

Research note

Western Australian Electoral Reforms: Labor Finally Succeeds

NORM KELLY

Australian National University

Australian electoral systems have a history of malapportionment, designed to give added voting weight to rural and remote areas. However, by 2000, all Australian jurisdictions except Western Australia had adopted voting equality within specified tolerances. This paper provides a brief analysis of the Gallop Labor government's efforts to reform the Western Australian system, drawing primarily on interviews with key players involved in the debates, including parliamentary members of the political parties involved. Quotations in this paper are drawn from these interviews, which were conducted in August 2004.

Western Australia has experienced high levels of malapportionment favouring rural and North West seats. Reforms in 1929 (amendments to the Electoral Districts Act 1922) and 1947 (Electoral Distribution Act 1947) resulted in a lessening of malapportionment, but non-metropolitan areas generally remained favoured by about 2:1 for the Legislative Assembly and 3:1 for the Legislative Council. In the 1980s, the Burke Labor government proposed voting equality for both houses (state-wide proportional representation for the Legislative Council), but in order to obtain National Party support was forced to retain zonation for the Council, with proportional representation based on six regions, and abandon attempts to reform the Assembly. While the Council's metropolitan regions now had representative parity with country regions (17 members each), the population disparity meant that a significant level of malapportionment (2.8:1) was retained (Phillips 1991, 234).

Labor's Reform Attempts, 2001–04

Following Labor's victory at the 2001 election, there was a non-conservative majority in both houses of parliament for the first time ever.¹ This gave Labor an

Norm Kelly is a doctoral student in the Faculty of Arts at the Australian National University. He was a Member of the Western Australian Legislative Council from 1997 to 2001. The author wishes to thank Marian Sawyer and the referees for their helpful comments on earlier drafts. The author also thanks the MPs and parliamentary staff interviewed for his thesis—'Vote Weighting in Electoral Systems: The "One Vote, One Value" Debate in Western Australia', from which information for this article is drawn.
¹The Council's 34 members were: 13 Labor, 5 Greens, 12 Liberal, 1 National and 3 One Nation.

excellent opportunity to legislate for significant electoral reform. With the election of a Labor President and the support of the five Greens Council members, Labor could secure a 17–16 majority on the floor of the Council. However, it was acknowledged at this time that the government would require an absolute majority of 18 votes to pass its proposed reforms, due to the ‘entrenchment’ provision (section 13) of the Electoral Distribution Act 1947, requiring an absolute majority of both houses for the act to be amended. Within a month of the election, Labor approached the Greens to seek their position on the government’s proposed reforms, which was for one vote, one value to be adopted for both the Assembly and the Council. A Greens interviewee explains:

They were very keen on a straightforward model for the Assembly and they seemed to be more flexible about the Upper House, but basically they wanted the Upper House to be on a one vote, one value system too, and there were two ways you could do that. Either you went to a model where there was one state-wide seat on one vote, one value principles, or there was a radical realignment of the regions in order to remove vote weighting.

The Greens MLCs held conflicting views in respect of Labor’s proposals, and so adopted a consensus approach to determine their position. A central concern for the Greens was to balance the principle of a fairer, more equitable electoral system with maintaining equitable representation between regions (Margetts 2001). One Greens MLC proposed that Council regions be based on areas of biodiversity, irrespective of population:

Our electoral system isn’t just representing people, it’s representing country ... We needed people from physical locations close to the country they lived in to be able to represent that country. It was a very different framework from that that was being put in academic and legal circles of constitutional experts because voting systems are very much seen in terms of counting heads ... we should have really gone for a model of seven regions of five members ... the seventh region would be the Kimberley because ... the Kimberley is its own bioregion with its own climate ... and a whole different geography and biology.

The Greens’ idea of representation of biodiversity was very much at odds with Labor’s long-held policy of voting equality. The above proposal for representation based on bioregions would result in malapportionment of about 20:1,² a massive increase in the existing malapportionment. The Greens’ argument that representation should be based on biodiversity stems from the green movement’s push for ecological democracy, which calls for representation of all affected interests, including future generations and non-human species (Dobson 1996, 124; Eckersley 2000, 118–19). However, the Greens’ position of retaining malapportionment is at odds with general concepts of ecological democracy. It can be argued that the Greens’ commitment to participatory grassroots democracy (which it exercises within the party), with all people representing his or her own interests, implies a commitment to voting equality (Goodin 1996). Anything other than equality attaches a different value to the interests of certain individuals over others. Following consultation with party members, the Greens developed a compromise position which attempted to honour these competing principles, through voting equality for the Assembly (with

²Comparing the Kimberley with metropolitan representation.

an exception for remote electorates), while retaining malapportionment for the Council. The Greens' Council model increased the size of the Council from 34 to 36 members, based on three metropolitan and three non-metropolitan regions, each with six members. While not comfortable with the Council component of the model, Labor quickly agreed to it, as Assembly reform was its main concern.

It was generally agreed during the parliamentary debates that Labor's proposed reforms would result in a shift of eight Legislative Assembly seats from country regions into the metropolitan area. The Greens' requirement for remote electorates meant the Mining and Pastoral region would lose only two Assembly seats, rather than the three seats it would lose under strict voting equality. Labor acknowledged that this special exemption from one vote, one value would be to its advantage, but argued that it was included in the legislation because of the Greens' insistence:

Our preference was 10% variance, common quota overall, however we had to find a formula ... The Greens insisted on weighting for Mining and Pastoral, the most remote area, and the nearest acceptable thing we could come to was the formula for the six remote seats ... Indeed it would advantage Labor, the joke was that our model didn't accord any special margin for Mining and Pastoral, it was a Greens insistence based on an argument more for remoteness and biodiversity type.

The eight seats to be shifted to metropolitan regions were primarily Coalition seats, with only two non-metropolitan Labor seats to be lost in the proposed change. The most severe impact would be to the National Party, with a loss of three seats, as a result of its concentrated voting support in the Agricultural Region and lack of support in metropolitan regions. In determining the Council model, the Greens sought a position that neither seriously advantaged nor disadvantaged the party, and it appears they were successful in achieving that objective. The following comment illustrates the Greens' view:

The electorate suicide model ... when we were going through the process of devising that, I got advice that the six by six model was roughly neutral. There were certain people, and academic people that made contact with me to suggest that it was actually a very bad model for the Greens ... I'm not so altruistic as to want to advocate a position that was suicidal for the Greens but nor did we want to come up with a position that was blatantly self-interested. We actually wanted to come up with a position that we could sit comfortably with ethically.

The Labor government reluctantly accepted malapportionment for the Legislative Council, and adopted the special provision for remote areas. However, the government did not include the increase in Council numbers in its legislation. This meant that the Greens were forced to initiate amendments to increase Council numbers, and take the force of public and media criticism for imposing the costs of two additional MPs. Simultaneously, the government expressed opposition to the added costs, claiming that it was forced into supporting the change in order to have its reforms passed. This enabled the government to deflect criticism of the Greens' model, despite having privately agreed to it, albeit reluctantly. The Greens erred strategically, allowing themselves to be exposed to public criticism by not requiring that Labor include the entire model in its legislation. The Greens'

perspective was that 'the Labor Party brought this in cold, and let us take the heat, as it were'. The Labor perspective:

Our proposal was not to have the exception, the Greens insisted on that exception as a condition of their support. We saw no reason to increase the Council from 34 to 36. It was the price we had to pay. The original Bill was structured knowing that the Greens would amend it this way in the Upper House as their requirement, but it was our clear understanding that that's what they'd do and we'd cop it. The Bill was structured such . . . as to allow the Green amendment in the Upper House to do that.

Labor was also aware that it would face heavy criticism for reducing representation in country areas, especially as the remote electorate exemption was construed as manipulation of the system to Labor's advantage. However, Labor ensured that the Greens were blamed for the increase in Council numbers. As a result, media commentary centred negatively on the Greens' role.³ A positive outcome, though, for the Greens was that media debate increased public awareness of their 'balance of power' role, subsequently allowing the party to publicise its position more effectively on other legislation.

Legislation and the Courts

The government introduced its legislation in August 2001. The primary purpose of the Electoral Distribution Repeal Bill 2001 was to repeal the Electoral Distribution Act 1947 (Distribution Act), which provided the basis for the system of vote weighting for non-metropolitan regions and electorates. The Electoral Amendment Bill 2001 sought to apply the principle of one vote, one value (within a 10% tolerance) to Assembly elections by transferring relevant sections of the (to be) repealed Distribution Act into an amended Electoral Act 1907. Electorates larger than 100,000 square kilometres would be weighted by adding an 'additional large district number', being 0.5% of the electorate's area in square kilometres ('notional' enrolments), to the number of actual enrolments, and with a broader tolerance of total enrolments (plus 10% to minus 20%). In the context of the ensuing debate, by repealing the Distribution Act, Labor expected to avoid the act's section 13 provision requiring amendments to be passed by an absolute majority. The bills were passed without amendment by the Assembly in August–September 2001.

In the Council, the possibility of amending section 14 of the Constitution Acts Amendment Act 1899 to give the President a deliberative vote was raised during a Legislation Committee inquiry. However, the Greens' view was that an existing right to a deliberative vote existed in the Constitution Act 1899, and, as one Greens MLC illustrates, 'Even when we were going in to vote on the Bill, we were encouraging the President to vote . . . we actually believed . . . the President had the vote anyway.' The Clerk of the Parliaments, Laurie Marquet, informed the President that in the event the Repeal Bill was passed by the Council without an absolute majority, he intended to seek a declaratory statement from the Supreme Court as to whether he could present the bill for Royal Assent. The major contention was whether repeal of the Distribution Act constituted an 'amendment' of the act.

³For example: 'Greens Threat to Vote Reform' (*The West Australian* 19 September, 8); 'Vote Reform Comes at a Cost' (*The West Australian* 30 November 2001, 20); 'Reform Move Simplistic, Selfish and Undemocratic' (*The West Australian* 14 December 2001, 21).

The bills were subsequently passed by the Council in December 2001 with simple, but not absolute, majorities.⁴ The Clerk then took the foreshadowed action, which Labor only supported under sufferance, knowing the bills would be defeated if a declaratory statement was not sought, as this Labor comment illustrates:

The Greens said to the Government that there was some doubt about the legality of the Bills . . . they said to us they were not willing to pass the Bill at the third reading unless we can assure them that they're legally in order. They were not satisfied with respect to Solicitor General's opinions or anything else and basically without this device it looked as though the Greens would defeat it at third reading. At least it effected the passage of the Bills and we had some chance in the courts.

In October 2002 the Supreme Court ruled that an absolute majority was required to pass the legislation, stating that parliament intended the word 'amend' to encompass a repeal of the act.⁵ Therefore the bills could not be presented for Royal Assent. Following the Supreme Court decision, the government announced that it would appeal against the decision to the High Court (Shine 2002). The High Court action became even more critical when the Greens stated that they would not support new legislation to clarify the President's voting rights (Harvey 2002, 3). Labor was unwilling to have the President exercise a deliberative vote, as it believed that such an action would be legally challenged, and that the Supreme Court may look upon the government unfavourably given the previous history of the legislation. During this period, the government entered into negotiations with the Liberal Party to obtain an absolute majority, as a Labor MLC explains:

We went back to the Libs and said, look, you risk being overturned in the High Court and losing everything. We offered to cut a half-way house deal . . . the Libs would have extracted a high price for their co-operation. Whether we could have paid that in the end is a different matter. The price was the destruction of proportional representation in the Upper House, reintroduction of a staggered term, with the current six regions, which would put the quota at 30% or above . . . it destroys minor representation.

However, before the High Court made its decision, the Electoral Distribution Commissioners published their decision on its redistribution of electoral boundaries, which was seen to favour the Liberal Party.⁶ Following this, the issue of a compromise was not pursued further, prior to the High Court decision. As one interviewee observes: 'People like Dan [Sullivan, Liberal Deputy Leader], who had a very nice 62% Leschenault seat, decided they had no interest in overturning this draft redistribution.' In November 2003, the High Court upheld the Supreme Court decision, agreeing that the term 'amend' included 'repeal'.⁷

⁴The President did not vote.

⁵For full details see *Marquet v the Attorney-General of Western Australia* [2002], Supreme Court of Western Australia, 2002.

⁶Redistributions occur after every second election. The 2003 redistribution reduced Mining and Pastoral Assembly seats from six to five, and increased South West seats from 10 to 11.

⁷For full details see *Attorney-General (WA) v Marquet* [2003], High Court of Australia, 2003.

The 2005 Election—Reform at Last

In June 2004, Alan Cadby, a Liberal MLC, resigned from his party as a result of a pre-selection process that placed him in an unwinnable position for the upcoming election. This breathed new life into the debate, with the possibility that Labor could obtain Cadby's vote, thereby achieving an absolute majority for its legislation. However, the Premier ruled out this option, thus ending Labor's reform efforts prior to the 2005 general election (held 26 February). While the Labor Party was returned to government, in the Council there was no increase in the overall number of ALP/Greens seats, meaning they still could not achieve an absolute majority on the floor of the house.⁸ However, newly elected councillors do not take up their seats until 22 May every four years, so the government had a window of opportunity of almost three months to put through legislation if it could win the support of Alan Cadby.

During the election campaign, Labor promised that the five existing Mining and Pastoral Assembly electorates would be retained in any redistribution brought about by its proposed reforms.⁹ However, the Greens insisted that the only exemption from voting equality for the Assembly should be on the grounds of remoteness. The government was in a difficult position, having either to break its election promise to protect the five seats or find an alternative to retain them. Labor introduced its reform bill on 30 March, which included the provision for five guaranteed seats in the Mining and Pastoral region.¹⁰ However, Labor was able to negotiate an agreement by suggesting a small increase in the number of Assembly seats. Simply by enlarging the Assembly from 57 to 59 seats, the average electorate enrolment, based on 2005 election figures, reduces from 22,092 to 21,343 (WAEC 2005). Combined with the special provision for remote electorates, this ensures that the Mining and Pastoral region retains five Assembly seats. This satisfied the Greens (and Cadby) while keeping Labor's election commitment intact. The 'one vote, one value' legislation and separate legislation to increase the size of the Assembly¹¹ were passed in May 2005, in the week prior to the newly elected Council members taking their seats.

An accurate assessment of the impact of the electoral system changes will not be possible until the Electoral Distribution Commissioners carry out the redistribution process.¹² However, based on enrolments at the 2005 election, it is expected that for the Assembly, the metropolitan area will gain eight seats (from 34 to 42), while the Agricultural and South West regions will each lose three seats (7 to 4, and 11 to 8, respectively). It is no surprise that these reforms clearly advantage Labor, which, in overall terms, will pick up three seats while the Coalition parties lose one seat (see Table 1). In the Legislative Council, theoretically it will be easier for minor parties to win seats, as the quota reduces from 16.7% to 14.3% in four regions (but increases from 12.5% to 14.3% in the other two regions). However, based on 2005 election results, the Council reform will benefit Labor,

⁸Labor won an additional three seats (13 to 16), while the Greens lost three seats (five to two). The Liberal Party won a further three seats while One Nation lost three seats.

⁹Labor won four of these seats at the 2005 election, the fifth is held by the Liberal Party.

¹⁰One Vote One Value Bill 2005, later re-named the Electoral Amendment and Repeal Bill 2005.

¹¹Constitution and Electoral Amendment Bill 2005. The bill also increased the size of the Council from 34 to 36, and reduced malapportionment by having 21 metropolitan and 15 non-metropolitan members. This was later amended to 18/18, on the Greens' insistence.

¹²To occur in 2007—e-mail correspondence, 13 July 2005, Western Australian Electoral Commission.

Table 1. Legislative Assembly seats by party—2005 election result and post-reform estimates (in parentheses)^a

Party	Metropolitan	Non-metropolitan			Total
		Mining and Pastoral	Agricultural	South West	
Labor	24 (29)	4 (4)	1 (0)	3 (2)	32 (35)
Liberal	8 (11)	1 (1)	2 (2)	7 (6)	18 (20)
National	—	—	4 (2)	1 (0)	5 (2)
Independents	2 (2)	—	—	—	2 (2)
Total	34 (42)	5 (5)	7 (4)	11 (8)	57 (59)

Note:

^a2005 election results are shown first. Post-reform figures are shown in parentheses and are the author's estimates based on 2005 election results and are subject to the results of the redistribution process.

giving the party an increased chance of winning half of the Council seats. The Greens will struggle to retain or win seats, continuing to rely on preferences.¹³

By increasing the size of the Assembly, an ingenious solution was found to the impasse between Labor and the Greens—one which had nothing to do with voting equality principles and everything to do with political expediency and self-interest. There are reasonable arguments for (and against) making special provisions for remote electorates, and in this sense the Western Australian legislation largely replicates that of Queensland, which has similar issues of remoteness. However, increasing the size of the parliament to accommodate political self-interest makes a mockery of consultation processes and principles of representation. It is a pity that a rational public debate (as occurred with the Commission on Government in the 1990s) on the appropriate size of parliament was not held prior to this legislation being passed.

The Gallop government's electoral reform is a major step towards voting equality for the Legislative Assembly. Malapportionment of about 2:1 will continue to exist—however, this will only be in relation to six 'geographically large' non-metropolitan seats—compared to all 23 non-metropolitan seats under the previous system. Unfortunately the inherent soundness of the new system is tainted by the political self-interest that was the driver for change. It is not possible to argue that the reform of the Legislative Council is progressive, as the reform actually increases the previous level of malapportionment. Because the new legislation retains geographically distinct non-metropolitan Council regions irrespective of population, the level of malapportionment increases in the worst-case scenario from 4.1:1 to 4.6:1.¹⁴ It is remarkable that this legislation, which Labor purports is based on voting equality, actually increases inequality for one house of parliament.

Labor is the clear political winner in these reforms. It has been able to protect its Assembly seats in the Mining and Pastoral region, while severely weakening the

¹³The Greens' current seats (North Metropolitan and South West) are in the two regions where the quota will increase.

¹⁴Based on voters enrolled per member, comparing Mining and Pastoral (68,240 enrolled at the 2005 election; increasing from five to six members) against North Metropolitan (388,999 enrolled; to decrease to about 311,142, and decreasing from seven to six members).

Nationals in their areas of support. The Liberal Party benefits from additional metropolitan seats, and having a weaker Coalition partner in the Nationals. The Greens are neither big winners nor losers, but are responsible for increasing Legislative Council malapportionment.

References

- Dobson, A. 1996. 'Representative Democracy and the Environment.' In *Democracy and the Environment: Problems and Prospects*, eds W.M. Lafferty and J. Meadowcroft. Cheltenham: Edward Elgar.
- Eckersley, R. 2000. 'Deliberative Democracy, Ecological Representation and Risk: Towards a Democracy of the Affected.' In *Democratic Innovation: Deliberation, Representation and Association*, ed. M. Saward. London: Routledge.
- Goodin, R.E. 1996. 'Enfranchising the Earth, and its Alternatives.' *Political Studies* 44: 835–49.
- Harvey, B. 2002. 'Greens Sink Votes Bid.' *The West Australian* (Perth) 18 November 2002. Page 3.
- Kelly, N. 2004. 'Vote Weighting in Electoral Systems: The 'One Vote, One Value' Debate in Western Australia.' Honours thesis, Faculty of Media, Society and Culture. Perth: Curtin University of Technology.
- Margetts, D. 2001. 'Electoral Amendment Bill 2001—Second Reading Speech.' Hansard. 29 November 2001. Perth: Parliament of Western Australia. <<http://www.parliament.wa.gov.au/index.htm#>>. Consulted 10 February 2004.
- Phillips, H. 1991. 'The Modern Parliament, 1965–1989.' In *The House on the Hill: A History of the Parliament of Western Australia 1832–1990*, ed. D. Black. Perth: Parliament of Western Australia.
- Shine, K. 2002. 'Poll Reforms Bound for High Court.' *The Australian* (Perth) 13 November 2002. Page 4.
- WAEC [Western Australian Electoral Commission]. 2005. <<http://www.waec.wa.gov.au>>. Consulted 1 July 2005.