8. One Vote, One Value

It is important to consider the values placed on electors’ votes. These can range from voting equality to massive malapportionment or vote weighting. When discussions on malapportioned systems occur, the term ‘gerrymander’ (or ‘Bjelkemander’, after a former Queensland premier) is often mistakenly used. A gerrymander occurs when a dominant political party is able to dictate the drawing of electoral boundaries in a way that maximises the benefits for that party, even when all electorates have an equal number of enrolments. Typically, this would result in the non-governing party having large majorities in a minority of seats, while the dominant party holds smaller majorities, but in a greater number of seats. This maximises the value of the dominant party’s votes, while non-governing parties have excess votes ‘wasted’ in safe seats.

Systems of malapportionment, however, establish electorates of different enrolment size according to the creation of zones, where areas receive a greater or lesser voting weight, or power, according to their location. In these systems it is usually the rural areas that receive additional voting power, with countries such as Australia, Norway, New Zealand, Canada and South Africa having used such weighting. According to William Mackenzie, typical arguments used to support malapportionment include the need to recognise the wealth of the farming estate for a nation’s economic prosperity and that the rural areas represent a nation’s patriotic values and virtues.¹

In considering malapportioned systems, it is pertinent to assess the ‘fairness’ of the system. As described above in relation to gerrymanders, voting parity can be corrupted through the drawing of electorate boundaries to unfairly advantage or disadvantage a certain party. In a malapportioned system, however, inequality of voting power does not necessarily translate to being an unfair system. Fairness can still occur if the parties’ overall number of seats is proportionate to their level of voting support, or at least in relative terms due to the magnification effect that occurs for the two major parties in single-member seats. The geographic concentration of different parties’ voting support in different areas might balance out in an overall sense, thereby achieving a fair result. Despite this, it is usually possible to identify particular parties that are unfairly affected by malapportioned systems.

Early examples of Australian electoral systems were generally a continuation of the British precedent of differentiating between rural and urban areas in terms of voting value, with there being a traditional bias, or vote weighting, in favour of rural and remote areas. These were designed, and have been successful, in

working in favour of the conservative or non-Labor parties. A malapportioned system, however, can be subject to demographic change. For example, a rural constituency close to a metropolitan centre might experience rapidly changing demographics due to the spread of urbanisation, and thus shift the political balance of the electorate.

Australian electoral systems have generally moved away from malapportionment to systems based on the principle of one vote, one value. In all cases, Labor governments have initiated these reforms. A tolerance of plus or minus 10 per cent variation from the average electorate enrolment is considered to be the uniform minimum standard for the principle of one vote, one value. Arguments are regularly put forward, however, for more generous tolerances to be allowed so that special interests can be accommodated, particularly in the case of remote areas and Indigenous communities. For example, the Northern Territory, with a significant Indigenous population living in remote areas, has adopted an electoral system based on vote parity, but allowing a plus or minus 20 per cent tolerance from the average enrolment.

Despite the relative merits of such arguments, this study adopts the definition of one vote, one value having a tolerance of up to and including plus or minus 10 per cent. It should also be noted that while ‘structural’ malapportionment can occur as explained above, it is also possible for vote weighting, or ‘incidental’ malapportionment, to occur in a system of one vote, one value, through the application of allowable tolerances and electoral laws. For example, while Australia’s House of Representatives is elected using a one vote, one value system, the value of a Northern Territorian’s vote is more than double that of a voter living in the Australian Capital Territory. There are only two Australian houses of parliament that use an electoral system where all voters are provided with an equivalent vote value. These are the NSW and SA legislative councils, where members are elected by proportional representation in a state-wide electorate.

One vote, one value at the federal level

The primary law for Australia’s federal electoral system is the Australian Constitution, which sets out the requirements for the form of representation for the two houses of the Federal Parliament. The Constitution also empowers the parliament to pass legislation amending the original representational and electoral requirements (for example, the number of senators, Section 7; qualification of electors, Section 30; conduct of House of Representatives elections, Section 47).

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8. One Vote, One Value

The primary piece of legislation relating to electoral matters is the Commonwealth Electoral Act 1918. In the federal electoral system, while one vote, one value exists for the Senate and House of Representatives within each State and Territory, a wide disparity in the value of votes may occur between different States and Territories.

The Senate

At the time of Federation, the smaller colonies were concerned that their interests would be swamped by the more populous larger colonies. As a way of protecting their interests, the Australian Constitution (Section 7) dictates that an equal number of senators is to be elected from each State, irrespective of the size of the State’s population. This currently results in malapportionment of up to 12.9:1, with the quota (based on enrolled voters) to elect a senator from New South Wales at the 2010 election being 658 685 votes, compared with only 51 230 votes to elect a Tasmanian senator. Table 8.1 shows the disparity in representation that occurs due to the constitutional and legislative requirements for Senate elections.

Table 8.1 Enrolments per Elected Senator (based on the 2010 half-Senate election)

<table>
<thead>
<tr>
<th>State/Territory</th>
<th>Total enrolled</th>
<th>Average enrolled per elected senator</th>
<th>Difference from national average (%)</th>
<th>Quota</th>
</tr>
</thead>
<tbody>
<tr>
<td>New South Wales</td>
<td>4 610 795</td>
<td>768 466</td>
<td>118.2</td>
<td>658 685</td>
</tr>
<tr>
<td>Victoria</td>
<td>3 561 873</td>
<td>593 646</td>
<td>68.6</td>
<td>508 839</td>
</tr>
<tr>
<td>Queensland</td>
<td>2 719 360</td>
<td>453 227</td>
<td>28.7</td>
<td>388 480</td>
</tr>
<tr>
<td>Western Australia</td>
<td>1 362 534</td>
<td>227 089</td>
<td>-35.5</td>
<td>194 648</td>
</tr>
<tr>
<td>South Australia</td>
<td>1 104 698</td>
<td>184 116</td>
<td>-47.7</td>
<td>157 814</td>
</tr>
<tr>
<td>Tasmania</td>
<td>358 609</td>
<td>59 768</td>
<td>-83.0</td>
<td>51 230</td>
</tr>
<tr>
<td>Australian Capital Territory</td>
<td>247 941</td>
<td>123 971</td>
<td>-64.8</td>
<td>82 647</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>121 059</td>
<td>60 530</td>
<td>-82.8</td>
<td>40 353</td>
</tr>
<tr>
<td>Australia—Total</td>
<td>14 086 869</td>
<td>352 172</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

1 Quota = total enrolled ÷ (number of senators to be elected + 1).

Additionally, the Federal Parliament has the ability to influence the level of malapportionment through its constitutional powers to pass legislation that determines the manner and form of Australia’s electoral system. For example, the parliament’s law-making power under Section 122 of the Constitution allowed the parliament to legislate in 1973 for two senators to be elected for each of the Australian Capital Territory and the Northern Territory (Senate
Directions in Australian Electoral Reform

(Representation of the Territories) Act 1973). Section 40 of the Commonwealth Electoral Act 1918 ties increases in the number of senators for the Territories to population growth, through a correlation with the Territories’ entitlement of House of Representatives seats. The result is malapportionment of 16.3:1 when comparing the NT quota (40 353 votes) with the NSW quota. Using the Gini and Dauer-Kelsay indices, Figure 8.1 depicts the high levels of malapportionment that exist in the Senate, based on the 2004 election when 40 senators were elected.

![Figure 8.1 Australian Senate: 2004 Half-Senate Election](image)

**The House of Representatives**

While the electoral system for the House of Representatives is also primarily based on one vote, one value, the Australian Constitution enables two significant ways for vote weighting to occur. First, Section 24 of the Constitution requires electorates (districts) to be evenly divided within a State, and Section 29 stipulates that a ‘division shall not be formed out of parts of different States’. This has led to wide disparities in enrolment for jurisdictions with smaller populations, particularly within the Australian Capital Territory and the Northern Territory, when compared with other jurisdictions. At the 2010 election, for example, the
two NT seats had less than half the enrolment, with an average 60 530 enrolment, of the two ACT seats, which averaged 123 971 enrolments. Table 8.2 shows the disparities that exist.

**Table 8.2 Enrolment Numbers for House of Representatives Electorates, by State/Territory (2010 election figures)**

<table>
<thead>
<tr>
<th>State/Territory</th>
<th>No. of Seats</th>
<th>Average enrolled per electorate</th>
<th>Deviation from Australian average (%)</th>
<th>Lowest enrolment</th>
<th>Highest enrolment</th>
<th>Deviation from State/Territory average (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>New South Wales</td>
<td>48</td>
<td>96 058</td>
<td>2.3</td>
<td>90 059</td>
<td>101 464</td>
<td>−6.2/5.6</td>
</tr>
<tr>
<td>Victoria</td>
<td>37</td>
<td>96 267</td>
<td>2.5</td>
<td>86 275</td>
<td>117 023</td>
<td>−10.4/21.6</td>
</tr>
<tr>
<td>Queensland</td>
<td>30</td>
<td>90 645</td>
<td>−3.5</td>
<td>82 558</td>
<td>98 224</td>
<td>−8.9/8.4</td>
</tr>
<tr>
<td>Western Australia</td>
<td>15</td>
<td>90 836</td>
<td>−3.3</td>
<td>85 782</td>
<td>93 892</td>
<td>−5.6/3.4</td>
</tr>
<tr>
<td>South Australia</td>
<td>11</td>
<td>100 427</td>
<td>6.9</td>
<td>96 263</td>
<td>104 888</td>
<td>−4.1/4.4</td>
</tr>
<tr>
<td>Tasmania</td>
<td>5</td>
<td>71 722</td>
<td>−23.6</td>
<td>71 090</td>
<td>72 865</td>
<td>−0.9/1.6</td>
</tr>
<tr>
<td>Australian Capital Territory</td>
<td>2</td>
<td>123 971</td>
<td>32.0</td>
<td>123 444</td>
<td>124 215</td>
<td>−0.4/0.2</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>2</td>
<td>60 530</td>
<td>−35.5</td>
<td>59 879</td>
<td>61 126</td>
<td>−1.1/1.0</td>
</tr>
<tr>
<td>Australia</td>
<td>150</td>
<td>93 912</td>
<td>-</td>
<td>59 879</td>
<td>124 215</td>
<td>−36.2/32.31</td>
</tr>
</tbody>
</table>

1 Deviation from national average.

The second aspect of the Constitution that creates vote weighting for the House of Representatives is the Section 24 requirement that ‘five members at least shall be chosen in each Original State’. Western Australia and Tasmania were beneficiaries of this condition from Federation in 1901. In 1933, Western Australia’s population had grown sufficiently to no longer require this safeguard, however, Tasmania has continued to benefit, as the State would otherwise be entitled to only three seats based on its current population. At the 2010 election, Tasmania’s electorates had an average enrolment of 71 722, compared with an average of 94 678 for the other States and Territories.

Disparity also exists between the more highly populated states, due in part to redistributions taking place at different times for each State/Territory. Part IV of the *Commonwealth Electoral Act 1918* prescribes the manner in which redistributions are to be conducted, providing for a projected tolerance of plus or minus 3.5 per cent of a State or Territory’s average electorate enrolment (Sections 63A and 66). The timing of when redistributions are calculated can
significantly influence the degree of deviation that occurs. As Table 8.2 shows, actual deviations might be substantially outside the plus or minus 3.5 per cent range.

The Federal Parliament is also able to override decisions of the AEC, as occurred with the passing of the Commonwealth Electoral Amendment (Representation in the House of Representatives) Act 2004. This legislation set aside the Electoral Commissioner’s determination in 2003, based on population figures, that the Northern Territory’s representation in the House of Representatives be reduced from two seats to one seat. Irrespective of the merits of such legislative changes, the impact on vote weighting can be quite pronounced, as presented in Table 8.2. In the case of the Northern Territory, the Federal Parliament’s decision doubled the weight, or value, of each Northern Territorian’s vote.

Figure 8.2 illustrates small levels of malapportionment for the House of Representatives (using 2004 election figures), especially when compared with the Senate (Figure 8.1). A comparison of the two graphs also highlights the impact that malapportionment has on the Dauer-Kelsay Index. The large deviations that exist for Tasmania and the Northern Territory, as outlined above, can be seen to have only a minor impact on the Lorenz Curve, as these special conditions affect only seven of the 150 House of Representatives seats.
Recent reform attempts at the federal level

There have been a number of attempts in recent decades to entrench the principle of one vote, one value into Australia’s electoral system. At the 1963 federal election, size disparity within States for House of Representatives seats was as high as 3.1:1 (Victoria, seats of Bruce and Scullin) and 2.5:1 (New South Wales, seats of Mitchell and West Sydney). By the 1966 election, this disparity had increased to 3.8:1 and 3.4:1 respectively. In 1968, Senator Lionel Murphy QC, the Leader of the Labor Opposition in the Senate, introduced two Bills with the purpose of altering the Constitution to require one vote, one value for the States and the Commonwealth. Following Murphy’s second reading speech, the Bills failed to be progressed by the Coalition government.3

In 1974, the Senate voted against Prime Minister Gough Whitlam’s Constitution Alteration (Democratic Elections) Bill 1974, which sought to amend the Constitution to ‘ensure that the members of the House of Representatives and of the parliaments of the states are chosen directly and democratically by the people’.4 With the Governor-General’s approval (as provided for in Section 128 of the Constitution; see Appendix A), the proposal was, however, put forward in a constitutional referendum on 18 May 1974. The proposal received no support from the Opposition and was defeated, with only 47.2 per cent of voters, and with only one State, New South Wales, in support.

The High Court heard a case in 1975 relating to the alleged disparity in size of House of Representatives seats (the McKinlay case).5 In its decision, the High Court ruled that while ‘something approaching numerical equality’ was important, the Australian Constitution does not require this to occur. In its ruling, the High Court stated that Section 24 of the Constitution does not provide a ‘guarantee of equality in the voting value or weight of each vote cast in an election for the House of Representatives’.

The Bob Hawke Labor Government was successful in passing legislation in 1983—the Commonwealth Electoral Legislation Amendment Act 1983—which amended the Commonwealth Electoral Act 1918, by setting three criteria for the redistribution of seats. These criteria are that redistributions must occur: at least every seven years; if more than one-third of the seats in a State deviates from

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5 High Court of Australia. 1975. Attorney-General (Cwlth); Ex rel. McKinlay v The Commonwealth; South Australia v The Commonwealth; Lawlor v The Commonwealth [1975] HCA 53; (1975) 135 CLR 1 (1 December 1975).
the average enrolment by more than 10 per cent; or when a State’s entitlement to its number of seats changes (Section 59). These changes moved the Australian electoral system to one vote, one value, but as it was only a legislative change, there was no constitutional guarantee.

Senator Michael Macklin (Queensland, Australian Democrats) introduced Bills in 1984, 1985 and 1987 for a constitutional amendment to enshrine the principle of one vote, one value. They were designed to improve on the 1974 Whitlam model, which had based equality on the population of each electorate, rather than on the number of eligible people enrolled to vote. In his 1987 Bill, Senator Macklin sought a requirement for equality in electorate enrolments ‘as nearly as practicable’, but with a tolerance of plus 10 per cent, and with no lower limit. The Bill was referred to the JSCEM, which reported in April 1988, finding that ‘equity in voting power is a necessary first step in achieving a fair electoral system’. The committee recommended that electoral enrolments should be within 10 per cent of the average enrolment and that the issue be put to a referendum. Five months later, in September 1988, a referendum was held to amend the Australian Constitution to ‘ensure that democratic electoral arrangements would be guaranteed for Commonwealth, State and Territory elections’. This referendum was defeated, largely due to the Coalition parties campaigning against the proposal, on the basis that States should maintain control over their own electoral matters.6 It has also been argued that the Liberal Party was simply bowing to pressure from the National Party—traditional supporters of bias to rural electorates.

The WA case

Western Australia has had a historically high level of malapportionment favouring rural and north-west seats. For example, in 1917 the average enrolment in metropolitan seats was 6108, compared with 2642 for rural seats and 958 for seats in the north-west of the State.7 In one particular case, the effects of malapportionment reached 65:1 in the late 1920s with the extremes of the seat of Canning, with 17 347 voters, and the seat of Menzies, with only 265 voters.8 Reforms in 1929 (amendments to the Electoral Districts Act 1922) and 1947

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(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.⁹

In the 1980s, the Burke Labor Government proposed electoral reforms including the introduction of State-wide proportional representation for the legislative council. At the time, the council had dual-member electorates, with each vacancy elected every second election on a rotational basis. The Burke Government also proposed voting equality for the legislative assembly. In order to obtain National Party support for the legislation, which eventually passed in 1987, the Labor Party was forced to retain a level of zonation for the legislative council, with proportional representation based on three metropolitan and three non-metropolitan regions, and abandon attempts to reform the assembly.

While the council’s combined metropolitan regions now had representative parity with the country regions (17 members each), the population disparity meant that a significant level of malapportionment (2.8:1) was retained in favour of the non-metropolitan regions, and the National Party’s interests.¹⁰ In addition, malapportionment remained for assembly elections. Table 8.3 depicts the level of malapportionment that has existed for the WA Legislative Assembly over the past century, using the David-Eisenberg (most extreme example of malapportionment), Dauer-Kelsay (smallest percentage of enrolments to produce a majority) and Gini (zero being absolute voting parity) indices. The significant reduction in malapportionment of the assembly as a result of the 2005 reforms (discussed later in this chapter) can be seen with the increase in the Dauer-Kelsay Index—from 38.14 in 2005 to 47.70 at the 2008 election.

### Table 8.3 Malapportionment in the Legislative Assembly, Western Australia

<table>
<thead>
<tr>
<th>Year</th>
<th>David-Eisenberg Index</th>
<th>Dauer-Kelsay Index</th>
<th>Gini Coefficient*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1894</td>
<td>77.46</td>
<td>18.37</td>
<td>0.514</td>
</tr>
<tr>
<td>1904</td>
<td>17.37</td>
<td>29.36</td>
<td>0.337</td>
</tr>
<tr>
<td>1914</td>
<td>8.95</td>
<td>29.71</td>
<td>0.326</td>
</tr>
<tr>
<td>1924</td>
<td>23.89</td>
<td>25.26</td>
<td>0.402</td>
</tr>
<tr>
<td>1936</td>
<td>17.04</td>
<td>32.94</td>
<td>0.282</td>
</tr>
<tr>
<td>1947</td>
<td>30.37</td>
<td>28.64</td>
<td>0.351</td>
</tr>
<tr>
<td>1956</td>
<td>9.70</td>
<td>34.50</td>
<td>0.239</td>
</tr>
<tr>
<td>1965</td>
<td>7.21</td>
<td>33.07</td>
<td>0.250</td>
</tr>
<tr>
<td>1974</td>
<td>9.64</td>
<td>31.90</td>
<td>0.244</td>
</tr>
</tbody>
</table>

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⁹ Another good account of the history of malapportionment in Western Australia can be found in Harry Phillips and Kirsten Robinson. 2006. The Quest for ‘One Vote One Value’ in Western Australia’s Political History. Perth: Western Australian Electoral Commission.

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<table>
<thead>
<tr>
<th>Year</th>
<th>David-Eisenberg Index</th>
<th>Dauer-Kelsay Index</th>
<th>Gini Coefficient*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1983</td>
<td>5.79</td>
<td>36.06</td>
<td>0.194</td>
</tr>
<tr>
<td>1996</td>
<td>2.78</td>
<td>38.52</td>
<td>-</td>
</tr>
<tr>
<td>2001</td>
<td>4.01</td>
<td>37.80</td>
<td>-</td>
</tr>
<tr>
<td>2005</td>
<td>2.45</td>
<td>38.14</td>
<td>-</td>
</tr>
<tr>
<td>2008</td>
<td>2.34</td>
<td>47.70</td>
<td>-</td>
</tr>
</tbody>
</table>


## The Gallop Government reforms

Following Labor’s victory at the 2001 election, and the subsequent changeover of council members in May 2001, for the first time in its history, the WA Parliament had a non-conservative majority in both houses.\(^{11}\) Therefore, Labor finally had the 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.

Within a month of Labor winning the 2001 election, Labor’s Electoral Affairs Minister, Jim McGinty, approached the Greens to seek their position on the government’s proposed electoral reforms. Labor’s proposal was for one vote, one value to be adopted for both the assembly and the council, with an allowable 10 per cent tolerance for assembly seats. For the legislative council, Labor was open to the idea of either amalgamating existing regions into a single state-wide electorate or retaining regionalism, but with revised boundaries drawn using voting equality principles. As explained by a Greens interviewee:

> They [Labor] 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. 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.

It was also acknowledged at this time that the government would require an absolute majority of 18 votes to pass its proposed electoral reforms. This was

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\(^{11}\) The legislative council’s 34 members were made up of 13 Labor, five Greens, 12 Liberal, one Nationals and three One Nation. The Greens effectively held the ‘balance of power’.

due to the ‘entrenchment’ provision (Section 13) of the *Electoral Distribution Act 1947*, which requires an absolute majority of both houses for amendments to that Act to be made. In June 2001 it was announced that Labor was planning to amend legislation, if the Greens members were supportive, to allow the president to have a deliberative vote—a change that required only a simple majority to pass the council. This would then allow the government to make the electoral reforms it was planning, using an absolute majority of council members, assuming that it could win the Greens’ support.

The Greens MLCs adopted a consensus approach in determining their position, which allowed for Dee Margetts’ (Greens’ Agricultural Region MLC) opposition to a blanket application of the one vote, one value principle. This was achieved by making concessions to allow for a special provision for remote (that is, geographically large) electorates. In July 2001, the Greens agreed to a model that would bring about voting equality for the assembly, with the exception of the special consideration for remote electorates (similar to the Queensland model). For the council, however, the Greens’ model retained the existing level of malapportionment between metropolitan and non-metropolitan council regions—another concession to Margetts. The Greens’ model also included an increase of council members from 34 to 36, based on three metropolitan and three non-metropolitan regions, each with six members.

The community debate on the merits of voting equality that ensued as a result of the Gallop Government’s push for electoral reform was largely influenced by the public arguments put forward by the political parties and the consequent media commentary. Similar to most parliamentary political environments, however, here, negotiations and strategies that are not necessarily obvious to outside observers were being played out, particularly between Labor and the Greens.

It was generally agreed during parliamentary debates that Labor’s proposed reforms would result in a shift of eight legislative assembly seats from country regions into the metropolitan area. In the non-metropolitan regions, the Greens’ requirement of a consideration for geographically large electorates meant that the Mining and Pastoral Region would lose only two assembly seats, rather than the three seats it would lose under a system based strictly on voting equality. A probable impact of this provision would result in Labor being able to retain a seat at the expense of a Coalition seat in the other non-metropolitan regions. Labor acknowledged that this special exemption from one vote, one value would be to its own advantage, but argued that the exemption was included in the legislation due to the Greens’ insistence, ‘based on an argument more for remoteness and biodiversity type…[Labor] didn’t go in seeking that’.

Overall, the eight seats to be shifted from non-metropolitan regions to metropolitan regions were primarily Coalition seats, with an estimation that
only one or two non-metropolitan Labor seats would be lost in the proposed change. The most severe negative impact would be to the National Party, with an anticipated loss of three seats, primarily as a result of its concentrated voting support in the Agricultural Region and lack of support in metropolitan regions.

On balance, the Greens’ council model appeared to disadvantage themselves, especially when the party’s primary vote is taken into account. The Greens have never achieved a quota with their primary vote and thus have always had a reliance on preferences to win seats. This was particularly the case in the Agricultural and Mining and Pastoral regions in 2001, where the Greens’ primary vote was little more than one-quarter of a quota. It is anticipated that preference arrangements will remain a significant factor in the Greens’ prospects at future elections. In determining a model, the Greens sought a balanced position that neither seriously advantaged nor disadvantaged the party, and it appears they were successful in achieving that objective. The following comments illustrate the Greens’ views on the model:

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 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.

In drafting its legislation, the Labor government reluctantly accepted maintenance of malapportionment for the legislative council, including the Greens’ ‘six by six’ model, and adopted the special provision for remote areas. The government did not, however, include the increase in council numbers, which the Greens made clear was necessary if they were to support the reforms. This meant that the Greens were forced to initiate amendments to increase the number of members from 34 to 36, and take the force of public and media criticism for imposing the costs of two additional members of parliament. Simultaneously, the government was able to state opposition to the imposition of the added costs, and claim they were being forced into supporting the change in order to have their electoral reforms passed. This stance enabled the Labor government to deflect public and media criticism of the Greens’ ‘six by six’ 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 Greens 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 was:
Our proposal was not to have that exception; the Greens insisted on that exception as a condition of their support. The Bill made no impact on malapportionment in the upper house. 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. We understood that we would accept an amendment along those lines.

Labor was also aware they would face heavy criticism, particularly from the opposition and rural interest groups, by reducing representation in country areas. This was exacerbated by the adoption of an exemption from one vote, one value that could be construed as manipulation of the system to their own advantage. Labor was, however, able to ensure that during the parliamentary debates on the Bills, the Greens would be blamed for the proposed change in legislative council numbers, regardless of maintaining the malapportionment that Labor’s opponents were supporting. As a result, media commentary centred negatively on the Greens’ role, with headlines such as ‘Greens Threat to Vote Reform’, ‘Vote Reform Comes at a Cost’, and ‘Reform Move Simplistic, Selfish and Undemocratic’. Public awareness of the Greens’ ‘balance of power’ role was, however, clearly increased by the media debate, subsequently allowing the party to more effectively publicise its position on other legislation.

On 1 August 2001, Labor’s Minister for Electoral Affairs (and Attorney-General), Jim McGinty, introduced his party’s electoral reform legislation, the Electoral Distribution Repeal Bill 2001 (the Repeal Bill) and the Electoral Amendment Bill 2001 (the Amendment Bill), into the legislative assembly. The primary purpose of the Repeal Bill was to repeal the Electoral Distribution Act 1947, which provided the basis for the system of vote weighting for non-metropolitan regions and electorates. The Amendment Bill primarily sought to apply the principle of one vote, one value to assembly elections. This was to be done by transferring the relevant sections of the (to be) repealed Electoral Distribution Act 1947 into an amended Electoral Act 1907, with the major modification being that the division of enrolments into electorates would be on a State-wide basis. For electorates of less than 100 000 sq km, projected enrolments were to be within a plus or minus 10 per cent tolerance from the State average district enrolment. Electorates with an area of 100 000 sq km or more would be weighted by adding an ‘additional large district number’—0.5 per cent of the electorate’s area in square kilometres (‘notional’ enrolments)—to the number of actual enrolments, and with a broader tolerance of projected enrolments (notional and actual) to be allowed, within plus 10 per cent or minus 20 per cent of the State average district enrolment.

McGinty stated that the legislation did not represent absolute principles of one vote, one value—referring to the special provisions for large electorates and the lack of reform of the legislative council—because it reflected a compromise position that took into account the Greens’ requirements. Importantly, in the context of the ensuing debate, by repealing the *Electoral Distribution Act 1947*, Labor also expected to be able to avoid the Act’s Section 13 provision requiring amendments to that Act to be passed by an absolute majority. The Bills were passed unamended by the assembly in August–September 2001.

Although it was stated that there was a unanimous decision within the Liberal Party Caucus to oppose Labor’s Bills, indications are that a significant number of Liberal members were supportive of one vote, one value and would cross the floor and vote with the government if not bound by party discipline. As one interviewee described it:

> If they were given a free vote on the issue, there were a number of Liberals who would cross the floor and I suspect the majority of their members in the upper house would be in that position to cross the floor and vote with the Labor Party, but it was introduced in such a way that it polarised views from the outset. Almost half of the parliamentary Liberal Party were in favour of the change.

The Liberal Party has historically required National Party support to form government, so it is important for the Liberal Party to retain a reasonable working relationship with its Coalition partner. Some members of the Liberal Party, however, would appreciate not having to accommodate the Nationals, and see electoral reform as a way to achieve this, provided there is no overall loss of conservative seats. As one interviewee stated:

> There is a strain of opinion within the Liberal Party that sees one of the great advantages of ending malapportionment is ending the existence of the National Party, who they see as a major nuisance and that if eight seats go to the city, the Liberal Party may only get four out of the eight, but the National Party will get none, and that’s seen as a distinct advantage.

The National Party is the only party clearly advantaged by the malapportionment existing in the WA system. Thus, it is not surprising that the party has fought vehemently against the introduction of voting equality. The combination of geographically concentrated voting support, and the effect of malapportionment providing a greater number of rural electorates in comparison with an equally apportioned system, has allowed the Nationals to remain a significant political

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party in WA State politics. An indication of the Nationals’ motives is evident in its strategy to amend the legislation in two ways. First, the party considered an amendment to return the legislative council to single-member electorates, with 15 metropolitan electorates and 15 non-metropolitan electorates. This amendment would have had the effect of removing proportional representation, and probably eliminating the Greens from the parliament, but leaving the Nationals able to win two or three seats in their agricultural heartland. The second proposal was to broaden zonation for assembly electorates, with metropolitan, regional and remote zones. Under this proposal, weighting would be allowed for regional and remote electorates. Although not ultimately moved in parliament, these proposals give an indication of the National Party’s preferred electoral system.

The legislative council referred both Bills to the Standing Committee on Legislation. The standing committee’s membership for the inquiry was three Labor, two Liberal, a Green and a One Nation member. The committee’s report included 31 recommendations, but apart from recommending that the existing weighting in favour of non-metropolitan council regions be maintained, the committee was unable to agree on any other issues relating specifically to electoral reform. This was not surprising, given the positions of the different parties. Of particular importance though was Recommendation 5, supported by the Liberal, Greens and One Nation members, which recommended that the council take action to obtain a Supreme Court ruling on the legality of the Bills being presented for Royal Assent in the event that they were passed without an absolute majority. This indicated that there would be a willingness for the council to pursue clarification from the Supreme Court on the ‘absolute majority’ question.

The possibility of amending Section 14 of the Constitution Acts Amendment Act 1899 to give the president a deliberative vote was raised at the time of the standing committee inquiry in 2001. The Greens came to a view that an existing right to a deliberative vote existed, and encouraged the president to vote. Following the tabling of the standing committee report, the Clerk of the Parliaments, Laurie Marquet, informed the president that in the event that 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 in this aspect of the debate was whether the repeal of the Electoral Distribution Act 1947 actually constituted an ‘amendment’ of the Act, which would therefore require it to be passed with an absolute majority, as per Section 13 of the Act. The president informed the council of the clerk’s position on 28 November 2001. The Bills were subsequently passed by the council in December 2001, with simple, but not absolute, majorities.
Within less than five months, the Labor government had been able to pass its electoral reform legislation, with the support of the five Greens members in the legislative council. Despite a standing committee inquiry, and lengthy and heated debates in both houses, the legislation passed without any major changes to the original model that had been agreed to between the government and the Greens prior to the legislation being introduced. Before the legislation could become law through receiving Royal Assent, however, the question of whether the Repeal Bill was bound by the ‘absolute majority’ provision of the Electoral Distribution Act 1947 was still to be answered by the WA Supreme Court. Following the passing of the legislation, Marquet sought a declaratory statement from the Supreme Court on the validity of the Bills. Although the clerk’s action in seeking a declaratory statement from the Supreme Court was taken with the support of the council, it was viewed by the government as thwarting its agenda. Labor only supported the Supreme Court action under sufferance, knowing that the Bills would be defeated if a declaratory statement was not sought. The following Labor comment illustrates this:

The Greens said there was some doubt about the legality of the Bills and it all looked a bit shonky…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 [the] Solicitor-General’s opinions and basically without this device it looked as though the Greens would defeat it at [the] third reading. This was concurred under much sufferance by the government…because at least it effected the passage of the Bills and we had some chance in the courts.

The five-member full bench of the Supreme Court heard the case in April 2002. The government put forward three main arguments in support of the legislation, being that: repealing an Act is not the same as amending it, and therefore Section 13 of the Electoral Distribution Act 1947 did not apply; it is not competent for a parliament to bind a future parliament in the way that Section 13 of the Electoral Distribution Act 1947 does; and Section 13 of the Electoral Distribution Act 1947 had been repealed implicitly by Section 2(3) of the Acts Amendment (Constitution) Act 1978.  

In a four-to-one decision, the court stated that an absolute majority was required to pass the legislation in the council. In summary, the ruling stated that: parliament intended that the word ‘amend’ encompassed a repeal of the Act; parliament is able to enact a manner and form provision that requires a particular majority to amend or repeal legislation; and the legislation was captured by Section 73(1) of the Constitution Act 1899, irrespective of the later subsections of Section 73.

14 Section 2(3) of the Acts Amendment (Constitution) Act 1978 added new subsections to Section 73 of the Constitution Act 1899, stipulating specific actions that required an absolute majority.
15 Marquet v the Attorney-General of Western Australia [2002], Supreme Court of Western Australia, 2002.
This meant that the Bills could not be presented for Royal Assent and represented an emphatic win for the opponents of the government’s electoral reforms. It also shifted attention to the issue of amending Section 14 of the Constitution Acts Amendment Act 1899 to give the president a deliberative vote in the legislative council. If the Greens were to support such a change, the government could achieve the absolute majority that was required, as ruled by the Supreme Court. A month after the Supreme Court decision, Premier Geoff Gallop announced that the government would appeal the decision to the High Court, stating that the government’s legal advice was that an appeal ‘should succeed’. A week after the premier’s announcement, the High Court action became even more critical when the Greens stated that they would not support legislation giving the president a deliberative vote, arguing that their legal advice had stated that Section 73 of the Constitution Act 1899 already provided the president with a deliberative vote on constitutional matters, and that further legislation to provide a deliberative vote would affect the impartiality of the president’s position. The interests of political parties became further apparent with the appeal attracting legal intervention from the Labor governments of Queensland and New South Wales, and the federal Attorney-General.

The Supreme Court decision confirmed that the Labor government would need an absolute majority to pass its electoral reforms. The Greens’ preferred position was for legislation to be amended to clarify the president’s voting rights, but, in doing so, the Greens felt that the implications of such a change needed investigating (such as the increased likelihood of deadlocked votes, and therefore the need for a casting vote). Additionally, the Greens believed that broader issues of reforming the WA Constitution should be addressed at the same time. Following the Supreme Court decision, Labor was unwilling to have the president exercise a deliberative vote, as it believed that such an action would inevitably be subject to a legal challenge, and that the Supreme Court may look upon the government unfavourably given the previous history of the legislation.

Following the Supreme Court decision, the government was left with three choices: accept the decision and not pursue the reforms any further; challenge the decision in the High Court; or pursue changes to the legislation that would win the support of an absolute majority. While the first option was not seriously considered given the importance Labor placed on the reforms, the government used its High Court appeal as a bargaining point in attempting to win Liberal support, arguing that the Liberal Party risked ‘losing everything’.

We offered to cut a deal…the Libs would have extracted a high price for their cooperation. Whether we could have paid that in the end

is a different matter. The price was the destruction of proportional representation, reintroduction of a staggered term…it destroys minor representation.

The reintroduction of staggered terms would mean that members of the legislative council would be elected for two terms (eight years), with only half of the council seats up for election at each general election. This would effectively double the quota required for election; however, before the High Court made its decision, the WA Electoral Distribution Commissioners published their decision on the redistribution of electoral boundaries, which was seen to favour the Liberal Party. Following this, the issue of a compromise was not pursued further, prior to the High Court decision. As observed by one interviewee: ‘People like Dan [Sullivan, Liberal Deputy Leader], the man who had a very nice 62 per cent Leschenault seat, decided they had no interest in overturning this draft redistribution.’

The High Court delivered its decision in November 2003, upholding the Supreme Court decision, and therefore ruling the electoral reform legislation invalid, by a five-to-one majority. The decision addressed all aspects of the Supreme Court ruling, and agreed with the Supreme Court that the term ‘amend’ included ‘repeal’. Additionally, the court argued that with the repealing of electoral boundaries there is an implicit and required redrawing of boundaries for an election to be held, and therefore the legislation constituted a repeal and simultaneous amendment of boundaries. In his dissenting judgment, Justice Kirby argued that the word ‘amend’ is usually used in reference to partial repeals, where words or sections of an Act may be deleted, whereas the total repeal of an Act should not be referred to as an amendment. The High Court decision brought to a conclusion the three-year battle that the first Gallop Government had waged to introduce the one vote, one value principle to Western Australia’s electoral laws.

The Supreme Court and High Court deliberations necessarily concentrated on the constitutionality of the legislative process, and it should be noted that the High Court has been reluctant to interfere with the parliament’s role of determining electoral distribution and administration. In a number of cases, the High Court has supported deviations from voting equality on the basis that the Constitution provides for parliament to be the primary decision maker of the electoral system that provides representative government. In contrast, Labor argues that the US Supreme Court provides more relevant interpretations of the

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17 Redistributions are held 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.
18 Attorney-General (WA) v Marquet [2003], High Court of Australia, 2003.
19 For example, Attorney-General (Cwlth) ex rel McKinlay v Commonwealth (1975); and McGinty v Western Australia (1996).
meaning of election ‘by the people’. The US examples are, however, based on explicit constitutional rights, such as the Fourteenth Amendment, which provides equal rights. Such protections and rights are absent in the Australian Constitution.

In June 2004, Alan Cadby, a Liberal member of the legislative council, resigned from his party as a result of a preselection process that placed him in an unwinnable position for the upcoming State election. This breathed new life into the electoral reform debate, with the possibility that Labor could obtain Cadby’s vote, thereby achieving an absolute majority for its legislation, with the Greens’ support. Alternatively, it was suggested that Cadby could be offered the president’s position, giving Labor an absolute majority, again with the Greens’ support. The Greens stated that they would support the legislation if it were reintroduced; however, the premier ruled out this option in response to media questioning, and apparently without consulting his party, as explained by the Greens:

That’s why we were really dirty on Gallop when Cadby resigned, there it was, on a plate…and it would have gone through…we’ve seen Gallop do this before, he gets put on the spot, he doesn’t consult because at that stage we’d been talking for about a week with [council president] Cowdell, and McGinty through Cowdell, and we had been relayed Cadby’s position and there it was…the Labor Party was devastated.

The premier’s statement brought an end to Labor’s efforts for reform prior to the 2005 general election (held on 26 February). While the Labor Party was easily returned to power, the overall legislative council result maintained the ideological balance that existed before the election. This meant that Labor and the Greens could not achieve an absolute majority on the floor of the house; 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 the Greens and former Liberal Alan Cadby.

During the election campaign, Labor promised that none of the five existing mining and pastoral assembly electorates would be lost in any redistribution brought about by its proposed electoral reforms. Following the election, however, the Greens insisted that the only exemption from voting equality for the assembly should be on the grounds of remoteness, as had been proposed in the earlier legislation. For the legislative council, the Greens maintained their

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21 Labor won an additional three seats, while the Greens lost three seats. The Liberal Party won a further three seats, while One Nation lost three seats.
position of enlarging the chamber to six six-member regions, giving metropolitan and non-metropolitan regions a total of 18 members each. The government was in a difficult position. It had to either break its election promise to protect the five seats or find an alternative to retain them. Labor also had to defend itself against accusations of acting out of self-interest, protecting seats where they had strong support, while removing seats from the Nationals’ heartland in the agricultural region.

Labor introduced its reform Bill\(^{22}\) on 30 March 2005, which included the provision for five guaranteed seats in the Mining and Pastoral region. The Bill also increased the size of the council from 34 to 36, and aimed to reduce malapportionment by having 21 metropolitan and 15 non-metropolitan members (this was later amended to 18/18, due to the Greens’ insistence). Without the guarantee, the Mining and Pastoral region stood to lose one of its five assembly seats. The legislation’s passage in the council was slowed due to the differences between Labor and the Greens (and Cadby); however, Labor negotiated an agreement by suggesting a small increase in the number of assembly seats. Simply by enlarging the size of the assembly from 57 to 59 seats, the average electorate enrolment (based on 2005 election figures) reduces by almost 10 per cent, from 22 092 to 21 343. Combined with the special provision for geographically large electorates, this ensures that the Mining and Pastoral region retains five assembly seats. This satisfied the Greens’ demands while keeping Labor’s election commitment intact.

The ‘one vote, one value’ legislation progressed, passing its final parliamentary stage on 17 May 2005, only five days before the newly elected council members took their seats. On 4 May, the government had introduced separate legislation\(^{23}\) to increase the assembly numbers, which was also passed in the old council’s final week of sitting.

Once the electoral distribution commissioners conducted the redistribution process, the metropolitan area had gained eight seats (from 34 to 42), while the Agricultural and South West regions each lost three seats (seven to four, and 11 to eight, respectively). Under a system of full ‘one vote, one value’, the Mining and Pastoral region would have been reduced to three assembly seats; however, it retained its five seats, as intended (and promised) by Labor.

It is no surprise that the electoral impacts of these reforms, based on 2005 election results, clearly advantage Labor. In the non-metropolitan regions, which lost a total of six seats, Labor would only lose two seats, while the Liberals would lose one or two. The major loser was the National Party, who stood to lose two or three seats and, as a result, parliamentary party status. In the metropolitan area,

\(\text{\footnotesize 22 One Vote One Value Bill 2005, later renamed the Electoral Amendment and Repeal Bill 2005.}\)
\(\text{\footnotesize 23 Constitution and Electoral Amendment Bill 2005.}\)
Labor notionally gained an additional five seats, while the Liberals picked up another three seats. The impacts for the assembly are summarised in Table 8.4. It can be seen that in overall terms Labor picked up three seats while the Coalition parties lost one seat.

**Table 8.4 Legislative Assembly: Seats by Party, 2005 Election—Post reform**

<table>
<thead>
<tr>
<th>Party</th>
<th>Metropolitan</th>
<th>Mining and Pastoral</th>
<th>Non-metropolitan</th>
<th>South West</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labor</td>
<td>24–9</td>
<td>4–4</td>
<td>1–0</td>
<td>3–2</td>
<td>32–5</td>
</tr>
<tr>
<td>Liberal</td>
<td>8–11</td>
<td>1–1</td>
<td>2–2</td>
<td>7–6</td>
<td>18–20</td>
</tr>
<tr>
<td>Nationals</td>
<td>-</td>
<td>-</td>
<td>4–2</td>
<td>1–0</td>
<td>5–2</td>
</tr>
<tr>
<td>Independents</td>
<td>2–2</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>2–2</td>
</tr>
<tr>
<td>Total</td>
<td>34–42</td>
<td>5–5</td>
<td>7–4</td>
<td>11–8</td>
<td>57–9</td>
</tr>
</tbody>
</table>

Note: 2005 election results are shown first. Post-reform figures are estimates based on 2005 election results and are subject to the results of the redistribution process.

In the legislative council, it is theoretically easier for minor parties to win seats, on the basis that the quota reduces from 16.7 to 14.3 per cent in four regions (but increases from 12.5 to 14.3 per cent in the other two regions). Once again, however, based on 2005 election results, the council reform will benefit Labor, giving the party an increased chance of winning half of the council seats. The Greens will struggle to retain or win seats, and will continue to rely on preferences, especially from any unused Labor overflow.

Of course, the above estimations are based on the 2005 election result. In reality, at the 2008 general election, there was a significant swing of 6 per cent away from Labor, most of which went to the Coalition. As a result, Labor lost government, losing four assembly seats and five council seats.

**Conclusion**

It can be seen that an ingenious solution to the impasse between Labor and the Greens was found, one that had nothing to do with voting equality principles and everything to do with political expediency and self-interest. There are reasonable arguments for (and also arguments against) making special provisions for remote electorates, and in this sense the new WA 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. In the past 105 years, the assembly has increased in size only from 50 to 59 seats. It is a pity
that a rational public debate (as occurred with the Commission on Government inquiry in the 1990s, then subsequently ignored) on the appropriate size of parliament was not held prior to this legislation being passed.

In assessing the merits of the Gallop Government’s electoral reforms, it is definitely 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 the five Mining and Pastoral region seats—compared with a similar degree of malapportionment for the 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 of change.

It is not possible to argue, however, that the reform of the legislative council is in the best interests of voting equality, 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 increased in the worst-case scenario from 4.1:1 to 4.6:1.\textsuperscript{24} It is remarkable that this legislation, which Labor purports is based on voting equality, actually increases inequality for one house of parliament. Labor has, however, repeatedly made it clear that it is the reform of the assembly, the house of government, that it is really concerned about.

Labor is the clear political winner in these electoral reforms, despite the 2008 election result. It has been able to protect its assembly seats in the Mining and Pastoral region, while severely weakening the Nationals in their areas of support. The Liberal Party will also benefit from the increase in the number of metropolitan seats, and by having a weaker Coalition partner in the Nationals. The Greens have probably been neither big winners nor big losers, but are responsible for increasing the council’s level of malapportionment. While political scientists and theorists might lament the lack of democratic principle applied to these reforms, until such electoral reforms can be determined by impartial and independent processes, the political realities of partisanship and self-interest will be the prime movers of reform.

\textsuperscript{24} Based on the number of voters enrolled per member, comparing the Mining and Pastoral region (68,240 enrolled, increasing from five to six members) with the North Metropolitan region (388,999 enrolled; this will change as metropolitan regions will be approximately the same size—about 311,142, decreasing from seven to six members).