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THE FAIRNESS CLAUSE IN SOUTH AUSTRALIA

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South Australia's fairness clause is unique in Australia, although similar requirements have been proposed in WA and also NSW.¹ This research paper looks at why a fairness clause seemed necessary in South Australia, and why the parliament chose a fairness clause rather than a different mechanism.

The paper shows that both of South Australia's major parties had, from the 1960s, made numerous statements that the aim of a fair electoral system should be to allow a party to assume the government benches if it won the support of a majority of voters. When the fairness requirement was adopted in 1990 it was not a new proposal – a similar requirement had first been proposed in 1975. For all of the fourteen year period from the 1975 proposal to the 1989 select committee recommendation, a special redistribution criterion had been conceptualized as a remedy for bias caused by the overconcentration of one party's support in a few safe seats. And for all of that time there was a generally-held assumption that if the bias was addressed then the new districts would generate an outcome at a subsequent election which would return a party to government if it had the support of a majority of voters.

Only the 1990 HA select committee sounded a warning that other factors, such as the way that parties campaign, might interfere with the translation of votes into seats. But almost everyone seems to have considered that the parties' campaigns were not so different that this factor would have much effect. On that basis it seemed reasonable to express the requirement in terms of its intended effect – a fair election outcome.

Finally, the fairness clause was not unanimously supported, nor considered to be the only option. But both parties were committed to retaining single member districts and to assuming government if given the support of a majority of voters.

Malapportionment and bias

South Australia's earliest electoral district boundaries were malapportioned, designed to provide separate representation of the colony's various economic interests, rather than to equalize district population. The emphasis on separate representation of agriculture, fishing, forestry and mining produced more rural districts than city districts, even though the population was substantially city-based. Malapportionment advantaged the parties which had strongest support in rural districts, and Labor often won more votes even before preferences were allocated but failed to win a majority of seats (and government).² Labor won government in 1924, lost it in 1927,

¹ See for example WA. Commission on Government, 1995, Report No. 1, The Commission, Perth, section 8.3.6; *NSW Parliamentary Debates* 15 October 1997 Constitution Amendment Bill (proposed new redistribution criterion).

² In 1927 Labor won 48% of first preferences and the Liberal and Country party candidates won 46% between them, with equal numbers of members elected uncontested on both sides. But Labor won just 16 seats while the Liberal and Country parties won 28 in the 46 seat House. A Liberal member's Address in Reply speech was interrupted as follows:

'The Hon W Morrow (Liberal) -....(the voters) had to decide whether they would have a Liberal-Country Party Government or a Labor Government, and the verdict was emphatic and unmistakable.

regained it in 1930 and then lost it again with a party split in 1933, and the incoming Liberal Country League (LCL) coalition entrenched itself with a zonal redistribution which gave twice as many seats to areas outside the capital city, despite the fact that the population was twice as big in the city. That design advantaged the LCL to the extent that it retained government until 1965.³ Zonal malapportionment remained in place with minor alterations until the LCL began to dismantle it in 1968, but looking back in 1970 Jaensch could argue that ‘the South Australian electoral system has never made any pretence at upholding the principle of one vote one value.’⁴

Because Labor support was concentrated in inner city areas, Labor seemed to be doubly disadvantaged by malapportionment and also by a bias in the way that votes translated into seats which seemed to be due to the overconcentration of Labor support in industrial areas of Adelaide and in regional cities. In Adelaide Labor candidates won districts with very large enrolments, by large majorities, and in a few rural cities Labor candidates won districts with very small enrolments, often also by large margins. The ALP could not effectively spread its support out into neighbouring areas to win extra seats. A similar situation had been observed in the UK where David Butler said the British Labour Party used ‘many more votes in piling up huge majorities in absolutely safe seats than the Conservatives whose strength happens to be more effectively spread.’⁵

Measuring bias

Measuring malapportionment was simple – compulsory enrolment and an ongoing electoral roll meant that the number of electors in each district could be ascertained. Measuring bias was not so simple. Butler considered that to win a given number of seats, UK Labour had needed 2% more of the vote than the Conservatives in 1950 and 1951 and about 1% more in 1955, assuming

The Hon J Jelley (ALP) – The gerrymander played a great part in it too – we got more votes than you.

The Hon W Morrow (Liberal) – The honourable member is entitled to all the joy he can get from that moral victory, so long as he will allow us to have the actual victory, with its occupancy of the Treasury benches.’

South Australian Parliamentary Debates, 27 July 1927: 145.

³ Few two party preferred estimates were made at the time, but later estimates showed that seven of the eleven postwar elections before the 1976 reforms took effect, were wrong winner elections: the LCL took government six times without majority voter support, and Labor once. Jaensch 1971: 85; Jaensch, 1975: 5.

⁴ Jaensch 1971: 82. Malapportionment was characteristic of all Australian states at the time, though not of federal districts. A redistribution in 1955 brought elector numbers within a 20% tolerance but the zones retained different quotas, and at the next election the average metropolitan district had 3.3 times as many electors as the average rural district.

⁵ Butler 1951: 331. Butler quantified this in the 1952 report: ‘In both 1950 and 1951 the median Conservative vote (that is the Conservative strength in that constituency which ranked midway between its safest and its most hopeless) was above the mean, while with Labour the opposite was the case. In other words, over half the Conservative candidates secured more than the average for their party, while over half the Labour candidates secured less than the average support for their party. Since almost all victorious candidates are among those who secure a vote above the average, it follows that Conservative support was more effectively distributed about the country from the point of view of winning seats.’ Butler 1952: 276.

a uniform swing assumption could be applied.⁶ Perhaps in order to reinforce his uniform swing thesis, Butler repeatedly asserted that his statistical analysis of the British elections showed that ‘no local issues, campaigns and organizations made an overwhelming difference to the outcome in their constituency’, but he did recognise that

...there is always the danger of carrying the refutation too far. In this case it must be stressed that, however much one may provide universal explanations to cover variations in election results between individual constituencies, a small margin still remains which can only be accounted for in local terms.⁷

Butler did observe a sitting member advantage at the 1955 election: the swing against UK Labour was 1.2% in seats held by Labour but 1.5% in seats held by Conservatives.⁸ But by comparison with the effects of malapportionment (and turnout differences) and different geographic concentration of the parties’ support, Butler regarded local campaign effects and the sitting member advantage as minor. And because they inferred that swings would not be uniform (and Butler’s analysis was based on a uniform swing hypothesis) Butler did not separately analysed them.

In the 1950s Joan Rydon applied these ideas to Australian elections, and developed two measures for disadvantage. Following Butler, Rydon measured *total electoral disadvantage from all causes*, as the difference between the statewide two party preferred vote and the two party preferred vote in the median seat. Then she demonstrated that the effect of *malapportionment* could be measured as the difference between the statewide two party preferred vote and the average of the two party preferred results in each district.⁹ Finally there was a *residual disadvantage due to all other factors*, which could be measured in terms of the difference between the average of the two party preferred results in each district and the two party preferred vote in the median district.¹⁰

Rydon demonstrated that at recent federal elections the Australian Labor Party had a higher proportion of its support in safe seats than the coalition parties. She assumed that this was the main cause of all disadvantage other than malapportionment.¹¹ Rydon’s calculations were therefore always expressed in terms of just two causes of under-representation: malapportionment and what she called the ‘*differential concentration of majorities*’. Rydon’s assumption was consistent with those made by Butler in respect of the UK and also by Brookes

⁶ Butler 1955: 208-9.

⁷ Butler 1952: 243.

⁸ Butler 1955: 203-4.

⁹ In the UK this could also reflect differential turnout, but it is a reasonable measure of malapportionment in Australia.

¹⁰ Rydon 1957: 57.

¹¹ ‘The explanation of the bias against the A.L.P. thus seems to be that Labour voters are more concentrated in safe seats than are the supporters of the non-Labour parties.’ Rydon 1957: 60.

in relation to New Zealand, and indeed by Johnston *et al* much more-recently in the UK. Brookes considered that once malapportionment, turnout and minor party effects had been accounted for, any remaining distortion ‘is the result of the gerrymander effect’, and Johnston *et al* have followed Brookes.¹² Each of these models has assumed that other effects which might cause distortion in the way that votes translate into seats are so small that they can be ignored.

Measuring bias in South Australia

In 1963 Rydon applied these measures to estimated two party preferred results for the 1959 South Australian state election, and concluded that Labor was under-represented in South Australia by 8.7 per cent, of which 3.5 per cent was attributable to malapportionment and fully 5.2 per cent was due to the ‘differential concentration of majorities’ - the over-concentration of Labor’s support in ultra-safe districts. Those effects seemed very high, given that Rydon had found Labor under-representation at Commonwealth elections was ‘about 2% and almost all of this is due to differential concentration of majorities.’¹³ To make sure that this distortion was a function of the boundaries rather than a state election campaign, Rydon reallocated 1958 federal results into the South Australian state districts, and still found that the state district boundaries disadvantaged Labor by 8.8 per cent, of which 4.7 per cent was attributable to malapportionment and 4.1 per cent was due to the differential concentration of party support.¹⁴

Rydon’s analysis was widely accepted in academic circles and by the parties, but the measures produced estimates which were considered speculative until 1968 when both major parties contested each seat, and the distribution of preferences could be estimated with some confidence.¹⁵ So the overconcentration of Labor’s vote was assumed, but not emphasized, in a public campaign for electoral reform which the ALP conducted in South Australia during the 1960s. Campaigners did refer to the US Supreme Court judgments of 1962 and then 1964 which had invalidated malapportionment on constitutional grounds and which had triggered the ‘one vote one value revolution’ in that country.¹⁶ Labor’s campaign for electoral reform in South

¹² Brookes 1959: 219; Johnston, Rossiter & Pattie 1999: 368.

¹³ Rydon 1963: 87.

¹⁴ Rydon 1963: 87.

¹⁵ Single member districts were introduced at the 1938 election; turnout for state elections was compulsory from the 1944 election. When two party preferred results were estimated for elections prior to 1968, votes were inferred in uncontested seats using results from the previous federal election. Official statewide two candidate preferred counts became available from the 1979 state election, and official two party preferred results from 1989, though unofficial two party preferred counts were made from 1982.

¹⁶ In *Baker v Carr*, 369 U.S. 186 (1962), the US Supreme Court found that courts did have jurisdiction to consider redistricting plans. In *Wesberry v Sanders* 376 U.S. 1 (1964) (and a series of other cases decided on the same day) the court derived an equal population requirement for congressional districts from Article 1 Section 2 of the US Constitution: “Representatives . . . shall be apportioned among the several states . . . according to their respective numbers.” And in *Reynolds v. Sims* 377 U.S. 533 (1964) (and other cases decided at the same time) the court derived an equal population requirement for a state legislature’s districts from the Equal Protection Clause of the

Australia was articulated in terms of malapportionment and ‘one vote one value’, and it was argued that an electoral system without malapportionment would award government to the party with the support of a majority of voters and on that basis would be fair.

The emphasis on malapportionment rather than total disadvantage meant that the absence of two party preferred counts was not a real problem for the Labor campaign.¹⁷ But even though Labor focused on just one cause of electoral disadvantage, the test it used of a fair set of districts was always that a fair map would give government to the party which won the support of a majority of voters, and in 1962 when Labor won a majority of the votes even before preferences were distributed - yet failed to win a majority of the seats - ALP Leader Frank Walsh claimed the right to govern:

We have received a mandate from the electors of South Australia to form a government. My party has received an overall majority of the vote of the electors.¹⁸

A Labor spokesman – perhaps Dunstan - was reported as saying that ‘it was against the tenets of responsible government for a party to hold office when the vote was clearly against it.’¹⁹

By the early 1960s the LCL was less-trenchantly opposed to electoral districts with equal numbers of electors. Hetherington noted that in 1962 the LCL ‘deleted from its platform the maintenance of the existing two to one ratio of country to metropolitan seats in the house of assembly ...leaving the government free to draw boundaries on new principles.’²⁰ Hetherington’s view was that it was simply ‘no longer possible to defend a system which, through the rapid growth of the metropolitan population, had made a country vote worth nearly four metropolitan votes.’²¹ In addition changes were working in Labor’s favor, as Labor-voting

14th Amendment to the US Constitution “No state shall ... deny to any person within its jurisdiction the equal protection of the laws.” Being derived from different parts of the constitution, the standards are different: congressional districts have been more strictly controlled and are now required to have equal population while state districts can be within a 5% tolerance. The judgments required every US state to draw up new maps for their state and congressional electoral districts. See National Council of State Legislatures, 2009: 25.

¹⁷ In 1956 Forbes had estimated votes for ALP, LCL and others at SA state elections from 1938 to 1956 but had stopped short of allocating them to two parties and had simply concluded that 1944 was probably the only election when the LCL had retained government without a majority of votes (Forbes, AdB 1956: 51). Rydon used Hetherington and Reid’s data and estimated that the ALP would have had a majority of the two party preferred vote in 1959 (Rydon 1963: 86.) These were the only published two party preferred estimates available before the 1968 reforms.

¹⁸ In contested districts Labor won 54% of first preferences, but there were eight uncontested districts and six of them were safe LCL (Jaensch 2007: 281).

¹⁹ ‘SA result still in suspense’, *The Advertiser*, 5 March 1962: 1.

²⁰ Hetherington 1964: 236.

²¹ Hetherington 1964: 237.

skilled workers brought into the state by Playford's state development policies were pushing into outer-metropolitan areas and changing the balance of support in several LCL districts.²²

At the end of 1962 legislation was passed appointing a new redistribution commission and instructing it to draw 42 districts (an increase of 3 on the 39-seat assembly), allocating 20 seats to areas where the majority of the residents gained their income from primary production or services to primary production, and 22 seats to other areas.²³ The tolerance within each zone was reduced from 20 per cent to 10 per cent; this plan would reduce, but not eliminate, malapportionment, and would probably have advantaged the LCL.²⁴ The new commission's requirement to create just 20 rural districts would increase the rural quota, and Labor would be likely to lose several seats which it held in regional cities because the only available extra electors would need to come from strongly-LCL hinterland areas. Meanwhile the quota would be reduced in metropolitan districts, and Blewett and Jaensch noted that this 'provided the possibility of rescuing LCL enclaves previously buried in Labor areas, and thus of increasing the proportion of LCL Members from the metropolitan area.'²⁵

In addition, the legislation specified two extra districts for non-primary-producing areas that were more than 30 miles from the city centre, if their population was at least two thirds the average population of the other non-rural districts. Given that Labor already held three seats representing the regional industrial cities of Whyalla, Port Pirie and Port Augusta, this provision would concentrate the Labor vote from three districts into two. Hetherington considered that these criteria would

...confine the Labor vote and positively assist the LCL. ...Labor would be denied the advantage it would otherwise gain from the rapid increase in the number of Labor voters which will follow the building of the steel works at present under construction at Whyalla. They would be locked in the two country industrial seats. With such a distribution Labor could be denied the treasury benches even with a clear overall majority of the votes in the state as a whole. Even if it won an election it would be highly unlikely that it could win sufficient seats in the

²² 'Two factors are forcing the Government to make a change. The first is that with the present distribution it faces defeat at the next election.' Hon Frank Walsh Leader of the Opposition, Constitution Act Amendment Bill (Electoral) second reading, *South Australian Parliamentary Debates*, February 25 1964: 2076. Martin says Playford 'was aware of the irony' (Martin 2009: 35).

²³ The previous ratio was 13 metropolitan to 26 country districts.

²⁴ Playford articulated the remaining malapportionment in terms of representation, arguing that 'Anything that would swing the trend away from an equal balance between the development of the State and the development of the city would be wrong.' Hon Sir T Playford, Electoral Districts (Redivision) Bill 1962, *South Australian Parliamentary Debates*, 23 October 1962: 1598.

²⁵ Blewett & Jaensch 1971: 32.

house of assembly to give it the absolute majority, after providing a speaker, which would enable it to change the system.²⁶

Hetherington's analysis makes it clear that South Australian academics were aware in the early 1960s of the effect of bias due to one party's greater concentration of support.

The commission issued a report, but Labor prevented it being adopted by the parliament.²⁷ Labor considered that that the new districts would entrench an LCL government:

At the last election 56 per cent of the people said they wanted a change of government, but because of the gerrymander it was denied them; and under the proposed system, 68 per cent of the people could vote for a change of government, and this could be denied them by the Government in power.²⁸

The 1965 election was held on existing boundaries and Labor won a majority of both votes and seats and went into government for the first time since 1933. But even in government Labor was unable to pass its electoral reform legislation: a *Constitution Act Amendment Bill 1965* which would have abolished the zonal basis of the map and would also have reduced malapportionment, was rejected by the Legislative Council.²⁹ By increasing the size of the House of Assembly from 39 Members to 56 (and then requiring that 26 districts be wholly in country areas) the number of Members holding rural seats would not need to change, and the 15% tolerance was also expected to be applied to favor country districts.³⁰ But longstanding Labor policy was to increase the Assembly to 56 members and to abolish the Upper House, so this 1965 proposal to increase the size of the Assembly was interpreted as 'a step to eventual abolition' of the Upper House.³¹

²⁶ Hetherington 1964: 237.

²⁷ Electoral Commission 1963. Amending the number of districts required approval by an absolute majority of the house, and two Labor members were absent from the chamber when the vote was taken so the vote was lost (Constitution Act Amendment Bill (Electoral), *South Australian Parliamentary Debates*, 25 February 1964: 2103.) This was not unexpected: Playford foreshadowed it when introducing the Bill to constitute the Commission (Electoral Districts (Redivision) Bill, *South Australian Parliamentary Debates*, 23 October 1962: 1600).

²⁸ Hon Frank Walsh Leader of the Opposition, Constitution Act Amendment Bill (Electoral), *South Australian Parliamentary Debates*, February 25 1964, p.2076. Blewett and Jaensch estimated that the LCL would have won two of the three extra districts and Labor would have gained one (Blewett & Jaensch 1971: 32).

²⁹ Commissioners were a Supreme Court judge, the Assistant Electoral Commissioner, and the Surveyor-General; tolerance would have been 15%; two districts could be more than 15% below quota "for reasons of sparsity and remoteness of population and difficulties of communication": Hon Frank Walsh (Premier), Constitution Act Amendment Bill (Electoral), *South Australian Parliamentary Debates*, July 1 1965: 651.

³⁰ '...more closely settled districts would have a number of voters something over 11,000 and country districts something over 8,000'. Hon Frank Walsh (Premier), Constitution Act Amendment Bill (Electoral), *South Australian Parliamentary Debates*, July 1 1965: 651.

³¹ Hon Frank Walsh (Premier), Constitution Act Amendment Bill (Electoral) second reading, *South Australian Parliamentary Debates*, July 1 1965: 652. See for example 'When the Labor Party speaks of a House of 56 Members it visualizes the abolition of the Legislative Council, so that in the overall position there would be a

The criteria specified in Labor's 1965 Bill would have required that the districts be of a 'convenient shape', townships should not be split and reasonable access must exist between a district's centres of population. More importantly, the community of interest criterion was specified in a way that would allow districts to cross urban-rural boundaries: 'the interest of electors in any area other than a country area shall be regarded as common with those of electors in adjacent country areas.'³² The effect of that change would have been to diminish the over-concentration of Labor's vote in many of its ultra-safe districts, because it would have permitted districts in which strongly-Labor areas (outer-suburban Salisbury, Elizabeth or Gawler, or the industrial cities of Whyalla, Pt Augusta and Pt Pirie) could incorporate some of the LCL-voting rural hinterland.

Other provisions of the bill included a malapportionment criterion which would automatically trigger a redistribution when district enrolments were too far from the average (though redistributions could still be initiated by a resolution of the Assembly)³³ and abolition of the parliament's power to alter or reject a commission's redistribution report. Instead, a commission's report would be presented to the Governor and proclaimed 'at such time as the Governor shall deem fit.' Given that the Governor acts on the advice of the Executive Council this would mean that the Legislative Council would not be able to amend or reject a redistribution report. The Legislative Council rejected the Bill.

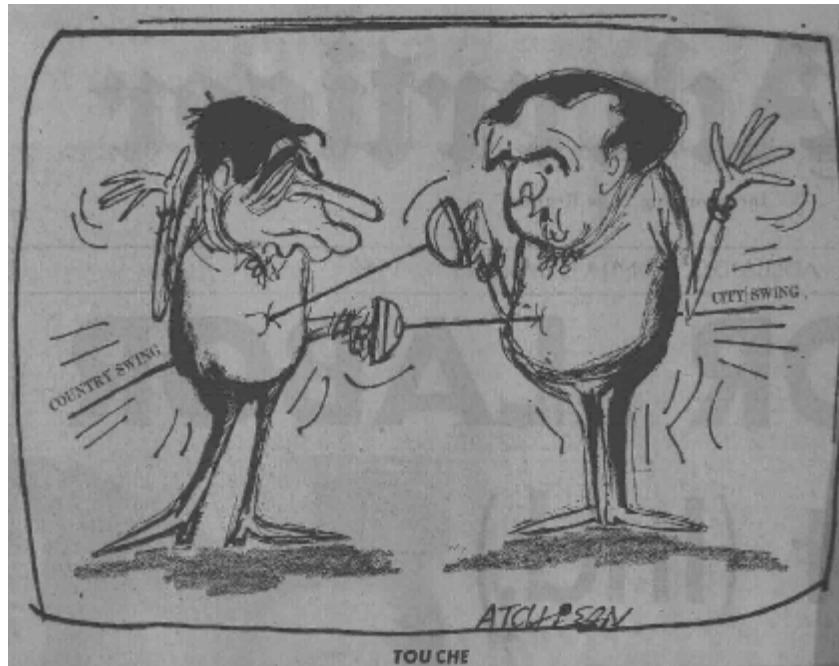
The subsequent election in March 1968 was a strange precursor to the South Australian elections of 2002 and of 2010. First, in a precursor to the 2010 result the election of 1968 produced non-uniform swings.³⁴ Both parties improved their vote in areas where they were already strong: Labor strengthened its city vote but the swings did not carry through to the country, where the LCL improved its support, taking Chaffey and Murray from the ALP. The Advertiser's Aitchison cartoon captured the moment: Dunstan skewered by swings against the ALP in rural districts and Hall hurt by swings against the LCL in city districts.

reduction of members': Hon Frank Walsh (Leader of the Opposition), Constitution Act Amendment Bill (Electoral) second reading, *South Australian Parliamentary Debates*, February 25 1964: 2076.

³² *Constitution Act Amendment Bill 1965* (SA), clause 80(b)(ii).

³³ If more than 10 of the 56 districts were 20% or more out of quota.

³⁴ It was also the first election at which both major parties contested all districts.



Aitchison cartoon: Touché, *The Advertiser* 4 March 1968:2.

Second, in a precursor to the 2002 result, there was a hung parliament. At the end of the count – almost three weeks after election day - both parties held 19 seats and an Independent member, Tom Stott, held the balance of power. Labor had won the support of a majority of voters – indeed it had won 52% of the first preference votes, before allocation of preferences - but Stott represented a country district and gave his support to the LCL.³⁵ Premier Dunstan could

...only regret that Mr Stott has seen fit to make a statement of this kind which ignores the fact that the Government has the support of the majority of electors and that Mr Stott was elected in Ridley on the preferences of those who wished the Government to remain in office.³⁶

For the six weeks between election day and the first day of sitting when Labor lost a vote on the floor of the house and lost government, Labor waged a one vote one value campaign involving media appearances, press reports and several large public demonstrations.³⁷ That campaign focused on the fact that Labor had the support of a substantial majority of voters but had not assumed government, and Rydon noted that the campaign did refer to Labor's disadvantage due

³⁵ Labor won 52% of the first preference votes (Jaensch 2007: 289). Jaensch estimated the two party preferred result as ALP 53.22% (Jaensch 1975: 5); Hughes has it as 52% (Hughes 2004).

³⁶ '19 All but Stott is for L.C.L.' *The Advertiser* 20 March 1968: 1.

³⁷ See for example 'Poll Protest Meeting', *The Advertiser* 18 March 1968: 1,6; An Adelaide Lawyer, 'Reform and the Constitution' *The Advertiser* 19 March 1968:2; 'LCL Could Lose on Own Plan Says Hall', *The Advertiser* 26 March 1968: 3; Editorial: 'Mr Dunstan and the Press', *The Advertiser* 26 March 1968: 2; ALP "Propaganda Drive" Claimed', *The Advertiser* 28 March 1968: 3. See also Mike Duigan's statement to the Don Dunstan Oral History Project: 2-3; Blewett & Jaensch 1971: 172-173.

to the overconcentration of its support in safe seats, as well as to malapportionment.³⁸ The campaign did bring the parties closer: Opposition Leader Steele Hall declared that the LCL was ‘not inflexible’ on its proposal for 25 country seats and 20 metropolitan seats, and Premier Dunstan proposed a 48 seat House with 12 four-member electoral districts using federal districts due to be redrawn within months.³⁹

Fixing malapportionment but increasing bias

The Hall LCL government which took office in 1968 began South Australia’s one vote one value electoral reforms, and they were completed by the Dunstan Labor government in 1976.⁴⁰ The 1968 LCL reforms substantially followed Labor’s 1965 proposals: the number of districts was increased from 39 to 47, and tolerances were reduced from 20% to 15% for districts outside the metropolitan area and to 10% for metropolitan districts.⁴¹ Zonal malapportionment remained, albeit at a reduced level: the two zones (metropolitan and non-metropolitan) were retained and districts within the metropolitan zone would still contain 15 per cent more electors than the state average.

The effect of the 1968 reforms had been anticipated when the 1963 redistribution proposal and the 1965 legislation were discussed: reducing malapportionment reduced Labor’s disadvantage, and reducing the number of electors in city seats allowed Labor’s votes in very safe seats to be unlocked and to be used to win neighbouring districts. At the same time, Labor’s vote was becoming less geographically concentrated as skilled migrants moved in to outer suburbs. These changes were recognised: Labor member Hugh Hudson told the House that

[m]ost of the political commentators, including Hetherington and Reid, assume that (the way population is developing in South Australia and the political wastage it causes) works to the considerable disadvantage of the Labor Party, but I do not think they are right. I think that the population changes, particularly in

³⁸ Rydon wrote that ‘the current outcry against the South Australian system has centred on the bias against Labor as much as on inequality itself.’ Rydon 1968: 141. Labor’s campaign against malapportionment in South Australia became a model for campaigns elsewhere and when Labor’s federal Leader, Gough Whitlam, made a submission that month to the federal redistribution of divisions in NSW he too argued that ‘[n]o distribution should permit a situation where a party or coalition of parties which secures a `majority of votes does not secure a majority of members in the House of Representatives. To permit otherwise would be to perpetrate a travesty of representative government.’ Distribution Commissioners for New South Wales, 1968: 5.

³⁹ ALP ‘Propaganda Drive’ Claimed’, *The Advertiser* 28 March 1968: 3; Labor Compromise Plan for 48 in Assembly’, *The Advertiser* 29 March 1968: 1.

⁴⁰ The 1968 legislation reduced malapportionment and appointed an independent commission; the 1976 reforms delegated the redistribution power entirely to the commission, reduced the allowable tolerance to 10% in any district and imposed legislated triggers.

⁴¹ *Electoral Districts (Revision) Act 1968-69 (SA)*.

the south-western and southern suburbs, have changed this situation considerably.⁴²

Meanwhile rural districts needed to include more electors, and electors in neighbouring areas were predominantly LCL voters, so LCL support began to be over-concentrated in safe rural districts. This was understood by some within the LCL⁴³ but the party could not refuse a redistribution or electoral reform: population movements were encroaching on LCL outer-metropolitan seats and would be likely to give the ALP a majority of seats even on the existing district boundaries.⁴⁴

The 1969 Electoral Districts Boundaries Commission was constituted and drew 28 metropolitan districts which averaged about 15,055 electors and 19 rural districts which averaged 9,647 electors.⁴⁵ The probable effect of the redistribution was variously reported: Aitkin concluded that at a 50:50 result the new districts would still advantage the LCL, but with Labor's high level of voter support it would be likely to win an election.⁴⁶ By contrast Reid argued that the redistribution contained an 'in-built bias towards the ALP' and would award government to Labor even with the support of only 48% of the two party preferred vote.⁴⁷

Labor won the subsequent state election in 1970 with a majority of the vote even before preferences were allocated, and returned to government on a platform which included electoral reform.⁴⁸ At that election the major parties contested all seats, so Jaensch produced two party preferred estimates on a statewide, mean and median basis and then applied them to Rydon's measures to calculate the extent of Labor's under-representation from malapportionment and from the overconcentration of Labor votes. He also estimated the measures for previous SA state elections back to 1944, an exercise that required more assumptions.

⁴² Hon Hugh Hudson, Constitution Act Amendment Bill 29 July 1965, *South Australian Parliamentary Debates*, p.753. See also Blewett & Jaensch 1971: 169; Dunstan 1981: 102.

⁴³ See for example, De Garis, Ren 1989, *Redressing the Imbalance*, Ren DeGaris, Millicent, SA.

⁴⁴ Blewett & Jaensch 1971: 184.

⁴⁵ SA Electoral Commission 1969: 7.

⁴⁶ Aitkin 1968: 91.

⁴⁷ Reid 1968: 9.

⁴⁸ See for example the President's Address in Australian Labor Party 1969: n.p. All seats were contested by both parties in 1970 (Jaensch 2007: 293). Jaensch's estimate of the two party preferred vote was 51.6% (Jaensch 1975: 5) but Hughes put it at 53.3% (Hughes 2004).

Table 1: Sources of ALP Under-Representation, SA House of Assembly, 1944 to 1965 (Jaensch)

Election	Under-representation due to:		
	Malapportionment (%)	Differential concentration of majorities (%)	Total (%)
1944	3.8	3.7	7.5
1947	3.3	3.0	6.3
1950	2.3	7.2	9.5
1953	4.3	4.7	9.0
1956	5.0	2.1	7.1
1959	3.9	4.8	8.7
1962	3.3	4.7	8.0
1965	2.5	-0.1	2.4
1968	5.5	-1.7	3.8
1970	3.8	-3.8	0.0

Source: Jaensch 1970:100.

Jaensch's estimates broadly confirmed Rydon's earlier estimates that at the time of the 1959 state election Labor had been badly disadvantaged, and that this disadvantage had been due in roughly equal parts to malapportionment and other factors which Rydon had assumed would boil down to the differential concentration of Labor's votes in ultra-safe districts. The new estimates showed that, as Hudson had predicted, the geographic distribution of Labor's support had begun to advantage Labor and was counterbalancing the disadvantage the party had suffered from malapportionment. Jaensch accepted that Rydon's measure for distortion other than malapportionment was indeed a measure of the electoral effect of the geographic distribution of Labor's vote.

Labor retained a majority of seats – and government - at the elections of 1973, 1975 and 1977 - albeit with under 50% of the two party preferred vote in 1975 on figures from both Jaensch and Hughes.⁴⁹ The 1975 state election took place in the shadow of a chaotic federal scene which seemed likely to reduce ALP support at the state level, and in his policy speech Premier Dunstan proposed optional preferential voting, an option which may have been popular amongst LCL voters and would have been helpful to the ALP against an opposition divided into National, Liberal Movement and LCL groups.⁵⁰ More importantly, after making malapportionment and the Upper House electoral system focal issues of six consecutive election campaigns,⁵¹ when Labor was returned to state government in 1975 it was not only seen to have a popular mandate for electoral reform but was in a position to achieve it: Liberal Movement (LM) candidates had won seats in the Legislative Council and were prepared to support Labor's electoral reforms.

A new redistribution criterion

Labor's *Constitution Amendment Bill (Commission) Bill*⁵² produced most of the elements of South Australia's current redistribution system: an ongoing Electoral Districts Boundaries Commission consisting of a Supreme Court judge, the Electoral Commissioner and the Surveyor-General;⁵³ the commission operating independently of the parliament to produce a set of districts that would come into effect without reference to the parliament; criteria and process designated within the legislation, and the overriding criterion being that districts should each have the same number of electors. Commonwealth legislation had recently reduced the allowable tolerance for the number of electors in federal divisions, from 20% to 10%, and the lower tolerance was adopted for the South Australian legislation.⁵⁴ Finally, a redistribution would be triggered after three elections (providing five years had elapsed since a prior redistribution).

Now even the LCL Leader conceded that '...no Party or group of Parties should attain government unless it has attained a majority of the preferred votes.'⁵⁵ Labor understood this to

⁴⁹ Hughes 2004; my calculations from Jaensch 1976. Jaensch and Hughes made different assumptions about the treatment of uncontested seats and about the proportion of preferences that would have reached the two major parties if each district's result had been counted out completely. See also Jaensch 1971: 85; Jaensch 1975: 5.

⁵⁰ Kelton, G 1975, 'Dunstan Promises SA Voting Change', *The Advertiser* 25 June 1975: 1.

⁵¹ For example in his election policy speech in 1973 Dunstan declared that '[o]ur firm policy for all elections is that there must be one man, one vote, and one vote, one value' ('\$300m industry for Far North' *The Advertiser*, 20 February 1973: 3). In his 1975 election policy speech he asked for 'a mandate to redistribute the electorates of the House of Assembly on the Labor Party principle of one vote one value, based on single member electorates.' ALP Policy Speech, 24 June 1975 (available in the Library).

⁵² This Bill became the *Constitution Amendment Act (No.5) 1975* (SA).

⁵³ Occupants of these three positions had traditionally been designated to conduct redistributions.

⁵⁴ *Commonwealth Electoral Act (No. 2) 1973*.

⁵⁵ Hon David Tonkin, Constitution Act Amendment Bill (Commission), *South Australian Parliamentary Debates* 8 October 1975, p.1209.

mean malapportionment should end, but LCL members who spoke on the Bill understood it in terms of the concentration of party support: now the LCL was anxious not to be caught by a community of interest criterion that could generate ‘vast wastage of votes for one party in a series of huge majorities in blue ribbon seats.’⁵⁶ So for the first time, LCL Members moved the insertion of a fair outcomes criterion requiring the commission to consider:

83 (aa) the extent to which the representation in the House of Assembly reflected the views of the electors as evidenced by a majority of the votes cast and counted towards the election of candidates at the general election or general elections that occurred since the last redistribution.⁵⁷

In reply, Hugh Hudson acknowledged that Labor could be caught again by a voting pattern that wasted its support but considered that

[i]f it is to be argued that there ought to be a condition that no party can govern unless it has 50 per cent of the vote, it really should be argued that there should not be single member districts but there should be multi-member districts, and some kind of proportional representation.⁵⁸

Labor Premier Dunstan acknowledged that the differential concentration of majorities could, even with equal elector numbers, mean that a party could win a majority of seats without a majority of votes, but argued that the focus of the legislation should be on ending malapportionment and creating an independent commission. Bias due to the overconcentration of support was, he said

... not likely to be very great, but it is conceivably possible under a single-member electorate system. It is unlikely, and the cases in which it will happen will be rare; it is remote, but it could conceivably happen. How precisely do we then draw electoral boundaries to see that under a single-member electorate system it does not happen? ...It is one of the criticisms of that system but it is not something that we can overcome by drawing boundaries according to concentrations of particular points of view. In fact, specifically, Electoral Commissioners should not draw boundaries according to the political points of view of the electors. That is just what they ought not to be doing, because, if they

⁵⁶ Hon Ren De Garis, Constitution Act Amendment Bill (Commission), *South Australian Parliamentary Debates* 14 October 1975: 1265.

⁵⁷ Hon David Tonkin, Constitution Act Amendment Bill (Commission), *South Australian Parliamentary Debates* 8 October 1975: 1209.

⁵⁸ ‘Voting patterns can change differentially again and it may well be that, in the future, the Labor Party will suffer once again the disadvantage that arises under a single member district system from a differential concentration of majorities. Once a single member district system is accepted with one vote, one value, the consequences of that system must be accepted.’ Hon Hugh Hudson, Constitution Act Amendment Bill (Commission), *South Australian Parliamentary Debates* 7 October 1975: 1111.

do that, they will introduce Party politics into their consideration of electoral boundaries.⁵⁹

The LCL proposal for a fairness requirement was defeated in the Assembly but resurfaced in the Council, where Ren DeGaris (LCL) proposed a criterion which would require the commission to consider the possibility of bias:

83(g) the desirability of ensuring that so far as is practicable each vote cast at an election shall have an equal political value.⁶⁰

DeGaris was asked to specify just what this amendment meant.

It means that the Commission, in drawing up the boundaries, must keep in mind (and it must be the Commission's opinion when it draws up the boundaries) that the pivotal point for changing the Government will be 50 per cent of all votes cast.....It does not mean the Commission has to produce this because in single-member district systems it cannot be done.⁶¹

Given the long history of egregious malapportionment in South Australia, these LCL proposals for a fairness criterion seemed ingenuous at the time, but by the early 1970s LCL support in rural districts was becoming over-concentrated. Australia's post-war baby boomers were forming their own families and driving the expansion of new suburbs, and many supported Labor. The over-concentration of Labor's vote in inner-city areas disappeared. Meanwhile in districts outside the metropolitan area, industrial employment in forestry and steelworks was contracting and industrial workers were moving away - as were rural teenagers - making the rural seats safer for the LCL. It seems likely that Labor was as aware of this change as the LCL but after the long years of malapportionment Labor may have chosen to ignore it.

The fairness proposals were unsuccessful, the bill was passed and an ongoing Electoral Districts Boundaries Commission was constituted; the legislation also triggered its first redistribution. For the first time in South Australia a commission was not required to draw a given number of metropolitan and rural seats: the Act required only that each district would contain the same number of electors, with an allowable tolerance of 10 percent. The importance of these changes is highlighted by Rydon's comment in 1968, when she contemplated a model similar to what South Australia adopted:

⁵⁹ Hon Don Dunstan, Constitution Act Amendment Bill (Commission), *South Australian Parliamentary Debates* 8 October 1975: 1209, my emphasis.

⁶⁰ Hon Ren De Garis, Constitution Act Amendment Bill (Commission), *South Australian Parliamentary Debates* 15 October 1975: 1341. He later offered to change 'political' to 'have an equal value in determining the Government.'

⁶¹ Hon Ren De Garis, Constitution Act Amendment Bill (Commission) in committee, *South Australian Parliamentary Debates* 15 October 1975: 1341.

Probably any form of proportional representation will diminish the likelihood that a party with an absolute majority of votes will not govern, but so also will a single member system approaching ‘one vote, one value’ which provides for automatic redistributions and removes the determination of electoral boundaries from the government of the day. But that is probably a pipe-dream.⁶²

The new legislation required the commission to consider several criteria:

83 For the purpose of making an electoral redistribution, the Commission shall as far as practicable have regard to –

(a) the desirability of making the electoral redistribution in such a manner that there will exist, as far as reasonably possible, amongst the population of each electoral district, a community of interest (of an economic, social, regional or other kind);

(b) the population of each proposed district;

(c) the desirability of leaving undisturbed as far as practicable and consistent with the principles on which the redistribution is to be made, the boundaries of existing districts;

(d) the topography of areas within which new electoral boundaries will be drawn;

(e) the feasibility of communication between electors affected by the redistribution and their parliamentary representatives in the House of Assembly;

and

(f) the nature of substantial demographic changes that the Commission considers likely to take place in proposed electoral districts between the conclusion of its present proceedings and the time when proceedings are likely to be next taken for the purpose of making an electoral redistribution,

and may have regard to any other matters it thinks relevant.⁶³

The commission acknowledged that the parliament had chosen not to perpetuate a zonal system:

Under the present legislation there is no differentiation in permitted tolerance and therefore ... there is now no electoral necessity to define the metropolitan area.

⁶² Rydon 1968: 147.

⁶³ *Constitution Act 1934* (SA), s.83(a).

The metropolitan boundary is consequently no more than a series of electoral boundaries.⁶⁴

Nonetheless, the 1969 commission interpreted its community of interest requirement in terms of an orientation towards rural or urban lifestyles,⁶⁵ and began its work by drawing 14 districts outside the metropolitan area, each with fewer electors than the state average.⁶⁶ Rural areas had been losing population to metropolitan (and especially outer-suburban) areas, and the commission was required to consider demographic change which was likely to occur before the next redistribution (up to nine years away) so the decision to draw rural districts with relatively few electors is hard to justify. But the commission was dismissive of the demographic change criterion:

...a district with a rapidly increasing electorate should, other things being equal, be placed below quota, and there should be corresponding degrees of tolerance in static or declining districts. But we have found that other things are rarely equal and other criteria may impose other solutions. Changing collective interests or age distributions may also be relevant. We have kept this criterion in mind as we have all the other mandatory criteria.⁶⁷

The commission's choice to retain the metropolitan area boundary and make what were effectively two separate redistributions, and to ignore the demographic change requirement, meant that it drew rural seats with fewer enrolments than average although they were likely to lose more, and metropolitan seats with relatively large enrolments although they were likely to grow. The commission received a submission that it should do more than faithfully apply the criteria, and should consider the political effect of the new boundaries. That was rejected on the grounds that the available methodology was too imprecise to sustain conclusions that could have so much import:

Political science in its role of predicting voting patterns in future elections seems to us, with respect, to involve an interpretation of incomplete statistical data, a series of assumptions as to uncounted preference votes, and a measure of oneiromancy.⁶⁸

The 1969 commission did make some preparation for any future commission which might need to consider the political effect of the lines it drew. It called for the result in each district to be

⁶⁴ SA Electoral Commission 1976: 9.

⁶⁵ The commission considered that the boundary of the metropolitan area "may indicate a possible separation of communities of interest." SA Electoral Commission 1976: 9.

⁶⁶ Victoria, Mallee, Eyre and Flinders were all set at 9% below quota, and Light at 8.3% below. SA Electoral Commission, 1976: 122.

⁶⁷ SA Electoral Commission, 1976: 11.

⁶⁸ SA Electoral Districts Boundaries Commission, 1976: 13.

counted out past the point required by the legislation, to a complete two party preferred result in each district so that an accurate figure for the statewide two party preferred result could be compiled.⁶⁹

The information so obtained will... enable the voting at that election for those candidates to be accurately known. ...We do not wish to express a view as to whether such information will be relevant to a future redistribution.⁷⁰

It does appear that the commission considered the matter. It seems to have had the new districts assessed - presumably in the same way that the parties would have done, by applying previous election results to the new districts - and was apparently satisfied with the result:

... even if it had been proper for us to consider voting patterns as a distinct criterion we should not, on the present proposed redivision, have varied our report.⁷¹

The reason for the commission's satisfaction is not clear. Jaensch applied 1975 voting figures to the commission's new boundaries and showed that LCL candidates would have won only 21 of the 47 seats and would have been 3 seats short of government, even with a statewide two party preferred vote of 50.6% (Hughes estimated it as 50.8%).⁷² The three most-marginal Labor seats would have been Unley and the new seats of Mawson and Hartley, and the LCL would have required swings of up to 4.6% to have won all three. Meanwhile *The Advertiser* reported that the redistribution would allow Labor to 'win government with only 45.6 per cent of the vote while the opposition is required to win more than 54 per cent.'⁷³ While it is possible that the commission's analysis would have produced a different result to Jaensch's estimates, it is not likely that the two set of results would have differed by three seats: more recently when several commentators produced estimates after each redistribution, the analyses were consistently within 0.1% to 0.3% on all seats.⁷⁴

So if the commissioners 'should not, on the proposed redivision, have varied (their) report' it was not because they believed the redistribution would have produced boundaries that would

⁶⁹ At the time the *Electoral Act 1929* (SA) required that ballot papers be allocated to candidates according to the first preference shown on each ballot and then, where there were more than two candidates, the count should continue by taking the ballot papers of the candidate with fewest first preferences and allocating them to the remaining candidates according to the second preferences shown on those ballot papers being transferred, and should continue until one candidate had an absolute majority of the votes. The count could sometimes end with three of four candidates still in the count. The EDBC called for the count to continue until only two candidates remained, so a two party preferred result would be available for every district. That would also allow the calculation of a statewide two party preferred vote that would be a result of the count, not an estimate.

⁷⁰ SA Electoral Districts Boundaries Commission, 1976: 13.

⁷¹ SA Electoral Districts Boundaries Commission, 1976: 13; Hughes, 2004.

⁷² Jaensch 1976: n.p.; Hughes, 2004.

⁷³ *The Advertiser* 7 September 1976 cited in Jaensch 1981: 233.

⁷⁴ See, for example, SA Electoral Districts Boundaries Commission, 1994: Appendix 17.

have given a majority of seats to the party which had won the support of a majority of voters. Still, at the next three South Australian elections, conducted on the basis of these new districts, the party which won a majority of the two party preferred vote across the state did indeed win government, so the map was not called into question.

The next redistribution was triggered by the provisions of the Act and was conducted in 1983. By that time demographic change had put 19 of the 47 districts out of tolerance.⁷⁵ Retirements since 1976 meant that none of the 1983 commissioners had been part of the previous commission, and the new commissioners considered the statutory criteria differently. First, they considered the relative importance of the criteria and decided that none could be dismissed:

All the criteria must be regarded as interlocking, so that none takes precedence over the other. Each of the criteria must be considered in relation to the proposed electorate and in relation to each other.⁷⁶

These commissioners interpreted the community of interest criterion differently. Looking for an expression of community which would be independent of existing electoral district boundaries or of the metropolitan zone, they decided that in rural areas local government boundaries would be at least 'readily definable and easily recognised by the public.'⁷⁷ In urban and peri-urban areas they considered that the meaning of community probably did not relate to local government areas as much as to smaller areas – possibly suburbs.

The commission considered whether voting patterns might indicate a community of interest, but decided against it, citing the unpredictability of election results as a practical difficulty. But it did acknowledge that the function of electoral districts might be more than just allocation of representatives to voters, and could extend to forming government.

It may be asserted that under our present electoral system the votes cast for successful candidates in electoral districts are capable of being transformed into a parliamentary majority, which facilitates the formation of a government that is able, by using its majority, to implement its decisions and therefore to govern effectively.⁷⁸

But the commission would not have had bipartisan support from the parliament to assess its districts against previous voting patterns,⁷⁹ under either the community of interest or the 'any other matters' criteria, and taking the step with the support of just one of the parties would be interpreted within the parliament as a partisan act. With that in mind

⁷⁵ SA Electoral Districts Boundaries Commission, 1983: 7.

⁷⁶ SA Electoral Districts Boundaries Commission, 1983: 9.

⁷⁷ SA Electoral Districts Boundaries Commission, 1983: 10.

⁷⁸ SA Electoral Districts Boundaries Commission, 1983: 7.

⁷⁹ Labor consistently opposed the idea when it was raised in 1975 and 1989.

...the Commission regards it as its duty to reach its conclusion uninfluenced by any existing voting patterns, whatever they might be. The Commission has deliberately eschewed voting patterns as matters relevant to its considerations in drawing boundaries.The Commission is of the opinion that it would be distracted from the proper exercise of its functions and duties if it were to allow voting patterns to have any place in the drawing of electoral boundaries.⁸⁰

The election immediately prior to that 1983 redistribution had produced a very close two party preferred result: Labor won 50.9% of the statewide two party preferred vote and won 25 of the 47 seats. So if the commission had simply made minor adjustments to the safer of the existing districts it might have been able to ensure that it had created a fair redistribution without actually assessing the new districts against voting data. But that option was not available because 19 districts were out of tolerance so the commission made major changes. Even so Jaensch estimated that the new map would have produced a fair result if those new districts had been in place at the 1982 election.⁸¹

In 1985 the House of Assembly term was extended from three years to four.⁸² The change had the effect of extending the time between redistributions, but demographic movements within the state had continued, and inequality of enrolments soon reached problematic proportions.⁸³ In early 1989 a Liberal proposal to require a redistribution after every second election⁸⁴ failed to receive the Labor government's support, but provided the opportunity to raise another issue: a larger share of Liberal support continued to be locked up in a series of ultra-safe districts, compared to Labor's position. Leading into the 1989 election, Trevor Griffin argued that the existing map disadvantaged the Liberal Party. He acknowledged that there were various views about 'what is electorally fair', and that there were advocates for proportional representation, or the West German system 'where there are single member electorates topped up by choosing from party lists' and that even within the academic community Mackerras and Jaensch disagreed on how to assess a set of districts as fair.⁸⁵ Assuming uniform swings Griffin argued that:

[t]he only way to assess whether or not the result of an election is fair in political terms is to look at the voting results at past elections. In South Australia in 1975 the Liberal Party would have required 55 per cent of the two-Party preferred vote across the State to have had a reasonable prospect of governing. In 1977 it was

⁸⁰ SA Electoral Districts Boundaries Commission, 1983: 10.

⁸¹ Jaensch 1986: 7.

⁸² *Constitution Act Amendment Act 1985* amending s28 of the *Constitution Act 1934* (SA).

⁸³ At the 1989 election Elizabeth and Whyalla were almost 20% under quota; Ramsay was more than 20% over quota and fisher was 34% over, and growing. All were Labor seats.

⁸⁴ *Constitution Amendment (Electoral Redistribution) Amendment Bill 1989* (SA).

⁸⁵ Assuming uniform swings the Liberal Party would have needed a swing of 5.1% on a two party preferred basis, to win the median seat. A uniform swing of 5.1% across the state would have given the Liberal Party 52% of the statewide two party preferred vote.

55.3 per cent; in 1979, 54.8 per cent; in 1982, 51.9 per cent; in 1985 51.1 per cent; and in 1989 it is estimated that the Liberal Party requires 52 per cent of the two-Party preferred vote to have a reasonable prospect of forming a government.⁸⁶

Griffin proposed a package of amendments to the *Constitutional Act* including a redistribution after each second State election and a new requirement that the EDBC should take into account

...the desirability that a political Party or group gaining 50 per cent plus one of the two party preferred vote at a general election of members of the House of Assembly at which the proposed redistribution would apply should have a reasonable prospect of forming a government.⁸⁷

Labor Attorney-General Chris Sumner argued that guaranteeing fairness or proportionality in a system with single member districts would be 'in theory undesirable' and 'in practice unachievable'.⁸⁸ Griffin's Bill lapsed when the 1989 election was called. When the election results were in, Labor had retained government with only 48% of the statewide two party preferred vote across the state. In addition twelve of the 47 House of Assembly districts were out of tolerance by more than 10%, and the next redistribution would only be occur after an election due in 1993, because the 1975 legislation had no malapportionment trigger. Members of both major parties representing the districts with largest enrolments called for additional resources to service their districts, and members in districts with very low enrolments worried that their districts might be abolished if enrolments dropped too much by the time of the next redistribution.⁸⁹ The press now portrayed Labor's governing with the support of just 48% of voters as problematic, possibly illegitimate, and described the electoral system as 'constitutionally entrenched malapportionment'⁹⁰ and Labor's record on electoral reform seemed under threat.

The Labor government introduced a *Constitution Act (Electoral Redistribution) Amendment Bill* to require a redistribution after every two elections. The Liberal Party's position was that equal numbers of electors still could not address the differential concentration of partisan support and in fact by requiring that the commission leave existing district boundaries intact as far as possible (s.83c) the commission had been directed to

⁸⁶ Hon. KT Griffin, Constitution Act Amendment Bill. *South Australian Parliamentary Debates*, 9 August 1989: 113.

⁸⁷ Hon. KT Griffin, Constitution Act Amendment Bill, *South Australian Parliamentary Debates*, 9 August 1989: 114.

⁸⁸ Hon CJ Sumner, Constitution Act Amendment Bill, *South Australian Parliamentary Debates* 18 October 1989: 1232.

⁸⁹ The outer-suburban district of Fisher (LIB) was 34% over quota, and outer-suburban Ramsay (ALP) was 22% over; meanwhile the regional centre of Whyalla (ALP) was 16% under and the satellite suburb of Elizabeth (also ALP) was 19% below. See SA State Electoral Department, 1991.

⁹⁰ Ward, P 1989, 'A new song sung to a very old tune', *The Australian*, 15 July 1989.

...lock up the potential Liberal vote in as few seats as possible and to spread the Labor vote as widely as possible.At the last election, there were 13 non-Labor seats which polled higher than 65% of the two party preferred vote for the winning candidate.... However, only five seats were won by Labor with the successful member getting more than 65 per cent. This is the perfect psephological example of the 'locked in' interest. At the last election, the non-Labor vote in these seats totalled 146,469. Labor needed about 20,600 fewer votes to win its 13 safest seats than the Liberal Party. ⁹¹

Labor repeated Premier Dunstan's comment of 1975 that an unfair result might occur even once malapportionment had been ended, but that it would be a rare, remote almost inconceivable occurrence.⁹² But Liberal Leader Dale Baker argued that, whatever its structure, the electoral system should be fair as well as equitable:

In producing a fair electoral system, we must consider two fundamental issues. First, the system must ensure the effectiveness and equality of local representation; equal numbers in electorates can achieve this. Secondly, we must also ensure that each vote has an equal influence on which Party governs, so that the party which obtains a majority of the vote does govern, with 50 percent of the two-Party preferred vote being the pivotal point.... Equal numbers in electorates by itself will not guarantee the second outcome.⁹³

Liberals canvassed several possibilities: multi-member districts with proportional representation, or a single member district system with additional districts assigned to balance parties' share of support (following the West German system)⁹⁴ or - if single-member electorates must be retained - more frequent redistributions and a fairness requirement. Baker concluded:

I want to make one point very clear. It does not really matter about the name of the Party, or who is being represented under what banner, but for the sake of democracy it is important that the winner does win: that we do not have an unfair system. If the people of South Australia say they desire to change the

⁹¹ DS Baker, Constitution Act (Electoral Redistribution) Amendment Bill, *South Australian Parliamentary Debates* 10 April 1990: 1377.

⁹² 'The Deputy Premier is continuing the Dunstan refrain. The Deputy Premier claims it would be rare for a Party to obtain a majority of the vote and not win, but this has happened twice in the past six South Australian elections, and Labor, under this present system always can win with a majority of the vote. I would not call that rare.' DS Baker, Constitution Act (Electoral Redistribution) Amendment Bill, *South Australian Parliamentary Debates* 10 April 1990: 1375.

⁹³ DS Baker, Constitution Act (Electoral Redistribution) Amendment Bill, *South Australian Parliamentary Debates* 10 April 1990: 1378.

⁹⁴ DS Baker, Constitution Act (Electoral Redistribution) Amendment Bill, *South Australian Parliamentary Debates* 10 April 1990: 1376-7. New Zealand had not yet changed to MMP.

government, and that is reflected in the vote, the government should change: democracy should not somehow be prevented from operating.⁹⁵

For the Labor Government, single-member electorates and preferential voting were not negotiable; and a fairness requirement was unacceptable. But Labor members holding seats with too many electors made a redistribution urgent. Labor was in a minority government supported by two Independent Labor Members, one of whom became a member of the select committee on the Bill.

Dealing with bias in order to fix malapportionment (again)

The committee was a select committee of the House of Assembly. Had it been a joint house committee the Australian Democrats would probably have been represented on the committee and their vote would have been influential. The Democrats would have supported proportional representation,⁹⁶ as would the Liberals, and the select committee is likely to have recommended a multi-member preferential system rather than the retention of single member districts with a fairness clause. In fact the select committee recommended retention of single member districts, with two major changes. To restore and maintain equality it recommended that a redistribution be triggered after every State election, reasoning that ‘perhaps with the exception of one or two growth areas, one would expect that, with a frequency of change as high as that, the individual changes will be relatively minor.’⁹⁷ The committee recommended that the 10% tolerance be retained, but the electors in each district should be equal at the time of the subsequent election, rather than at the time of the redistribution. In 1975 the constitutional provision covering redistribution frequency had been entrenched, so any change would need approval not only by the parliament but also at a referendum, and that would be unlikely without bipartisan support. In order to achieve Labor’s objective of more frequent redistributions the Labor members on the committee conceded the fairness provision.⁹⁸

⁹⁵ DS Baker, Constitution Act (Electoral Redistribution) Amendment Bill and Referendum (Electoral Redistribution) Bill, *South Australian Parliamentary Debates* 1 November 1990: 1856.

⁹⁶ ‘The Democrats have drawn up a petition calling for signatures against the proposed referendum, support for a reduction in the number of parliamentarians and the re-introduction of multi-member electorates’ *Kangaroo Islander* 21 November 1990. The PR count in the Legislative Council allowed the Australian Democrats two members but their support was geographically dispersed and they had been unable to have a member elected to the Assembly. They would have supported 9 five-member districts.

⁹⁷ Hon Don Hopgood, Constitution (Electoral Redistribution) Amendment Bill, report to the House, *South Australian Parliamentary Debates*, 13 November 1990: 1760.

⁹⁸ ‘...everyone understood that it was unlikely that the referendum, which is one of the inevitable outcomes of this procedure, would be approved if any significant political force in the community determined to campaign against it.’ Hon D Hopgood, Constitution (Electoral Redistribution) Amendment Bill, report to the House, *South Australian Parliamentary Debates* 13 November 1990: 1759.

The select committee recommended the insertion of a new criterion into the *Constitution Act*, which would require that:

[i]n making an electoral redistribution the Commission must ensure, as far as practicable that the electoral redistribution is fair to candidates and groups of candidates so that if candidates of a particular group attract more than 50 per cent of the popular vote (determined by aggregating votes cast throughout the State and allocating preferences to the necessary extent), they will be elected in sufficient numbers to enable a government to be formed.⁹⁹

Finally the committee recommended that the ‘existing boundaries’ criterion be removed, all other criteria be retained and the community of interest criterion be subordinated to the fairness criterion.

Unlike the majority of members speaking on the Bill in the House, members of the select committee did not assume that the fairness requirement would necessarily prevent wrong winner election outcomes. The committee report recognised three causes of under-representation: malapportionment, ‘the way the boundaries are actually drawn’ and a third factor: ‘the way in which the parties actually campaign’.

Factor (3) relates, for example, to the tactic of ‘targeting the marginals’. In any system, the political parties will seek to gain whatever advantage they can. Subject to the accepted notions of equity and fair play, this is not improper. No-one would want to discourage a lively contest. Notions of equality cannot be pushed so far as to eliminate the concept of winning and losing.¹⁰⁰

While the select committee agreed that ‘there are significant concentrations of party support in the various regions of the state’ it was cautious about attributing under-representation only to the geographic pattern of support, and referred again to campaigns.¹⁰¹ What it did find agreement on, was that ‘a Commission committed to advantaging any political party by the way it drew the boundaries could do so without obvious contrivance.’¹⁰² It contemplated various solutions. One was ‘a top-up system which would ensure that the party receiving the most votes would also attain a majority of members and therefore be able to form the government’ which could be assigned in accordance with the parties’ share of the statewide two party preferred vote or alternatively in accordance with a second ballot paper on which electors would indicate which

⁹⁹ Select Committee of the House of Assembly on the Constitution (Electoral Redistribution) Amendment Bill, 1991: 10.

¹⁰⁰ Select Committee of the House of Assembly on the Constitution (Electoral Redistribution) Amendment Bill, 1991: 5.

¹⁰¹ Select Committee of the House of Assembly on the Constitution (Electoral Redistribution) Amendment Bill, 1991: 5.

¹⁰² Select Committee of the House of Assembly on the Constitution (Electoral Redistribution) Amendment Bill, 1991: 8.

party they want to form government. The committee recommended that the top-up proposal be reconsidered after the first election under the new system. A second option was multimember districts, but the balance between proportionality and a party's ability to govern with a majority made that option unattractive to the committee.

The report proposed that a review of the operation of the new system be held after the first election for which it had all been in place.¹⁰³ That review was never held.

Importantly for the referendum vote, the press was positive. An editorial in *The Advertiser* urged voters to support the referendum.

The Government, of course, defends the boundaries but any reasonable examination proves they are patently unfair and significantly weighted in favour of the Labor Party. ... Assuming (the Bill) is passed, the Commission must draw boundaries that are fair to the political parties, fair to the existing members and fair to the public.¹⁰⁴

When the referendum was held, all parties supported the proposal and it was passed with a statewide vote of 76.7% in favour.¹⁰⁵ The *Constitution Act* was then amended to require that a redistribution be conducted after each election, to incorporate the new fairness requirement, and to remove the 'existing boundaries' criterion.¹⁰⁶

¹⁰³ Select Committee of the House of Assembly on the Constitution (Electoral Redistribution) Amendment Bill, 1991: 10. This review was never held.

¹⁰⁴ Editorial: 'Drawing Up a fairer system', *The Advertiser*, 15 November 1990, p. 24.

¹⁰⁵ Turnout was compulsory; votes in favour varied from 65.1% in Stuart to 84.0% in Bragg.

Referendum on the (Electoral Redistribution) Act, held on 9 February 1991, *South Australian Government Gazette* 28 February 1991, p. 701.

¹⁰⁶ The EDBC has addressed the select committee's recommendation that elector population be equalized at a future date, under the existing 'demographic change' criterion.

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