 member chamber. This meant that the percentage of women in this Chamber at 44 per cent had become the highest in any Australian legislature. At the same time the percentage of women in the Legislative Assembly, or lower house, was only 18.6 per cent, the lowest of all Australian jurisdictions.³⁸⁸

It is tempting to subscribe to the thesis that PR has been an enabling factor to increase the ratio of women for the Legislative Council. At the same time it is necessary to recognise the possible influence of the Labor Party's adoption of a quota system (with women as candidates for 35 per cent of winnable seats) as the concentration of this increase was more concentrated with the Labor Party. However, as the number of women Liberal Party MLCs had risen to 6 by 2005 and it was still 5 in 2009. In this election two seats were also won by National Party women. In modern politics the balanced ticket theory for PR appears to have validity as an inspection of the party tickets does confirm that women are invariably being included in the respective party

³⁸⁶ Sawer (1997), 'Loading the Dice', p. 6. Since that observation PR was introduced in Victoria.

³⁸⁷ Hon Lyn MacLaren filled a casual vacancy in the Legislative Council from 15 February 2005 to 21 May 2005. This increased the number of women for the Greens (WA) from 3 to 4 as Lyn MacLaren was elected due the resignation of Greens WA representative Hon. Jim Scott (South Metropolitan) on 26 January 2005.

³⁸⁸ Janet Wilson and David Black (2009), 'Women parliamentarians in Australia 1921 2009', Background Note. Department of Parliamentary Services, Parliament of Australia, p. 45. This percentage was increased to 47.2 per cent on 22 March 2010 when Linda Savage (Labor) filled a casual vacancy with the death of Jock Ferguson (Labor) on 13 February 2010.

lists for each Legislative Council election. At the top of the ratio of women members are the Greens WA with 3 of the 4 (or 75 per cent) MLC's from that party being women. It must also be observed that the Greens have long advocated proportional representation throughout Australia as a fairer principle of representation for both lower and upper houses. They have also strongly espoused equality for women in all spheres of Australian society.

CHAPTER 11 CONCLUDING OBSERVATIONS

When representative government was first established in the Legislative Council 1870, the single or double member plurality system (known as first past the post) was implemented. The debates in the legislature suggest that such a voting system was assumed, although at that time the traditional British model had begun to come under review, particularly due to the writings of John Stuart Mill. In Western Australia there was newspaper evidence to suggest that Mill's promulgation of PR was known to the colonists. However, a host of other electoral law considerations dominated the political agenda such as the franchise, the secret ballot, district boundaries, voter registration and plural voting. At federation, though, there was consideration of PR for the newly created Senate. Tasmania from 1896, had experimented with PR before its final state-wide adoption in 1907. At the time there were numerous scholars in the various colonies who were advocating various PR formulas for elections in the various Australian jurisdictions. In Western Australia a Select Committee of the Legislative Assembly in 1907 was required to consider the merits of PR, specifically the single transferable vote (STV) method. With the expertise of Chief Electoral Officer Ernst Gottfried being very important to the exercise STV-PR was reviewed but the final recommendation was instead for the adoption of preference voting (also known as the alternative vote). At first the preference vote was implemented with optional preferences, but by 1911 the distribution of preferences was made compulsory. With this voting method Western Australia led the way for the gradual spread of preference voting for all the lower houses in mainland Australia. However, with respect to proportional representation the State was to be a laggard (see Appendix Two).

While PR was sometimes mentioned in Parliament, particularly from the Opposition benches, it was not formally debated at length until 1912. In August of that year Douglas Gawler, a newly elected Liberal Party MLC and lawyer, moved for the adoption of the Hare-Spence form of PR for the Legislative Council. It was passed on the voices but a subsequent STV-PR Bill was not tabled in the Legislative Assembly despite having received passage in the Legislative Council. Gawler was said to be the 'Father of PR' in Western Australia but disappointed some of his colleagues by failing to establish a PR Society for the State. The quest for PR tended to be left to some occasional calls for its consideration by members who were not leaders of the political parties. In 1921 Edith Cowan, the first woman elected to an Australian parliament, proposed PR in her Maiden (Inaugural) Speech. Two years later Edwin Corboy, the youngest member ever elected to the Western Australian Parliament, was also on record as urging PR for both Houses of the legislature. So whilst PR was said to be 'on the horizon' the cause was not adopted by prominent political party leaders of this era.

For a long period in Western Australian politics PR was rarely contemplated, although it was mentioned in the literature as continuing to have its advocates for the Commonwealth Senate. The adoption of PR in for the Senate in 1948 did not prompt any public legislative consideration in Western Australia. It was not until the mid 1970s and early 1980s that PR was given regular consideration in the Parliament. South Australia had moved in 1982 to have STV-PR for its upper House as had New South Wales four years earlier. Labor members began to mention its merits mainly in relation to its introduction in the Legislative Council, often as a means of securing 'one vote one value', as state-wide PR with one large constituency would effectively

mean that the equitable vote platform could be achieved for one chamber. The actual adoption of PR for the Legislative Council took place in 1987 when the Labor Party combined with the National Party to secure its passage. The Liberal Party opposed the move and had resolutely opposed many other changes to the electoral arrangements for the upper House. It was vociferous in attempting to maintain the election of only half of the Legislative Council at one time. Finally, though, a four year fixed term was adopted for the Legislative Council with all MLCs to commence their terms for each parliament on 22 May. Members of the Legislative Assembly were to be elected for a maximum of four years. From 1989 the elections for each chamber have taken place on the same day but the members in the Legislative Assembly have assumed their seats at different times from the set date for members of the Legislative Council.

PR was not implemented on a state-wide single electorate basis as was the case with the Senate, in New South Wales or South Australia, but rather in conjunction with three multi-member metropolitan regions (North, South and East) and three multi-member country regions (South West, Agricultural, Mining and Pastoral). National Party member, Matt Stephens, had been at the forefront of the regional PR schema which maintained rural one-weighting as both the metropolitan and country representation was set at 17 seats. This was despite the fact that some 70 per cent of electors resided in the metropolitan regions. Stephens had long spoken of the Legislative Council being a 'house of review' akin to how the Senate had evolved since the implementation of PR for that chamber. Some observers also thought that Stephens could foresee that under PR there was an excellent prospect of the National Party holding the 'balance of power' in the Legislative Council with just two or three seats.

The STV-PR schema was closely modelled on the version which had been adopted for the Senate in 1984, which kept to a minimum the percentage of informal votes which had often been a problem likely to emerge with the PR voting system. However, Western Australia made its own modifications. The ballot paper was divided vertically instead of horizontally (as for the Senate), with voting for groups on the left of the ballot paper. Also Western Australia only permitted political parties to lodge a single preference ticket with the Western Australian Electoral Commission (WAEC) partly because there were no Australian Democrats in the Legislative Council at the time to possibly force a concession of multiple tickets as had been the case in the Commonwealth Senate. From the first PR election in 1989 onwards, the voting public opted for the ticket version of casting a ballot. This was above 95 per cent for the Labor, Liberal and National Parties, but ticket voting was commonly above 90 cent of ballots cast for the Greens (WA), the Australian Democrats and One Nation. One advantage of the ticket voting option was the very low percentage of informal votes that had characterised other forms of PR in other jurisdictions. A recommendation by the Commission on Government (COG) in 1995 to replace ticket voting by the so called 'Robson Rotation' (as used in Tasmania) was not accepted by either the Government or Opposition of the day.

As predicted, the application of PR did facilitate the election of so termed minor party candidates. Seats between the major parties broadly corresponded to the percentage of votes achieved by the respective parties. However, on a strict proportionality basis (with the percentage of the vote being similar to the percentage of the seats) there were some aberrations, particularly for the last elected candidate in each region. Inspection of the votes has indicated that vote switching between the two Houses has

not been as prevalent as may have been expected. Nor has the introduction of PR in Western Australia prompted on a continuous basis the registration of political parties to restrict the fielding of candidates for the Legislative Council. It is widely accepted that political parties need to simultaneously offer candidates in the Legislative Assembly if for no other reason that 'how to vote cards' need to be distributed to distributed to potential votes to maximise the Legislative Council party vote.

Detailed analysis of the transfer of preference votes in accordance with what is known as the Inclusive Gregory method had revealed some mathematical inconsistencies. A proposal to hopefully overcome this problem, known as the Weighted Inclusive Gregory Method, was passed by the Parliament in 2006. Again, as predicted, the introduction of PR contributed to the loss of an historic Coalition party majority in the Legislative Council. Arguably this has enhanced the 'house of review' function of the upper House of which an expansion in the role of committees has been a part. As such PR for the Legislative Council was commended by the 'WA Inc' Royal Commission and the subsequent COG.

It appears that the existing STV-PR model is to remain as the voting system for the foreseeable future in the Western Australian Legislative Council. Interestingly, though, STV-PR only survived one election in 2007 for local government multi-member wards. As mentioned one important impact of PR has been a greater measure of proportionality in terms of political party seats as compared with the ratio of votes secured by the same parties. This has resulted in the achievement of minority party representation, with the Australian Democrats, Greens (WA) and One Nation able to gain parliamentary seats under PR in the upper House. Success has eluded the same parties in the Legislative Assembly under a different preference (alternative) vote system with the exception of the election of a Green (WA) candidate (Adele Carles) in by-election for the seat of Fremantle in May 2009.

Whilst PR does lower the electoral threshold enabling the so-termed minor parties a greater chance of electoral success, it should be recognised that perfect proportionality has not been an outcome. A comparatively recent measure of proportionately, known as the Michael Gallagher Squares Index, shows that a perfect 1.00 has not been achieved in Western Australia although such a reading has been nearly acquired in a jurisdiction such as New Zealand. The successive calculations for Legislative Council elections in Western Australia were, as expected, similar to the Australian Senate and better than for the Legislative Assembly. The Legislative Council readings, with the Legislative Assembly in brackets have been: 1989 – 6.83 (15.40); 1993 – 5.56 (7.22); 1996 – 8.44 (10.10); 2001 – 5.94 (17.25); 2005 – 6.39 (11.44) and 2008 – 8.45 (12.18)³⁸⁹ It may have been expected that a better reading, closer to 1.00, may have occurred in 2008 when the number of Legislative Council seats had increased from 34 to 36, when totaled across the regions. Firstly, though, in the 2008 poll all regions had six seats, whereas in previous elections there were two regions which had seven seats which meant a lower percentage of the vote was necessary to be elected in these regions (North Metropolitan and South West). Secondly, the participation in the electoral contest of minor parties such Family First, the Christian Democrats and the

³⁸⁹ See Appendix Three-Outcomes at Elections of the Western Australian Legislative Council Since 1989 and Norm Kelly (2012), *Directions in Australian Electoral Reform: Professionalism and Partisanship in Electoral Management*, Canberra: ANU Press, Appendix C to D, pp. 163–181.

Citizen's Electoral Council were 'across the board' parties only achieving a low percentage of votes far below the necessary quota in each region. In addition the Greens WA party suffers from its support being generally broad across the State regularly failing to achieve a quota. Nor were these parties able to achieve a high ratio of surplus votes from the major parties to unexpectedly achieve a quota. By contrast the National Party, with a concentrated vote in the Agricultural Region, was able to win three of the six region seats.

At the same time the operation of the STV-PR mechanism has departed from the hopes of its founders as being candidate focused. Ticket voting has been feature with only about 5 per cent of electors indicating a full preference schedule at the polling booth. This means that election to the Legislative Council is almost totally dependent upon party members securing a 'winnable spot' of the party ticket. Intra-party frictions arise from the quest for the most favourable positions on the party ticket. There are often disagreements, too, about the allocation of party funds for election campaigns. If a Minister, elected under PR, holds a region seat that member can rarely perform an 'equal share' of constituency work. At the same time it can be asserted that the current version of PR has facilitated the election of more women to the Legislative Council as political parties are obliged to select 'balanced tickets'. Of course this factor has to be understood in the context of more women being elected to Parliament and playing a more prominent role in contemporary public life.

John Stuart Mill considered that STV-PR had been one the greatest electoral inventions but assumed that its implementation would be associated with a greater level of public understanding of its operation. Surveys, rarely conducted on this matter, reveal that the public do not believe the workings of PR are well understood. Individual voters are not confident about being able to explain how PR works. There is little doubt there is inadequate public education about how the PR voting system

APPENDIX ONE

Chronology of Proportional Representation in Western Australia

- 1870 (10 August): Letter to Editor of *The Inquirer* seeking adoption of the proportional representation voting system as promulgated by John Stuart Mill being the single transferable vote-STV, for the Legislative Council.
- 1907: Proportional Representation considered by a Legislative Assembly Select Committee on the Electoral Act. Chief Electoral Officer, Ernest Gottfried Stenberg prepared a booklet on proportional representation and other voting systems. The Attorney General suggested PR was on the horizon.
- 1910 (15 December): Opposition Leader and future Premier, John Scaddan (Labor), raised the prospect of proportional representation in the Western Australian Parliament.
- 1912 (6 August): Douglas Gawler (MLC) (Liberal) moved a motion for the adoption of proportional representation (Hare/Spence) for the Legislative Council. Motion passed on the voices 28 August 1912.
- 1912 (10 September): Jabez Dodd (MLC) (Labor), introduced a proportional representation Bill for the Legislative Council. Bill passed the Legislative Council (20 November) but was not tabled in the Legislative Assembly.
- 1921 (21 July): Edith Cowan (MLA) (Nationalist), proposed proportional representation for the Western Australian Parliament in her Maiden Speech.
- 1923 (25 January): Edwin Corboy (MLA) (Labor), proposed that proportional representation be incorporated into a redistribution of seats for the Legislative Assembly (Defeated 25 January 1923).
- 1977 (17 August): Roy Cloughton (MLC) (Labor) unsuccessfully moved an Address-in-Reply amendment to seek electoral reform including proportional representation in the Legislative Council.
- 1977 (2 November) Robert (Bob) Hetherington (MLC) (Labor) introduced a Private Members' Bill for state-wide proportional representation (List form) for the Legislative Council (Adjourned).
- 1978 (20 September) Colin Jamieson (MLA) (Labor) introduced a Private Member's Acts Amendment (Proportional Representation) Bill for state-wide proportional representation (List form) for the Legislative Council.
- 1979 (22 August) Matt Stephens (MLA) (National Party) moved for the appointment of a Select Committee on parliamentary representation, including proportional representation for the Legislative Council on a state-wide or regional basis. Defeated 6 December 1979.
- 1982 (13 May) Motion by Matt Stephens (MLA) (National Party) for a referendum (to be held conjointly with the next general election) on proportional representation (metropolitan 18 seats, country 16 seats) for the Legislative Council, seconded by Arthur Tonkin (MLA) (Labor). Passed Legislative Assembly on 18 November 1982, but lapsed.

- 1983 (3 August): Acts Amendment (Constitution and Electoral Bill) moved by Arthur Tonkin (MLA) (Labor) for proportional representation (STV) for single state-wide electorate in the Legislative Council with MLC's reduced from 32 to 22 seats.
- 1984 (22 August): Parliament (Legislative Council Representation and Elections) Bill moved by Matt Stephens (MLA) (National Party) for proportional representation (STV) for the Legislative Council (3 regions-Metropolitan 16 seats, Country 4 and 12, half house elections. Bill lapsed.
- 1984 (19 September), Acts Amendment (Fair Representation) Bill moved by Arthur Tonkin (MLA) (Labor) for proportional representation (STV) for the Legislative Council (4 regions-32 members) and half house elections. Defeated in Legislative Council on 5 November 1984.
- 1986 (8 July) Acts Amendment (Electoral Reform) Bill introduced by Mal. Bryce (MLA) (Labor). Bill passed Legislative Council on 9 June 1987. Legislative Council to be elected by proportional representation (STV) in 6 multi-member regions contiguous with Legislative Assembly districts with all MLCs retiring after four year fixed terms. Country Regions were Agriculture 5 seats, Mining and Pastoral 5 seats and South West 7 seats. Metropolitan Regions were East Metropolitan 5 seats, South Metropolitan 5 seats and North Metropolitan 7 seats. Political party names to appear on ballot papers with option of ticket voting.
- 1992 Royal Commission into Commercial Activities of Government and Other Matters (WA Inc. Royal Commission), recommended that the Commission on Government review the electoral system for the Legislative Council. Sentiments were favourable to PR in the Legislative Council as 'house of review'.
- 1995 Draft Local Government Act included the introduction of proportional representation for multi-member local government wards to replace preferential voting. However, plurality (first past the post) was introduced for all local government elections.
- 1995 Commission on Government recommended that the Legislative Council's role should be recognised as that of a 'house of review' and an appropriate electoral system should be adopted to enhance this role. A system of proportional representation with optional expression of preferences should be introduced accompanied by the abolition of ticket voting. The Robson Rotation method for designing ballot papers should be introduced. State-wide proportional representation was rejected but the existing regions should be abolished and replaced by five, seven member electoral regions. However, there should be no change to the existing method of filling casual vacancies in the Legislative Council by the method of recounting ballots from the previous general election.
- 1995 Joint Parliamentary Standing Committee on the Commission on Government supported the 'house of review' role for the Legislative Council It recommended the continuation of proportional representation with the existing six regions. Ticket voting was to be retained but Robson rotation was not favoured.
- 2003 (20 November): Electoral Affairs Minister, Jim McGinty (MLA) (Labor), in the Electoral and Constitutional Amendment Bill 2003, proposes the introduction of the Weighted Inclusive Gregory Method in place of the existing Inclusive Gregory Method. Bill lapsed.

- 2005 (31 March): The proportional representation voting system was retained for the Legislative Council but from 2009 there would be six multi-member constituencies with six members elected from each region. Eighteen members from three regions would be from the Metropolitan area and eighteen members from three regions would be from the country areas.
- 2006 (23 August): The implementation of the Weighted Inclusive Gregory Method of surplus votes for STV-PR transfer in place of the Inclusive Gregory Method for the Legislative Council.
- 2006 (27 September): Introduction of the Weighted Inclusive Gregory Method of surplus vote transfer for STV-PR multi-member wards in local government. Use of the preference (alternative) vote for single member wards.
- 2009 (23 August): Repeal of proportional representation for local government multi-member wards. All local government elections for either single wards or multi-member wards to be conducted with plurality (or first past the post) voting system.

APPENDIX TWO

Proportional Representation in Australian Jurisdictions

| Jurisdiction | Chamber | Name of system | Date of introduction of current system | Number of members | Above the line voting | Vote allocation | Robson rotation | Method of distributing surpluses |
|------------------------------|----------------------|---|--|--|-----------------------|-----------------------------|-----------------|--|
| Commonwealth | Senate | Senate system | 1949 | 76 elected from 8 electoral districts | yes | full preferential voting | no | Inclusive Gregory method from 1984, previously random sampling |
| Australian Capital Territory | Legislative Assembly | Hare-Clark | 1993 ¹ | 17 elected from 3 electorates | no | minimum preferential young | yes | Gregory method |
| New South Wales | Legislative Council | Optional Preferential Proportional Representation | 1978 ² | 42 members with the state serving as a single constituency | yes | minimum preferential voting | no | Random Sampling method |
| South Australia | Legislative Council | Modified Hare-Clark | 1982 ³ | 22 members with the state serving as a single constituency | yes | full preferential voting | no | Inclusive Gregory method |
| Tasmania | Legislative Assembly | Hare-Clark | 1907 | 24 members elected from 5 electoral districts | no | minimum preferential voting | yes | Gregory method |
| Western Australia | Legislative Council | Proportional Representation | 1989 | 34 members elected from 6 electoral regions | yes | full preferential voting | no | Inclusive Gregory method |
| Western Australia | Legislative Council | Proportional Representation | 2005 | 36 members elected from 6 electoral regions | yes | full preferential voting | no | Weighted Inclusive Gregory method (2007) |

¹ 1989 D'Hont form of STV-PR.

² 1918–1926 STV-PR Legislative Assembly.

³ Modified list form of PR in Legislative Council.

Source: Narelle Miragliotta (2002). *Determining the Result: Transferring Surplus Votes in the Western Australian Legislative Council*, Perth: Western Australian Electoral Commission.

APPENDIX THREE

Outcomes at Elections of the Western Australia Legislative Council since 1989

| Election | 1989 | | Seats Won | 1993 | | Seats won | 1996 | | Seats won | 2001 | | Seats won | 2005 | | Seats won |
|--------------------------|---------|-----------------------|-----------|-----------------------|-----------------------|-----------|-----------------------|-----------------------|-----------|-----------------------|-----------------------|-----------|-----------|-------|-----------|
| | Party | First preference vote | | First preference vote | First preference vote | | First preference vote | First preference vote | | First preference vote | First preference vote | | | | |
| | (n) | (%) | (%) | (n) | (%) | (%) | (n) | (%) | (%) | (n) | (%) | (%) | (n) | (%) | (%) |
| Australian Democrats | 28,111 | 3.32 | 0 | 27,640 | 3.01 | 0 | 64,461 | 6.58 | 5.88 | 38,968 | 3.72 | 0.00 | 10,180 | 0.93 | 0 |
| Australian Labor Party | 350,046 | 41.33 | 47.06 | 337,554 | 36.82 | 41.18 | 323,886 | 33.08 | 35.29 | 397,846 | 37.94 | 38.24 | 475,717 | 43.35 | 47.06 |
| Christian Democrats | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | 16,105 | 1.54 | 0.00 | 25,011 | 2.28 | 0 |
| Family First | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | 22,037 | 2.01 | 0 |
| Greens WA | 16,156 | 1.91 | 0 | 47,305 | 5.16 | 2.94 | 54,336 | 5.55 | 8.82 | 83,883 | 8.00 | 14.71 | 82,507 | 7.52 | 5.88 |
| Grey Power | 34,055 | 4.02 | 0 | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a |
| Independents | 14,856 | 1.75 | 0 | 38,304 | 4.18 | 2.94 | 37,236 | 3.80 | 0 | 25,613 | 2.44 | 0 | 12,529 | 1.14 | 0 |
| Liberal Party | 347,665 | 41.05 | 44.12 | 418,039 | 45.60 | 44.12 | 449,799* | 45.94 | 41.18 | 356,126 | 33.96 | 35.29 | 407,306 | 37.12 | 44.12 |
| National Party | 42,338 | 5.00 | 8.82 | 36,614 | 3.99 | 8.82 | 5,087 | 0.52 | 8.82 | 25,204 | 2.40 | 2.94 | 23,985 | 2.19 | 2.94 |
| One Nation Party | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | 103,571 | 9.88 | 8.82 | 17,435 | 1.59 | 0 |
| Others | 13712 | 1.62 | 0 | 11,327 | 1.24 | 0 | 44,357 | 4.53 | 0 | 1,436 | 0.14 | 0 | 13,980 | 1.11 | 0 |
| Public Hospital Group | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | 6,657 | 0.61 | 0 |
| TOTAL FORMAL VOTE | 846,939 | 100.00 | 100.00 | 916,783 | 100.00 | 100.00 | 979,162 | 100.00 | 100.00 | 1,048,752 | 100.00 | 100.00 | 1,259,262 | 96.82 | 100.00 |
| Informal (%) | 2.76 | | | 3.74 | | | 3.01 | | | 2.64 | | | 3.18 | | |
| Ticket Vote (%) | 91.42 | | | 83.41 | | | 92.98 | | | 91.40 | | | 96.06 | | |
| Turnout | 90.92 | | | 93.67 | | | 90.14 | | | 90.70 | | | 90.01 | | |

* At this election the Liberal and National parties ran a joint ticket in the Agricultural and South West regions.

Sources: Narelle Miragliotta (2002) *Determining the result* transferring surplus votes in the Western Australian Legislative Council, Perth: Western Australian Electoral Commission, p. 38 and 2005 State General Election: Results and Statistics (2006), Perth: Western Australian Electoral Commission.

**Outcomes at Elections of the Western Australia Legislative Council since 1989 continued
(2009)³⁹⁰**

| Party | First Preference Vote (n) | First Preference Vote % | Seats Won (n) | Seats Won % |
|----------------------------|------------------------------|----------------------------|------------------|----------------|
| Australian Democrats | – | – | 0 | 0 |
| Australian Labor Party | 404,389 | 36.14 | 11 | 30.56 |
| Christian Democrats | 25,962 | 2.32 | 0 | 0 |
| Family First | 28,149 | 2.52 | 0 | 0 |
| Greens WA | 123,942 | 11.08 | 4 | 11.11 |
| Independents | 16,480 | 1.47 | 0 | 0 |
| Liberal Party | 443,064 | 39.60 | 16 | 44.44 |
| National Party | 59,505 | 5.32 | 5 | 13.89 |
| One Nation Party | 7,012 | 0.61 | 0 | 0 |
| New Country Party | 555 | 0.05 | 0 | 0 |
| Citizens Electoral Council | 2,975 | 0.27 | 0 | 0 |
| Daylight Saving Party | 6,806 | 0.61 | 0 | 0 |
| | | | | |
| Formal Vote | 1,118,839 | 97.17 | | |
| Informal (%) | 2.83 | | | |
| | | | | |
| Ticket Vote (%) | 96.07 | | | |
| | | | | |
| Turnout (%) | 86.55 | | | |

³⁹⁰ Source: See Antony Green (2009), *2008 Western Australian State Election: Analysis of Results*, Perth: Western Australian Parliamentary Library Election Papers Series, No.1/March 2009, pp. 33–47 and *2008 Western Australian General Election: Results and Statistics*, Western Australian Electoral Commission, November 2009, p. 174.

Outcomes: Western Australian Legislative Council elected Members of Parliament from 1989

| Party | 1989 | 1993 | 1997 | 2001 | 2005 | 2009 |
|------------------------|-----------|-----------|-----------|-----------|-----------|-----------|
| Australian Democrats | | | 2 | | | |
| Australian Labor Party | 16 | 14 | 12 | 13 | 16 | 11 |
| Greens (WA) | | 1 | 3 | 5 | 2 | 4 |
| Independents | | 1 | | | | |
| Liberal Party | 15 | 15 | 14 | 12 | 15 | 16 |
| National Party | 3 | 3 | 3 | 1 | 1 | 5 |
| One Nation Party | | | | 3 | | |
| Total | 34 | 34 | 34 | 34 | 34 | 36 |

Outcomes: Gallagher's Least Squares Index³⁹¹

(1.00 deemed as perfect proportionality)

| Year of Election | Legislative Council | Legislative Assembly |
|------------------|---------------------|----------------------|
| 1989 | 6.93 | 15.40 |
| 1993 | 5.56 | 7.22 |
| 1996 | 8.44 | 10.10 |
| 2001 | 5.94 | 17.25 |
| 2005 | 6.39 | 11.44 |
| 2008 | 8.84 | 12.18 |

Senate 2007 – 6.05; 2004 – 8.33; 2001-8.45; 1998 – 7.24; 1996 – 5.53; 1993 – 3.54; 1990 – 5.01; 1987 – 2.93*

* Double dissolution

³⁹¹ See: Norm Kelly (2012), *Directions in Australian Electoral Reform: Professionalism and Partisanship in Electoral Management*, Canberra: ANU Press, Appendix C to D, pp. 163-181.

Outcomes: Western Australian Legislative Council regional party makeup from 1989

| Seats | 1989 | 1993 | 1996 | 2001 | 2005 |
|---|----------------------------------|----------------------------------|--|--|----------------------------------|
| North Metro (7 seats) | ALP 3 Liberal 4 | ALP 2 Liberal 4 Ind 1 | ALP 2 Liberal 3 Greens 1 Dem 1 | ALP 3 Liberal 3 Greens 1 | ALP 3 Liberal 3 Greens 1 |
| East Metro (5 seats) | ALP 3 Liberal 2 | ALP 3 Liberal 2 | ALP 2 Liberal 2 Dem 1 | ALP 3 Liberal 2 | ALP 3 Liberal 2 |
| South Metro (5 seats) | ALP 3 Liberal 2 | ALP 2 Liberal 2 Greens 1 | ALP 2 Liberal 2 Greens 1 | ALP 2 Liberal 2 Greens 1 | ALP 3 Liberal 2 |
| Mining and Pastoral (5 seats) | ALP 3 Liberal 2 | ALP 3 Liberal 2 | ALP 3 Liberal 2 | ALP 2 Liberal 1 Greens 1 One Nation 1 | ALP 3 Liberal 2 |
| Agricultural (5 seats) | ALP 1 Liberal 2 National 2 | ALP 1 Liberal 2 National 2 | ALP 1 Liberal 2 National 2 | ALP 1 Liberal 1 National 1 Greens 1 One Nation 1 | ALP 1 Liberal 3 National 1 |
| South West (7 seats) | ALP 3 Liberal 3 National 1 | ALP 3 Liberal 3 National 1 | ALP 2 Liberal 3 National 1 Greens 1 | ALP 2 Liberal 3 Greens 1 One Nation 1 | ALP 3 Liberal 3 Greens 1 |

**Outcomes: *Western Australian Legislative Council
regional political party composition 2009***

| Seats | 2009 |
|---|--|
| North Metropolitan (6 seats) | ALP 2 Liberal 3 Greens 1 |
| East Metropolitan (6 seats) | ALP 2 Liberal 3 Greens 1 |
| South Metropolitan (6 seats) | ALP 2 Liberal 3 Greens 1 |
| Mining and Pastoral (6 seats) | ALP 2 Liberal 2 National 1 Greens 1 |
| Agricultural (6 seats) | ALP 1 Liberal 2 National 3 |
| South West (6 seats) | ALP 2 Liberal 3 National 1 |
| | 36 seats |

Total Political Party Groupings (2009)

| ALP | Liberal | National | Greens WA |
|------------|----------------|-----------------|------------------|
| 11 | 16 | 5 | 4 |

APPENDIX FOUR

Shorthand Arguments For and Against STV-PR in Western Australia

| FOR | AGAINST |
|---|---|
| <ul style="list-style-type: none"> • The main principle of the voting system, whereby the percentage of seats gained by political parties is comparable to the percentage of seats gained by the same political party, is quite simple. • When party votes have been combined on a State-wide basis there has normally been a broad correspondence between the party voting percentage and the percentage of seats gained by the political party; • Minor parties with wide voting support have been able to achieve representation; • By-elections have not been necessary to fill 'casual vacancies'. • The introduction of the system has enhanced the role of Legislative Council as a House of Review and facilitated the development of a committee system; • The number of informal votes (with ticket voting) has been limited; • Campaigning has necessarily been on a regional basis rather than on a narrower district basis; • Electors, in the view of some, have a greater feeling of political efficacy since they more readily believe their vote and participation will count; and • The system has provided scope for the political parties to gain the election to the Legislative Council for demographic groups lacking representation such as women. | <ul style="list-style-type: none"> • Regional electorates, particularly in the country, are of necessity vast geographic areas making it difficult for members to effectively serve constituents; • Considerable power is given to the political party machine to determine the order in which the names of candidates are listed on the ballot paper; • The ticket voting method has resulted in the STV form of PR becoming in practice a list form of PR; • The transfer of votes formula is difficult to comprehend by party activists and the electorate; • The transfer of votes formula can yield arithmetic flaws; • Some of the results have not been consistent with proportionality principles, particularly for the final candidate elected in a region; • Ministers who represent regions invariably leave a large share of the constituency work to non-Ministers; • Internal party bickering sometimes arises at party pre-selection for ballot positions and decisions to share campaign funds in a multi-member electorate; • There exists a latent fear that PR will cause the number of parties to proliferate; and • It is often difficult for the Government to achieve a majority in the Legislative Council. |

APPENDIX FIVE

Educational Model of a Proportional Representation Count

This educational model proportional representation model count is based on an example printed in *Electoral Education Resources for Primary and Secondary Schools in Australia* (2005), Canberra: Australian Electoral Commission, pp. 65–66.

COUNTING LEGISLATIVE COUNCIL VOTES

Legislative Council candidates must gain a quota or proportion of votes to be elected.

This quota is worked out by dividing the total number of formal ballot papers by one more than the number of vacancies to be filled and by adding 1 to the result.

$$\frac{\text{no. of formal votes}}{\text{no. of vacancies} + 1} + 1 = \text{Quota}$$

In this example three MLC's are to be elected. The total number of formal votes for the 'state' is 2,400

$$\text{Therefore the QUOTA} = \frac{2,400}{3 + 1} + 1 = 601$$

All the ballot papers are then examined to see how many first preference votes each candidate received.

| | |
|-------------|------------|
| John Smith | 240 |
| Mary White | 550 |
| Kim Taylor | 730 |
| Ann Gill | 140 |
| Tom Blogg | 590 |
| Sally James | 150 |
| | 2400 votes |

Kim Taylor is the only candidate to receive the quota 601 immediately and so is elected. The 129 votes she received in excess of the quota are called surplus votes. Under some voting systems, 129 ballot papers would be randomly picked from Kim Taylor's 730 votes and distributed according to the second preference to the remaining candidates at full value. Under the Legislative Council system the surplus of 129 is transferred to the remaining candidates by transferring all of Kim Taylor's votes at less than their full value.

The transfer value of the ballot papers is worked out by dividing the number of surplus votes by the total number of ballot papers received by the elected candidate.

$$\frac{\text{No. of Surplus Votes}}{\text{Total no. of Kim Taylor's 1}^{\text{st}} \text{ Preference Votes}} = \frac{129}{730}$$

Therefore the TRANSFER VALUE = 0 .177

The list below shows the number of second preferences received by each candidate on Kim's 730 ballot papers.

| | |
|-------------|-----------|
| John Smith | 100 |
| Mary White | 400 |
| Ann Gill | 20 |
| Tom Blogg | 150 |
| Sally James | 60 |
| | 730 votes |

These ballot papers are then multiplied by their transfer value, decimal remainders are disregarded and then added to the first preference totals.

| | | | Transfer Votes | + | 1st Preference Votes | = | New Total |
|-------------|-------------------|---|---------------------------|----------|--|----------|----------------------|
| John Smith | $100 \times .177$ | = | 17 | + | 240 | = | 257 |
| Mary White | $400 \times .177$ | = | 70 | + | 550 | = | 620 |
| Ann Gill | $20 \times .177$ | = | 3 | + | 140 | = | 143 |
| Tom Blogg | $150 \times .177$ | = | 26 | + | 590 | = | 616 |
| Sally James | $60 \times .177$ | = | 10 | + | 150 | = | 160 |

Now that Mary Gill and Tom Blogg have also reached the quota, the 3 vacancies have been filled.

N.B. If all the vacancies have not been filled after the surplus votes have been transferred, the candidate with the lowest number of votes is excluded. The excluded candidate's ballot papers are distributed according to preferences, at their full value, to the remaining candidates. The distribution of preferences from excluded candidates continues until the required number of senators is elected.

Even though the calculations are now done by computer, it is not surprising that it can take some weeks before the complete results are confirmed and we learn who are the elected members of the Legislative Council for the next four years.

* Courtesy of the Australian Electoral Commission dated 23 December 2005. The model, with the insertion of second names (surnames) is a replica of Proforma 31, 'Counting Senate Votes' in *Electoral Education Resource for Primary and Secondary Schools in Australia* (2005), Canberra: Commonwealth of Australia, pp. 65–66.

APPENDIX SIX

*Proportional Representation Explained for the Legislative Council and Local Government in Western Australia*³⁹²

Introduction

Proportional representation (PR) is a type of vote counting system which can be used when there are multiple vacancies at an election. Under PR systems, candidates are elected on the proportion of the total vote that they receive. Preferences are transferred from elected or excluded candidates to continuing candidates in order to determine the most popular, or preferred, candidates.

In 1987 legislation was passed by the Western Australian Parliament for the introduction of PR for Legislative Council elections in multi-member regions. In 2007, 20 years later, PR was also made law for multiple ward elections in local government authorities. At the same time the PR formula was modified to the Weighted Inclusive Gregory Method (WIGM) for both the Legislative Council and Local Government.

The PR vote counting system is designed to ensure that vacant positions (or seats) are allocated as nearly as possible in proportion to the votes received. The principle is simple but the steps in the process can be complicated. While the steps help ensure that the system is fair, it may take longer to finalise the result.

This booklet provides a simple example of PR (WIGM), and then follows with a practical example of a count to elect four candidates.

The Count

Ballot papers are the pieces of paper showing voters' order of preferences. They are distributed during counts as first preferences, surpluses or exclusions. They have transfer values applied to them which either reduce or maintain their value. Under WIGM, the value of a ballot never increases.

Ballot papers at the first count have a value of 1.

Effective votes are the numbers of votes given to candidates once the appropriate transfer value has been applied to the ballot papers for that count. The running total of votes is used to determine whether or not a candidate has reached the quota and thus declared elected. Exclusions are also determined upon this tally.

For **exclusions** each parcel of ballot papers received by an excluded candidate at previous counts is distributed to continuing candidates at the transfer value at which the ballot papers were received. Each parcel is treated as a separate count on the count sheet.

If a candidate is **elected during an exclusion**, the exclusion is continued but no further ballot papers can be allocated to the elected candidate after the count at which they were elected.

Fractional remainders are ignored: i.e. 134.2855 votes resulting from a transfer of ballot papers is recorded as 134 votes. For the definition of **lost by fraction** see the glossary of PR terms at the back of the document.

³⁹² Permission for publication courtesy of the Western Australian Electoral Commission.

When **surplus votes** are transferred, all the ballot papers received by the elected candidate at previous counts are transferred to continuing candidates at a reduced value (the transfer value). Each parcel of ballot papers received by the candidate is distributed to continuing candidates as a separate parcel.

If a candidate is **elected during a transfer of surplus votes**, this candidate continues to receive ballot papers from the transfer of surplus votes until the distribution of that surplus is complete.

If a candidate is **elected during a transfer of surplus votes** and there are surplus votes to distribute from this election, the surplus votes of candidates elected at an earlier count are distributed before the surplus of a candidate elected at a later count.

If a candidate is **elected with exactly a quota** and there is a further vacancy, the ballot papers of that candidate are set aside as finally dealt with.

If two or more candidates are **elected at the same count** the candidate with the greatest number of votes is taken to be the first elected. Also, the candidate's surplus votes are distributed first if further vacancies exist.

Transfer values and the distribution of surpluses. A surplus is distributed to continuing candidates by transferring all the ballot papers of the elected candidate. Each ballot paper is regarded as representing only a fraction of a vote, so that the total value of the transferred ballot papers is only equal to the number of votes in the surplus. This fractional value is the 'transfer value'.

Surpluses are transferred in parcels of votes and each parcel will be distributed using a transfer value (TV) calculated as follows:

$$\frac{\text{Elected candidate's surplus}}{\text{Total number of votes}} \times (\text{Current TV}) = \frac{\text{transfer value at which those ballot papers were received by the elected candidate (Previous TV)}}{\text{new transfer value (TV)}}$$

Ballot papers from an **excluded candidate** are transferred at the transfer value at which they were received. For example, the ballot papers received by the excluded candidate at the first preference count are distributed at a value of 1.

In the case of **tied candidates** the following can apply.

- If two or more candidates tie and one has to be excluded, exclude the candidate who had the fewest votes at the last count when they had a different number of votes. If there is no such count, the returning officer draws lots to determine which candidate is to be excluded.
- If two or more candidates have reached the quota with the same number of votes the order of election must be determined. The candidate who had the highest votes at the last count when they had a different number of votes will be elected before the other candidate(s). If there is no such count, the returning officer draws lots to determine the order of election.

The **drawing of lots** in any of the above situations is done by the returning officer in accordance with the procedure for:

- Legislative Council elections set out in Schedule 2 of the *Electoral Act 1907*; or
- Local Government elections set out in Regulation 30 of the *Local Government (Elections) Regulations 1997*.

The following are the basic steps taken where the Weighted Inclusive Gregory Method (WIGM) is used in an election.

STEP 1

Informal ballot papers are set aside.
First preference votes for each candidate on formal ballot papers are counted.



STEP 2

Calculate the Quota (Q)

$$Q = \frac{\text{Valid votes}}{\text{Number of vacancies} + 1} + 1$$


STEP 3

Candidates with votes equal to or greater than the quota are elected.
If all vacancies have been filled, the election is finished.
If some vacancies remain unfilled, the votes of elected candidates are examined to determine if any received more votes than the quota (surplus votes).



If there are surplus votes to be distributed



The elected candidate's surplus votes (those in excess of the quota) are distributed to candidates continuing in the count. They are distributed according to the next available preference marked on the ballot papers. All the elected candidate's ballot papers are examined and distributed at a transfer value (TV).

For ballot papers received from the elected candidate's first preference votes, the current TV is

$$\frac{\text{Number of surplus votes of elected candidate}}{\text{Total votes of elected candidate}}$$

For ballot papers received from previous surplus distributions, the TV is

$$\frac{\text{current transfer value}}{\text{previous transfer value}}$$

Total votes for each of the continuing candidates are calculated by multiplying the number of ballot papers to be transferred to a continuing candidate by the transfer value.

Step 3 is then revisited.

If there are no surplus votes to be distributed



The candidate with the least votes is excluded from the count. That candidate's votes are distributed to continuing candidates according to the next available preference indicated on the ballot papers.

The votes of an excluded candidate are distributed to continuing candidates at the same transfer value as they were received.

Each continuing candidate's total votes are calculated, then:

- Step 3 is revisited, or
- If the number of continuing candidates is equal to the number of vacancies remaining unfilled, all those candidates are declared elected and the election is finished.

Note: A continuing candidate is one who has not yet been elected or excluded from the count.

The following pages demonstrate the WIGM count showing the full set of figures for an election with four vacancies. In the election 950 formal ballot papers have been lodged. The following process outlines each step taken to determine the four successful candidates.

The first step is to determine the quota (Q). Each candidate must receive a proportion of votes, or the quota, to be elected. This is done using the following equation:

$$Q = \frac{\text{Valid votes}}{\text{Number of vacancies} + 1} + 1$$

For this election the quota is as follows:

$$Q = \frac{950}{4 + 1} + 1 = 191$$

A candidate in this election will need to obtain at least 191 votes to be elected.

Count 1

| Table 1: Count of Preferences and Distribution of Ballot Papers | | | | | | | | | | |
|---|------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-----------------------------|---------------------|--|
| Count number | Description | Candidate A | Candidate B | Candidate C | Candidate D | Candidate E | Candidate F | Total ballot papers counted | Transfer value (TV) | Effective votes transferred to Table 2 |
| 1 | First preference votes | 207 | 162 | 116 | 151 | 146 | 168 | 950 | 1.0 | 950 |

Count 1 is the count of formal votes and the allocation of first preference votes to each candidate. No transfer values are applied to first preference votes, therefore the value of these votes equals one. There are 950 valid first preference votes. Table 1 shows the distribution of these votes to candidates, according to the way the electors have marked the ballot papers. Table 2 shows the tally of effective votes.

It is important to note that at this stage, the totals in the two tables are identical as no reduced fractional values (transfer values) need be applied to first preference votes. All ballot papers at the first count have a value of one. Therefore, the number of ballot papers equals the number of effective votes at the first count in the election.

| Table 2: Distribution of Effective Votes | | | | | | | | | | |
|--|------------------------|-------------|-------------|-------------|-------------|-------------|-------------|---------------------|------------------------|--|
| Count number | Description | Candidate A | Candidate B | Candidate C | Candidate D | Candidate E | Candidate F | Total votes counted | Votes lost by fraction | Comments |
| 1 | First preference votes | 207 | 162 | 116 | 151 | 146 | 168 | 950 | n/a | Count of first preference distribution |

Count 2

| Table 1: Count of Preferences and Distribution of Ballot Papers | | | | | | | | | | |
|---|------------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-----------------------------|---------------------|--|
| Count number | Description | Candidate A | Candidate B | Candidate C | Candidate D | Candidate E | Candidate F | Total ballot papers counted | Transfer value (TV) | Effective votes transferred to Table 2 |
| 1 | First preference votes | 207 | 162 | 116 | 151 | 146 | 168 | 950 | 1.0 | 950 |
| 2 | Candidate A surplus (from count 1) | Elected 1st | 71 | 54 | 31 | 14 | 37 | 207 | 0.07729469 | 16 |
| Total | | | 233 | 170 | 182 | 160 | 205 | | | |

Candidate A elected

At the conclusion of count 1, Candidate A is the only candidate who has a number of votes (207) over the quota of 191, so is the first candidate to be elected.

Distribution of A's surplus votes

A surplus of 16 votes (207 minus 191) must be distributed. This is done by examining all of Candidate A's 207 ballot papers and distributing them to the next available preference marked on the ballot papers at a reduced value.

Transfer Value

This reduced value is the transfer value (TV). The transfer value is calculated as follows:

$$TV = \frac{\text{Number of surplus votes (see Table 2)}}{\text{Total number of votes received by the candidate (see Table 2)}} = \frac{16}{207} = 0.07729469$$

Note: Votes (Table 2), not ballot papers (Table 1), are used to determine the running total.

Count 2 continued

| Table 2: Distribution of Effective Votes | | | | | | | | | | |
|--|------------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|---------------------|------------------------|---|
| Count number | Description | Candidate A | Candidate B | Candidate C | Candidate D | Candidate E | Candidate F | Total votes counted | Votes lost by fraction | Comments |
| 1 | First preference votes | 207 | 162 | 116 | 151 | 146 | 168 | 950 | n/a | Count of first preference distribution |
| 2 | Candidate A surplus (from count 1) | -16 | 5 | 4 | 2 | 1 | 2 | 16 | 2 | Parcel from first preference distribution |
| Total | | 191 | 167 | 120 | 153 | 147 | 170 | | | |

Allocation of surplus votes to each continuing candidate

To calculate the number of effective votes that each of the continuing candidates receives from A's surplus, the number of ballot papers showing a preference for them is multiplied by the transfer value. For example, Candidate B receives 71 ballot papers (Table 1) which, when multiplied by the transfer value, becomes five effective votes (Table 2) with one vote 'lost by fraction'.

Votes lost by fraction

This occurs when ballot papers with a next available preference for a particular continuing candidate are multiplied by the transfer value and the result is a number with a remainder. These remainders are ignored, no matter what the remainder may be. For count 2, there are a total of 2 'lost by fraction' votes.

No candidate elected at count 2

At the conclusion of count 2, Table 2 shows that no continuing candidate has achieved the quota. This means that a candidate must be excluded from the count. This is the candidate with the lowest number of votes, this is Candidate C. The following counts 3 and 3.1 show this exclusion.

Note: Votes (Table 2), not ballot papers (Table 1), are used to determine the running total.

Count 3

| Table 1: Count of Preferences and Distribution of Ballot Papers | | | | | | | | | | |
|---|--------------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-----------------------------|---------------------|--|
| Count number | Description | Candidate A | Candidate B | Candidate C | Candidate D | Candidate E | Candidate F | Total ballot papers counted | Transfer value (TV) | Effective votes transferred to Table 2 |
| 1 | First preference votes | 207 | 162 | 116 | 151 | 146 | 168 | 950 | 1 | 950 |
| 2 | Candidate A surplus (from count 1) | Elected 1st | 71 | 54 | 31 | 14 | 37 | 207 | 0.07729469 | 16 |
| Total | | | 233 | 170 | 182 | 160 | 205 | | | |
| 3 | Candidate C exclusion (from count 1) | | 38 | -116 | 38 | 22 | 18 | 116 | 1.0 | 116 |
| Total | | | 271 | 54 | 220 | 182 | 223 | | | |

Exclusion of Candidate C

When a candidate is excluded, all their ballot papers are distributed at the value at which they were received. Each parcel of ballot papers received by the excluded candidate from previous counts is distributed as a separate count.

As Candidate C received ballot papers from two previous counts (counts 1 and 2) they are distributed to continuing candidates in two separate parcels, as counts 3 and 4.

All the excluded candidate's ballot papers are distributed to the second available preferences indicated on the ballot paper.

Distribution of Candidate C's ballot papers received at count 1 (first parcel)

Count 3 shows the distribution of the parcel of ballot papers Candidate C received from count 1. As count 1 was the distribution of first preferences, they had a value of 1 and are therefore distributed at this value.

Count 3 continued

| Table 2: Distribution of Effective Votes | | | | | | | | | | |
|--|--------------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|---------------------|------------------------|---|
| Count number | Description | Candidate A | Candidate B | Candidate C | Candidate D | Candidate E | Candidate F | Total votes counted | Votes lost by fraction | Comments |
| 1 | First preference votes | 207 | 162 | 116 | 151 | 146 | 168 | 950 | n/a | Count of first preference distribution |
| 2 | Candidate A surplus (from count 1) | -16 | 5 | 4 | 2 | 1 | 2 | 16 | 2 | Parcel from first preference distribution |
| Total | | 191 | 167 | 120 | 153 | 147 | 170 | | | |
| 3 | Candidate C exclusion (from count 1) | Elected 1st | 38 | -116 | 38 | 22 | 18 | 116 | 0 | Parcel from first preference distribution |
| Total | | | 205 | 4 | 191 | 169 | 188 | | | |

Distribution of effective votes at count 3

As the first parcel of Candidate C's ballot papers received from count 1 are transferred at a value of 1, the numbers of effective votes distributed are identical to that of the ballot papers distributed.

Two candidates have achieved the quota at end of count 3

At the end of count 3 both Candidates B and D have achieved the quota. They are elected second and third.

Not all the parcels of ballot papers from excluded Candidate C have been distributed, but as these two candidates achieved the quota after the distribution of the first parcel, they do not receive any more ballot papers.

No ballot papers to be transferred to elected candidates

Transfers of individual parcels of ballot papers from an excluded candidate are all individual and separate transfers (counts). No ballot papers can be transferred to an elected or excluded candidate after the transfer at which that election occurs.

Count 4

| Table 1: Count of Preferences and Distribution of Ballot Papers | | | | | | | | | | |
|---|--------------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-----------------------------|---------------------|--|
| Count number | Description | Candidate A | Candidate B | Candidate C | Candidate D | Candidate E | Candidate F | Total ballot papers counted | Transfer value (TV) | Effective votes transferred to Table 2 |
| 1 | First preference votes | 207 | 162 | 116 | 151 | 146 | 168 | 950 | 1 | 950 |
| 2 | Candidate A surplus (from count 1) | Elected 1st | 71 | 54 | 31 | 14 | 37 | 207 | 0.07729469 | 16 |
| Total | | | 233 | 170 | 182 | 160 | 205 | | | |
| 3 | Candidate C exclusion (from count 1) | | 38 | -116 | 38 | 22 | 18 | 116 | 1.0 | 116 |
| Total | | | 271 | 54 | 220 | 182 | 223 | | | |
| 4 | Candidate C exclusion (from count 2) | | Elected 2nd | -54 | Elected 3rd | 41 | 13 | 54 | 0.07729469 | 4 |
| Total | | | | 0 | | 223 | 236 | | | |

Distribution of Candidate C's ballot papers received at count 2 (second parcel)

Table 1 of count 4 shows the distribution of the second parcel of excluded Candidate C's ballot papers. These were ballot papers received by this candidate during count 2. There are 54 ballot papers in this parcel to be transferred to continuing candidates.

These ballot papers are distributed at a transfer value of 0.07729469, as this is the value at which they were received during count 2. Each of the 54 ballot papers in this parcel are examined and passed onto the next available preference at this value. This results in four effective votes being transferred as shown in Table 2 on the following page.

Count 4 continued

| Table 2: Distribution of Effective Votes | | | | | | | | | | |
|--|--------------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|---------------------|------------------------|---|
| Count number | Description | Candidate A | Candidate B | Candidate C | Candidate D | Candidate E | Candidate F | Total votes counted | Votes lost by fraction | Comments |
| 1 | First preference votes | 207 | 162 | 116 | 151 | 146 | 168 | 950 | n/a | Count of first preference distribution |
| 2 | Candidate A surplus (from count 1) | -16 | 5 | 4 | 2 | 1 | 2 | 16 | 2 | Parcel from first preference distribution |
| Total | | 191 | 167 | 120 | 153 | 147 | 170 | | | |
| 3 | Candidate C exclusion (from count 1) | Elected 1st | 38 | -116 | 38 | 22 | 18 | 116 | 0 | Parcel from first preference distribution |
| Total | | | 205 | 4 | 191 | 169 | 188 | | | |
| 4 | Candidate C exclusion (from count 2) | | n/a | -4 | n/a | 3 | 1 | 4 | 0 | Parcel from Candidate A surplus |
| Total | | | 205 | 0 | 191 | 172 | 189 | | | |

Two candidates are elected at end of count 4

At the end of count 4, Candidates B and D remain the only two candidates who have achieved the quota. The surplus of Candidate B is to be distributed first, as this candidate has the greater surplus. The surplus is distributed to the remaining two continuing candidates and is shown on the following pages as counts 5.1, 5.2 and 5.3.

Candidate D has achieved an *exact* quota of 191 so there are no surplus votes to distribute.

All these ballot papers are set aside as fully dealt with. No more ballot papers are received by this candidate, and no further distribution of these ballot papers is required.

Count 5.1

| Table 1: Count of Preferences and Distribution of Ballot Papers | | | | | | | | | | |
|---|--------------------------------------|-------------|-------------|--------------|-------------|-------------|-------------|-----------------------------|---------------------|--|
| Count number | Description | Candidate A | Candidate B | Candidate C | Candidate D | Candidate E | Candidate F | Total ballot papers counted | Transfer value (TV) | Effective votes transferred to Table 2 |
| 1 | First preference votes | 207 | 162 | 116 | 151 | 146 | 168 | 950 | 1.0 | 950 |
| 2 | Candidate A surplus (from count 1) | Elected 1st | 71 | 54 | 31 | 14 | 37 | 207 | 0.07729469 | 16 |
| Total | | | 233 | 170 | 182 | 160 | 205 | | | |
| 3 | Candidate C exclusion (from count 1) | | 38 | -116 | 38 | 22 | 18 | 116 | 1.0 | 116 |
| Total | | | 271 | 54 | 220 | 182 | 223 | | | |
| 4 | Candidate C exclusion (from count 2) | | Elected 2nd | -54 | Elected 3rd | 41 | 13 | 54 | 0.07729469 | 4 |
| Total | | | | 0 | | 223 | 236 | | | |
| 5.1 | Candidate B surplus (from count 1) | | | Excluded 1st | | 83 | 79 | 162 | 0.06829268 | 11 |
| Total | | | | | | 306 | 315 | | | |

Distribution of Candidate B's surplus (first parcel received at count 1)

The distribution of Candidate B's surplus is divided between the two remaining continuing candidates, E and F. There are three parcels of ballot papers from Candidate B's surplus to transfer to the continuing candidates. Count 4 shows the first parcel, which are the 162 ballot papers received by this candidate at count 1. A transfer value is applied to these ballot papers as follows.

Transfer value

The transfer value for the first parcel of B's surplus is calculated as follows:

$$TV = \frac{\text{Number of surplus votes (see Table 2)}}{\text{Total number of votes received by the candidate (see Table 2)}} = \frac{14}{205} = 0.06829268$$

Count 5.1 continued

| Table 2: Distribution of Effective Votes | | | | | | | | | | |
|--|--------------------------------------|-------------|-------------|--------------|-------------|-------------|-------------|---------------------|------------------------|---|
| Count number | Description | Candidate A | Candidate B | Candidate C | Candidate D | Candidate E | Candidate F | Total votes counted | Votes lost by fraction | Comments |
| 1 | First preference votes | 207 | 162 | 116 | 151 | 146 | 168 | 950 | n/a | Count of first preference distribution |
| 2 | Candidate A surplus (from count 1) | -16 | 5 | 4 | 2 | 1 | 2 | 16 | 2 | Parcel from first preference distribution |
| Total | | 191 | 167 | 120 | 153 | 147 | 170 | | | |
| 3 | Candidate C exclusion (from count 1) | Elected 1st | 38 | -116 | 38 | 22 | 18 | 116 | 0 | Parcel from first preference distribution |
| Total | | | 205 | 4 | 191 | 169 | 188 | | | |
| 4 | Candidate C exclusion (from count 2) | | n/a | -4 | n/a | 3 | 1 | 4 | 0 | Parcel from Candidate A surplus |
| Total | | | 205 | 0 | 191 | 172 | 189 | | | |
| 5.1 | Candidate B surplus (from count 1) | | -14 | Excluded 1st | n/a | 5 | 5 | 11 | 1 | Parcel from first preference distribution |
| Total | | | 191 | | 191 | 177 | 194 | | | |

Distribution of Candidate B's first parcel to continuing candidates

Once the transfer value of 0.06829268 is applied to the parcel of 162 ballot papers, 11 votes in total are transferred to Table 2, with five effective votes allocated to each continuing candidate and one vote lost by fraction.

Table 2 shows that at the end of count 5.1 Candidate F has 194 votes. This is over the quota of 191, but as this count is only one part of Candidate B's surplus distribution, this candidate will continue to receive votes from Candidate B's surplus. This is because a transfer of a candidate's surplus votes is treated as one whole count.

Count 5.2

| Table 1: Count of Preferences and Distribution of Ballot Papers | | | | | | | | | | |
|---|--------------------------------------|-------------|-------------|--------------|-------------|-------------|-------------|-----------------------------|---------------------|--|
| Count number | Description | Candidate A | Candidate B | Candidate C | Candidate D | Candidate E | Candidate F | Total ballot papers counted | Transfer value (TV) | Effective votes transferred to Table 2 |
| 1 | First preference votes | 207 | 162 | 116 | 151 | 146 | 168 | 950 | 1.0 | 950 |
| 2 | Candidate A surplus (from count 1) | Elected 1st | 71 | 54 | 31 | 14 | 37 | 207 | 0.07729469 | 16 |
| Total | | | 233 | 170 | 182 | 160 | 205 | | | |
| 3 | Candidate C exclusion (from count 1) | | 38 | -116 | 38 | 22 | 18 | 116 | 1.0 | 116 |
| Total | | | 271 | 54 | 220 | 182 | 223 | | | |
| 4 | Candidate C exclusion (from count 2) | | Elected 2nd | -54 | Elected 3rd | 41 | 13 | 54 | 0.07729469 | 4 |
| Total | | | | 0 | | 223 | 236 | | | |
| 5.1 | Candidate B surplus (from count 1) | | | Excluded 1st | | 83 | 79 | 162 | 0.06829268 | 11 |
| Total | | | | | | 306 | 315 | | | |
| 5.2 | Candidate B surplus (from count 2) | | | | | 48 | 23 | 71 | 0.00527866 | 0 |
| Total | | | | | | 354 | 338 | | | |

Distribution of Candidate B's surplus (second parcel received from count 2)

The next parcel to be distributed from B's surplus is the 71 ballot papers obtained at count 2, which was the distribution of Candidate A's surplus. As these ballot papers were received under a previous transfer of surplus, they are distributed at a further reduced value.

Transfer value

The reduced transfer value is calculated by multiplying the current transfer value for this distribution (CTV) by the previous transfer value (PTV) of ballot papers.

$$\text{CTV} = \frac{\text{Number of surplus votes (see Table 2)}}{\text{Total number of votes received by the candidate (see Table 2)}} = \frac{14}{205} = 0.06829268$$

Multiplied by

$$\text{PTV} = \frac{\text{Number of surplus votes of Candidate A (at count 2)}}{\text{Total number of votes received by Candidate A (at count 2)}} = \frac{16}{207} = 0.07729469$$

$$\text{TV} = 0.005279$$

Count 5.2 continued

| Table 2: Distribution of Effective Votes | | | | | | | | | | |
|--|--------------------------------------|-------------|-------------|--------------|-------------|-------------|-------------|---------------------|------------------------|---|
| Count number | Description | Candidate A | Candidate B | Candidate C | Candidate D | Candidate E | Candidate F | Total votes counted | Votes lost by fraction | Comments |
| 1 | First preference votes | 207 | 162 | 116 | 151 | 146 | 168 | 950 | n/a | Count of first preference distribution |
| 2 | Candidate A surplus (from count 1) | -16 | 5 | 4 | 2 | 1 | 2 | 16 | 2 | Parcel from first preference distribution |
| Total | | 191 | 167 | 120 | 153 | 147 | 170 | | | |
| 3 | Candidate C exclusion (from count 1) | Elected 1st | 38 | -116 | 38 | 22 | 18 | 116 | 0 | Parcel from first preference distribution |
| Total | | | 205 | 4 | 191 | 169 | 188 | | | |
| 4 | Candidate C exclusion (from count 2) | | n/a | -4 | n/a | 3 | 1 | 4 | 0 | Parcel from Candidate A surplus |
| Total | | | 205 | 0 | 191 | 172 | 189 | | | |
| 5.1 | Candidate B surplus (from count 1) | | -14 | Excluded 1st | n/a | 5 | 5 | 11 | 1 | Parcel from first preference distribution |
| Total | | | 191 | | 191 | 177 | 194 | | | |
| 5.2 | Candidate B surplus (from count 2) | | Elected 2nd | | Elected 3rd | 0 | 0 | 1 | 1 | Parcel from Candidate A surplus |
| Total | | | | | | 177 | 194 | | | |

Distribution of Candidate B's second parcel to continuing candidates

Each of the 71 ballot papers in the second parcel of Candidate B's surplus are multiplied by the transfer value of 0.005279. As the transfer value is now so small, no effective votes are actually distributed, with one vote being lost by fraction.

Count 5.3

| Table 1: Count of Preferences and Distribution of Ballot Papers | | | | | | | | | | |
|---|--------------------------------------|-------------|-------------|--------------|-------------|-------------|-------------|-----------------------------|---------------------|--|
| Count number | Description | Candidate A | Candidate B | Candidate C | Candidate D | Candidate E | Candidate F | Total ballot papers counted | Transfer value (TV) | Effective votes transferred to Table 2 |
| 1 | First preference votes | 207 | 162 | 116 | 151 | 146 | 168 | 950 | 1.0 | 950 |
| 2 | Candidate A surplus (from count 1) | Elected 1st | 71 | 54 | 31 | 14 | 37 | 207 | 0.07729469 | 16 |
| Total | | | 233 | 170 | 182 | 160 | 205 | | | |
| 3 | Candidate C exclusion (from count 1) | | 38 | -116 | 38 | 22 | 18 | 116 | 1.0 | 116 |
| Total | | | 271 | 54 | 220 | 182 | 223 | | | |
| 4 | Candidate C exclusion (from count 2) | | Elected 2nd | -54 | Elected 3rd | 41 | 13 | 54 | 0.07729469 | 4 |
| Total | | | | 0 | | 223 | 236 | | | |
| 5.1 | Candidate B surplus (from count 1) | | | Excluded 1st | | 83 | 79 | 162 | 0.06829268 | 11 |
| Total | | | | | | 306 | 315 | | | |
| 5.2 | Candidate B surplus (from count 2) | | | | | 48 | 23 | 71 | 0.00527866 | 0 |
| Total | | | | | | 354 | 338 | | | |
| 5.3 | Candidate B surplus (from count 3) | | | | | 18 | 20 | 38 | 0.06829268 | 2 |
| Total | | | | | | 372 | 358 | | | |
| | | | | | | | Elected 4th | | | |

Distribution of third parcel Candidate B's surplus

Count 5.3 shows the transfer of Candidate B's third parcel of 38 ballot papers. This candidate received these ballot papers during count 3, which was Candidate C's exclusion.

Transfer value

As these ballot papers had an incoming value of 1, the outgoing transfer value is as follows:

$$TV = \frac{\text{Number of surplus votes (see Table 2)}}{\text{Total number of votes received by the candidate (see Table 2)}} = \frac{14}{205} = 0.06829268$$

Count 5.3 continued

| Table 2: Distribution of Effective Votes | | | | | | | | | | |
|--|--------------------------------------|-------------|-------------|--------------|-------------|-------------|-------------|---------------------|------------------------|---|
| Count number | Description | Candidate A | Candidate B | Candidate C | Candidate D | Candidate E | Candidate F | Total votes counted | Votes lost by fraction | Comments |
| 1 | First preference votes | 207 | 162 | 116 | 151 | 146 | 168 | 950 | n/a | Count of first preference distribution |
| 2 | Candidate A surplus (from count 1) | -16 | 5 | 4 | 2 | 1 | 2 | 16 | 2 | Parcel from first preference distribution |
| Total | | 191 | 167 | 120 | 153 | 147 | 170 | | | |
| 3 | Candidate C exclusion (from count 1) | Elected 1st | 38 | -116 | 38 | 22 | 18 | 116 | 0 | Parcel from first preference distribution |
| Total | | | 205 | 4 | 191 | 169 | 188 | | | |
| 4 | Candidate C exclusion (from count 2) | | n/a | -4 | n/a | 3 | 1 | 4 | 0 | Parcel from Candidate A surplus |
| Total | | | 205 | 0 | 191 | 172 | 189 | | | |
| 5.1 | Candidate B surplus (from count 1) | | -14 | Excluded 1st | n/a | 5 | 5 | 11 | 1 | Parcel from first preference distribution |
| Total | | | 191 | | 191 | 177 | 194 | | | |
| 5.2 | Candidate B surplus (from count 2) | | Elected 2nd | | Elected 3rd | 0 | 0 | 1 | 1 | Parcel from Candidate A surplus |
| Total | | | | | | 177 | 194 | | | |
| 5.3 | Candidate B surplus (from count 3) | | | | | 1 | 1 | 2 | 0 | Parcel from Candidate C exclusion |
| Total | | | | | | 178 | 195 | | | |
| | | | | | | | Elected 4th | | | |

Four candidates are now elected

Once the transfer value of 0.06829268 is applied to the 38 ballot papers and they are distributed to the two continuing candidates, Candidates E and F are each allocated one vote. At the completion of count 5.3 Candidate F is elected, and there are now

four elected candidates. Candidates A, B, D, and F are elected in that order. The count is now complete.

Continuing candidate

An eligible candidate not already elected or excluded from the count.

Count

A distribution of ballot papers to candidates in an election. A count can be a:

- distribution of first preference votes;
- transfer of an elected candidate's surplus; or
- transfer of a parcel of an excluded candidate's ballot papers.

Droop method

A formula for calculating the quota, often expressed as a percentage, necessary for a candidate's election in certain forms of proportional representation - including the WIGM used in Local Government and Legislative Council elections. The total number of formal votes is divided by one more than the number of seats or positions to be filled and adding one to the result.

$$Q = \frac{\text{Total formal ballot papers}}{\text{Number of vacancies} + 1} + 1$$

Exclusion

The removal of a candidate from the count through failure to acquire sufficient votes to remain in contention for a vacancy. The candidate with the least amount of votes is excluded from a count if there are no elected candidates with a surplus to distribute. The ballot papers of the excluded candidate are distributed to the next available preference at the transfer value at which they were received (see **transfer value** below).

Lost by fraction

The transfer of ballot papers with a transfer value of less than 1 may result in a loss of votes. This occurs when ballot papers with a next available preference for a particular continuing candidate are multiplied by the transfer value and the result is a number with a remainder. These remainders are ignored.

For example:

Number of ballot papers = 431

Transfer value = 0.074321

Ballot papers (431) multiplied by the transfer value (0.074321) = 32.032351 votes

The result is 32 votes with the remainder 'lost' by fraction.

Even where the result is, for example, 32.999999, the result is 32 votes, not 33.

When several remainders occur, they can add up to a loss of whole votes and are recorded as such on the count sheets.

Next available preference

This is the next preferred candidate on a ballot paper according to the way in which the elector has numbered the candidates. Votes can then be transferred to this candidate in the case of a surplus or exclusion. A candidate is not 'available' for vote transfer if they are ineligible, elected or excluded.

Order of election

This is determined by the count at which a candidate achieves quota, with the candidate gaining quota earliest taking precedence. If two or more candidates are elected at the same count, the candidate with the largest surplus is said to be elected first.

The order of election is significant where there are surpluses to be transferred. The surplus votes of the candidate elected earliest are always distributed before those of later elected candidates.

The order of election is also significant for Local Government elections in Western Australia. Those elected first may be allocated the longer terms, while those elected later may be allocated shorter terms.

Preferential voting

In a general sense, this term refers to voting systems in which voters are required to mark the ballot paper with consecutive numbers indicating the order in which candidates are preferred. In the Western Australian context, this term is applied to elections utilising preferential voting in single member electorates or wards. Preferential voting in multi-member districts or wards is generally known as proportional representation.

Proportional representation (PR)

The system is designed to ensure that seats in an elected body are allocated as nearly as possible in proportion to the votes received. In Western Australia it is used for the election of candidates in multi-member electoral districts or wards.

Electors are able to choose between candidates by numbering the candidates in order of preference. To be elected a candidate must obtain a quota or proportion of the formal vote. This can comprise first preference votes and those received after the distribution of preferences.

Any votes for an elected candidate in excess of the quota (surplus votes) are transferred to candidates remaining in the count according to the next available preference shown on the ballot paper. If any seats remain unfilled, the lowest placed candidates are progressively excluded from the count and their votes transferred to candidates remaining in the count.

PR systems can be grouped broadly into two categories: list systems and the single transferable vote (STV) system. The PR system used in Western Australia for Local Government and Legislative Council elections is an STV system.

Quota

The term used for the number of votes which a candidate must receive in order to be elected. This is calculated by using the Droop method explained previously.

Surplus

Votes received by an elected candidate in excess of the quota.

Transfer

The transferring of ballot paper(s) from an elected or excluded candidate to a continuing candidate.

Transfer value (TV)

This is the fractional value at which ballot papers are transferred to continuing candidates.

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