

Proportional Representation in Theory and Practice

The Australian Experience

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June 2019

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Abstract

While all houses of Australian parliaments using proportional representation use the Single Transferable Vote arrangement, district magnitudes (the numbers of members elected per division) and requirements for casting a formal vote vary considerably. Early chapters of this thesis analyse election results in search for distinct patterns of proportionality, the numbers of effective parties and partisan advantage under different conditions. This thesis argues that while district magnitude remains the decisive factor in determining proportionality (the higher the magnitude, the more proportional the system), ballot paper numbering requirements play a more important role in determining the number of (especially) parliamentary parties. The general pattern is that, somewhat paradoxically, the more freedom voters have to choose their own preference allocations, or lack of them, the smaller the number of parliamentary parties.

Even numbered magnitudes in general, and six member divisions in particular, provide some advantage to the Liberal and National Parties, while the Greens are disadvantaged in five member divisions as compared to six or seven member divisions. The latter number appears to be the lowest at which no major party group has a particular advantage over the others.

Later chapters of the thesis examine rates of independent and female representation in PR-elected houses in comparison to the corresponding house in the same jurisdiction elected via a majoritarian system. It is argued that, contrary to the arguments of some observers; independent candidates have a better success record in single-member houses. Women tend to succeed more in PR-elected houses, (as feminist writers in particular have argued was likely to occur) but in some cases the differences become miniscule once the ability of PR systems to facilitate the election of minor parties (such as the Greens) that are more likely to select women is factored out of the equation.

Statement of Authorship

I certify that this work contains no material which has been accepted for the award of any other degree or diploma in my name, in any university or other tertiary institution and, to the best of my knowledge and belief, contains no material previously published or written by another person, except where due reference has been made in the text. In addition, I certify that no part of this work will, in the future, be used in a submission in my name, for any other degree or diploma in any university or other tertiary institution without the prior approval of the University of Adelaide and where applicable, any partner institution responsible for the joint-award of this degree.

I give permission for the digital version of my thesis to be made available on the web, via the University's digital research repository, the Library Search and also through web search engines, unless permission has been granted by the University to restrict access for a period of time.

I acknowledge the support I have received for my research through the provision of an Australian Government Research Training Program Scholarship.

Acknowledgements

Several people assisted me over the years that I have been writing this thesis to enable it to come to fruition. Most important have been my supervisors Clem Macintyre and Lisa Hill, who have continued to provide the necessary assistance in face of difficult personal circumstances. Particular credit is due to Lisa for her recent help in facilitating an office move and an improvement in computing facilities that has made completion so much easier.

Shamira Barr provided valuable assistance by helping to fix building access problems that arose as a result of the move. And the team at Disability Services, and especially Karen Roberts, were instrumental in enabling me to access the necessary adaptive technology. Thanks Karen.

Special credit is also due to (now retired) librarians Lucy Zuzolo and Margaret Hosking for their assistance with Endote referencing and tracking down sources. Margaret's work in the latter area was above and beyond the call of duty.

My long-time friend and mentor Malcolm Mackerras has assisted me in proofreading earlier drafts and making suggestions through both personal contact and his own work on the subject matter.

Proofreading assistance was also provided by my mother Lee (who also assisted by providing page numbers and references in the finishing stages), Jo-ann Whalley and Paul Black. Paul is one of several friends who have sustained me emotionally over the years of writing this thesis. The others are Rod 'Rocket' Sonnenburg, Charles Hawker, Graham 'Chapo' Chapman, Marty Hamill and Chris Pitcher. There have also been many other people with whom I have had the pleasure of dining and/or drinking with over the years, and I thank you all, and especially to Bernd 'Bernie' Woysch, who assisted me in an hour of need over ten years ago.

Thanks also to special female friends Dorothy Dunne, Alison Hodgetts and Eva Larsen. To Eva in particular, thank you for being part of my life: you have made me happier and emotionally richer.

Somewhat unexpectedly, the decision by the Turnbull government's to change the Senate voting system gave this thesis a boost when it was necessary. (Less happily the decision to withdrawal the blind pensioner and veteran subsidy for Great Southern Rail travel made my regular travel between Perth and Adelaide far more expensive.)

And last, but by no means least, thanks to my extended family. To my parents Lee and Brian, whose support was always there, regardless of whether I was

stationed in Adelaide or with them in Perth. Unfortunately Brian's death in May 2017 means he will not be able to read this thesis, but I know he would be proud of me for completing it.

Thanks also to my maternal grandparents, Neil and Catherine 'Cassie' Grosvenor. Unfortunately Neil died ten years before I was born, but I know he'd be pleased that one his grandchildren inherited his love of statistics. (These include cricket as well as election statistics.)

Like Neil, Cassie and her middle daughter Lethne were keen cardplayers. Thank you both for your many years of competitive auction bridge that helped me become a more proficient player when I decided to take up contract bridge. Thanks to all my partners, teammates and opponents who have helped me to reach the cusp of (at submission time) Grand Master status. I'll thank you all when I receive my Grand Master tray later this year.

Thanks are also due to my paternal grandparents, John 'Jack' Evans and Lillian May 'Marna' Evans (nee Roberts), and the various aunts, uncles, cousins and friends who have been part of my life: you've all contributed in various ways. And especially to my best friend from high school days, Sydney-based Simon Mikulandra, who provided me with accommodation in that city over the last 20 years. This assistance was especially welcome in the early 2000s when I was in a more difficult financial position than I am now. In recent years this assistance has enabled me to carry out New South Wales and Queensland research. Thanks Simon. I enjoyed our June catch-up.

Glynn Evans

June 2019

Preface

A brief comment on the 2019 federal election

At the time of the official campaign for the 2019 federal election, this thesis was in the final editing stage. At the end of that process, results are still not final for either the House of Representatives or (especially) the Senate. Consequently the thesis contains no analysis of the (likely) results. However it was considered appropriate that some comments about the 2019 election should be made on this page.

The author was as surprised as any seasoned observer by the result in the House of Representatives, which saw the Morrison Government returned to office with a slim majority, in defiance of all major opinion polls. However this result had little impact on the findings of this thesis, beyond noting that the continued success of independents backs up some of the findings made in chapter seven.

The Senate is at a much earlier stage of counting; with preference counts still the best part of a month away at time of submission. However the indicated likely results appear to be bearing out some of the claims made in this thesis. The suggestion that the new voting system is clearly having a reductive impact on the number of parliamentary parties, as this thesis had argued it would. The likely failure of Senator Derryn Hinch to hold his seat points to the difficulty independents have in winning seats under STV systems with above the line voting options.

Chapter 1

Introduction: The Scope and Analysis of Proportional Representation

The thesis will be the first exhaustive examination of Australian election results that have taken place under Single Transferable Vote (STV) systems of proportional representation. It aims to explain what general patterns, if any, exist under different types of STV systems used in Australia. Proportional Representation was first used in Tasmania in the early part of the twentieth century and has been used in many Australian elections over the past century. The analysis examines such factors as the degree of proportionality or lack of it, the number of effective parties existing within jurisdictions both before and after the introduction of proportional representation (PR), and the impact on levels of minor party, independent and female representation.

The thesis also offers an analysis of the distribution of preferences under the Single Transferrable Vote (STV) systems used in Australia (both with and without a ticket voting option). It is argued that ticket voting, or more specifically, the onerous task of casting a non-ticket vote in most systems with ticket voting (most notably the Australian Senate between 1984 and 2014), weakened democratic accountability by making it easier for political parties and groups to manipulate the system (a practice that has become known as preference whispering) for their own advantage.

The thesis makes an extensive study of the levels of disproportionality, and the number of electoral and parliamentary parties, produced by the different nuances of the STV system, in which the Gallagher Least Squares Index and the extension of the Herfindahl-Hirschman Concentration Index¹ are used as the measuring instruments. Later chapters referring to partisan advantage use the simpler comparisons of the differences in vote and seat percentages received by the various political parties, while chapters relating to minor party,

¹ For an explanation of the above index and the measurement of the number of effective parties that flow from it, see Rein Taagepera and Matthew Soberg Shugart, *Seats and Votes: The Effects and Determinants of Electoral Systems* (New York: Yale University Press, 1989).

independent and female representation take a comparative statistical approach, and analyse success rates in a range of proportional and non-proportional systems. The non-proportional system used almost exclusively in Australia for other elections, namely preferential voting in single-member districts, is an excellent instrument for comparison because it is essentially a single transferable vote system with a district magnitude of one.

Although seven of Australia's nine parliamentary jurisdictions use the STV system of PR to elect members to one of their houses (Queensland and the Northern Territory are the two exceptions), there is a considerable level of variation between those systems in aspects of district magnitudes (the number of members elected per district, ranging from two in the Australian Capital Territory and Northern Territory elections to the federal Senate, to 21 in New South Wales Legislative Council elections held since 1995). There is also variation on the requirements placed on voters in order to cast a valid vote (which have ranged from the ability to cast a single vote for one's preferred party/group to a requirement to number every candidate on the ballot paper, and quite frequently a choice of the two alternatives mentioned above).

While most analyses of federal elections have devoted some space to Senate elections (and the 2013 election was notable in in this respect),² there is comparatively little research that provides an overall summary of the workings of the system under the different magnitude and voting method configurations and the effect it has on proportionality and partisan advantage. This thesis fills that gap and, in the case of the mainland states and the Australian Capital Territory, analyses important aspects of two jurisdictions that have received

²The most detailed analysis of the 2013 Senate election was provided by Antony Green, "Explaining the Results," in *Abbott's Gambit: the 2013 Australian Federal Election*, ed. Carol Johnson and John Wanna (Canberra: Australian National University Press, 2015), 393-410. Another analysis with more historical context was provided by Malcolm Mackerras, "In Defence of the Present Australian Senate Electoral System," (Canberra: Australian Catholic University Public Policy Institute, 2013).

little attention. These include the level of proportionality generated, the number of parliamentary parties that emerge, and the democratic legitimacy of the outcomes produced. The thesis draws links between the above factors and the variations in the rules applying to the duties placed on voters to cast a formal vote and the options available to them for allocating their preferences.

Until the 2013 Senate election, the impact of preference distributions had received little public attention, (although Colin Hughes and Malcolm Mackerras have provided analysis of preferences in individual Senate contests ³), but some results from 2013 brought these issues into sharp focus for commentators, politicians and the general public alike. Concerns among politicians about the rules then applying were to manifest themselves in changes to the voting system via the *Commonwealth Electoral Amendment Act 2016*. Following the changes introduced by this Act, the 2016 Senate election was conducted under new rules, and is analysed closely in Chapter 3.

The thesis has, however, a much wider focus than the Senate, because all the states and territories using STV have their own individual quirks with different outcomes within them. The Victorian Legislative Council election of 2014, for example, replicated the pattern of the 2013 Senate election in enabling the election of a number of micro-parties, but elections for the upper houses in Western Australia (2013) and New South Wales (2015) did not. This is despite the WA system more closely resembling the pre-2016 Senate system than that of system used in Victoria since 2006. Victoria is one of the jurisdictions whose PR-elected house has received little analysis, and the same applies to the ACT Legislative Assembly. Tasmania has also received little attention

³ The best examples of in-depth analysis of Senate preference counts is by the said author, see Colin A. Hughes, "A Close-Run Thing," in *Australia at the Polls: The national elections of 1980 and 1983*, ed. Howard Penniman (Sydney: George Allen & Unwin, 1983), 216-47. Also see his contribution on the 1983 election in the same volume, titled 'An election about perceptions', 281-318. For an example of Mackerras's analysis of a Senate election, see Malcolm Mackerras, *The Mackerras 1993 Federal Election Guide* (Canberra: Australian Govt. Pub. Service, 1993).

since the publication of Terry Newman's wide-ranging, though not comprehensive, 1992 book.⁴ This thesis looks in more detail at the Tasmanian lower house and the upper house elections for other states and fills some of the gaps.

The salience of this study is demonstrated by the fact that Australia is one of the few countries to use the single transferable vote system to elect either a national or provincial parliament. Only Ireland and Malta use the STV system for national elections, and Northern Ireland uses STV to elect its local Assembly. Two Canadian provinces (Alberta and Manitoba) used a combination of STV and single-member preferential voting for provincial elections during the middle of the twentieth century.

The rarity of STV use was noted by Arend Lijphart in 1987 as an ethnic/lingual distinction:

we still have a perfect social science law without any major exceptions – very rare in the social sciences – linking political culture with forms of PR. When Anglo-American countries use PR, they always choose STV; in other countries, the choice is list PR.⁵

But soon after, in 1996, New Zealand became an exception to the rule when it adopted a Mixed Member Proportional (MMP) system (which has a list component). Soon afterwards, Australian commentator Malcolm Mackerras argued that such a system should be abandoned because it was counter to the political culture of New Zealand. He failed to mention Guyana as another exception to the first part of 'Lijphart's Law', but he does mention Estonia as a (temporary) exception to the second part.⁶ Estonia used STV for its first free and fair election in 1990, but switched to a list system for its 1992 election,

⁴ Terry Newman, *Hare-Clark in Tasmania: Representation of All Opinions* (Hobart: Joint Library Committee of the Parliament of Tasmania, 1992).

⁵ Arend Lijphart, "The Demise of the Last Westminster System? Comments on the Report of New Zealand's Royal Commission on the Electoral System," *Electoral Studies* 6, no. 2 (1987), 97-103.

⁶ Malcolm Mackerras, "Prospects for Electoral Reform in New Zealand," in *Proceedings of the Australasian Political Studies Association Annual Conference* (University of Canterbury, Christchurch, 1998), 5.

and is thus the only case of a country making such a switch. Little information exists on either of these two elections, though the information that is available confirms the arguments made in this thesis about the types of electoral arrangements that assist independent candidates.⁷

As a general rule, the countries using list systems do not allow for any expression of preferences beyond a voter's first choice and, consequently, provide no basis for comparison with the Australian experience in this respect. However, the general patterns of proportionality and the numbers of parties produced in list systems can be compared with those of STV. Accordingly, New Zealand, as a near neighbour and a country sharing similarities with aspects of Australian political culture, is used as a direct comparison when analysing success rates of independent and female candidates. Ireland and the Canadian provinces that use or used STV also provide comparison points on these subjects. The fact that two distinct types of proportional representation system exist in the world invites the asking of an important question.

What is Proportional Representation?

The question, what is proportional representation, once posed as the title of a book by Vernon Bogdanor,⁸ should be considered carefully in the context of this thesis. This is because some clarification of what constitutes a proportional representation system is necessary, as both academic observers and politicians have differing views on the definition. Once the clarification is made, it is possible to make more coherent arguments about its effects.

Douglas Rae gives as good a description as any of the principle behind a proportional representation system, namely: that the share of seats won by a

⁷ Vello Pettai, *Elections in Estonia 1990-1992: Transitional and Founding* (Berlin: edition sigma, 2012).

⁸ Vernon Bogdanor, *What is Proportional Representation?: A Guide to the Issues* (Oxford: Martin Robertson, 1984).

political party should be equal to the vote share received by that party.⁹ However, as Rae himself admits, this kind of perfect proportionality is never achieved in practice, for a number of reasons.¹⁰ One, which Taagepera and Shugart have mentioned, is that while vote shares come in fractions and decimals, seats are allocated in whole numbers only.¹¹ Taagepera and Shugart give a less strict definition: they make a specific reference to list PR as a system using some mathematical formula for the allocation of seats to parties in approximation to vote shares.¹² This has tended to be the accepted definition of proportional representation among political scientists. It is also an accurate description of the Mixed Member Proportional system used in New Zealand and Germany and similar to the PR system used in the Netherlands (which provides an even purer form of PR).

The single transferable vote, which is currently the only form of proportional representation used in Australia (though much less common worldwide) is a more candidate based system, although the availability of a ticket voting option (the ability to cast a single vote to endorse all candidates of a party in the order determined by the party) in many jurisdictions means these systems have a list component.¹³ By implication of placement, Taagepera and Shugart regard such a system as being proportional.¹⁴ Rae, in writing about the substantially similar Irish system, claims that STV, like any other system of proportional representation, “operates quite proportionally.”¹⁵ However Mackerras has argued that STV as used in Australia should be regarded as a

⁹ Douglas W. Rae, *The Political Consequences of Electoral Laws* (New Haven: Yale University Press, 1967), 28.

¹⁰ *Ibid.*, 29.

¹¹ Taagepera and Shugart, *Seats and Votes*, 19.

¹² *Ibid.*, 22-23.

¹³ Only the Tasmanian House of Assembly and the Australian Capital Territory do not allow voters the option of voting for a party ticket. The Senate and the four mainland state upper houses using STV allow voters to vote either for a party ticket above the line or for individual candidates below the line.

¹⁴ Taagepera and Shugart, *Seats and Votes*, 26-27.

¹⁵ Rae, *The Political Consequences of Electoral Laws*, 111.

semi-proportional system,¹⁶ and other writers have also suggested that STV systems using low district magnitudes should be regarded as semi-proportional.¹⁷ As will be seen, there are formulas available to determine how much any given electoral system deviates from proportionality.¹⁸

Only Lijphart has specified when a system ceases to be a proportional system and becomes a semi-proportional one, or ceases to be a semi-proportional system and becomes a non-proportional one. Mackerras has adopted this method via use of the Gallagher Least Squares Index.¹⁹ In later chapters this Index will be used to measure the proportionality of electoral systems being examined.

This thesis accepts, based on the above measure, that some systems loosely defined as proportional representation will often produce a semi-proportional result, and will on rare occasions produce a non-proportional result. Indeed, a central argument of this thesis is that because of the use of preferential voting in the STV systems, the results achieved will contain an element of both proportional and preferential characteristics. This thesis explores how the interaction of the two components of the system influence levels of proportionality and the number of effective parties.

At the same time, attention will also be paid to the differences that can occur when, on the one hand, PR is used for an upper house election held in conjunction with a lower house election under a single member system (such as a standard Australian federal election), and, on the other, a PR election

¹⁶ Malcolm Mackerras, "Howard's Strategy for Senate Control," Paper prepared for conference 'John Howard's Decade', Australian National University, Canberra, 3-4 March 2006, 8.

¹⁷ For example, see Rob Salmond, "Proportional Representation and Female Parliamentarians," *Legislative Studies Quarterly* 31, no. 2 (2006), 175-204.

¹⁸ The methods used to measure levels of proportionality and disproportionality have been analysed by Michael Gallagher, "Proportionality, Disproportionality and Electoral Systems," *Electoral Studies* 10, no. 1 (1991), 35-51. The author accepts the rationale that Gallagher's own Least Squares Index is the best such measure for the reasons argued by Gallagher.

¹⁹ Mackerras, "Howard's Plan for Senate Control".

held alone for a house of government, such as Tasmania (where upper house elections are always held separately).

Tasmania and the ACT, the only jurisdictions to use STV for a lower house, are also the only PR elected houses not to allow the option of voting for a party ticket (the 1949-1983 Senate system was also of this nature but, unlike the former two, required voters to give a preference to every candidate in order to cast a valid vote). The Senate and those mainland states with an upper house using a form of PR gave voters a choice of voting for a party box above the line, or individual candidates below the line. It is argued in this thesis that these two distinct models produce quite different patterns of results in terms of levels of minor party, female and (especially) independent representation. At various times, Tasmania provides evidence to suggest that proportional representation does not always assist minor parties, independents or women to be elected in larger numbers. It also provides clues as to why certain single transferable vote systems defy the conventional wisdom(s). It should be noted that the Tasmanian Legislative Council, which is elected by preferential voting in single-member districts, has seen higher rates of election for Independents and (except for the 1982-92 period) women.²⁰

Research Questions

PR. Proportionality and the number of parties.

In the 1950s French political scientist Maurice Duverger formulated the 'law' that single-member plurality systems (commonly known as first past the post) tended to lead to a two-party system, and the 'hypothesis' that proportional representation systems tended to favour the formation of a multi-party

²⁰ Most of the data in relation to these two points has been collected from Terry Newman, *Representation of the Tasmanian People: Expanded Edition, 1803-1994*, Expanded [i.e. 2nd] ed. ([Hobart]: Tasmanian Parliamentary Library, 1994).

system.²¹ While the hypothesis was challenged at various stages over the following years, many analysts found a strong link between proportional systems and multi-party politics. Duverger, however, paid little attention to the importance of district magnitude or the number of parties (beyond two) that were likely to be elected under certain magnitudes.

A little over a decade later, Douglas Rae also found a strong link between proportional representation and multi-party politics and advanced a proposition that both proportionality and the number of parliamentary parties tend to increase with increasing magnitude. Taagepera and Shugart argued the same two principal features,²² although Josep Colomer has argued more recently that political parties have more influence on the electoral system than the other way round. He also measures the number of effective parties produced by different electoral systems in a range of countries.²³

The argument made in this thesis is that while the link between higher magnitudes and larger numbers of parties might be true in an overall sense, the methods used for allocating preferences can be just as important, if not more so, than district magnitude in determining the number of parties elected to parliament.

Much of the motivation for the writing of this thesis came about from a desire to explain the reasons why results sometimes produced by the STV systems in particular do not conform to the hypothetical model expected of them.

Tasmania is a notable case. For nearly all of the first seventy years of its use in Tasmania, the Hare-Clark STV system did not result in the election of a third party. Malta, one of only two countries in the world to use STV for

²¹ Maurice Duverger, *Political Parties: Their Organization and Activity in the Modern State* (London: Methuen, 1964).

²² Taagepera and Shugart, *Seats and Votes*. Rae makes this claim on p.112, although the table on p.113 for the presented voting data tends to back up the argument being made in this thesis.

²³ Josep M. Colomer, "It's Parties That Choose Electoral Systems (or Duverger's Laws Upside Down)," *Political Studies* 53, no. 1 (2005), 1-21.

national lower house elections, has also conformed to this apparent aberrant pattern since World War II. Results obtained in Tasmania and the Australian Capital Territory provide a better explanation of why Malta has remained a two-party system that is more sophisticated than that put forward by an observer of Maltese politics, namely, that voters simply prefer it that way.²⁴ In particular, this thesis demonstrates that where voters have the ability (or are compelled) to vote for individual candidates rather than a party ticket, or can allow their preferences to exhaust, the number of parliamentary parties elected is reduced.

District Magnitude, Ballot Paper Rules and Partisan Advantage

While research by international observers such as Pippa Norris,²⁵ Rae, and Taagepera and Shugart provide substantial analysis on the number of effective parties produced by different levels of district magnitude (DM), little attention is paid to the idea that different levels of district magnitude might favour one major party over another. Michael Gallagher, who has analysed the occurrence of such a phenomenon in Ireland, is a rare exception to this pattern.²⁶ The first attempt to construct a general pattern in Australia was made by Malcolm Mackerras, who in his 1993 election guide predicted that in most circumstances, a normal half-Senate election electing six members per state, the likely distribution of seats will be a 3-3 split between parties of the left and parties of the right.

This prediction was made on the basis of one election, but it proved to be accurate: in the next four elections, only one contest (New South Wales in 1998) provided a deviating case. However, in his most valuable scholarly

²⁴ Wolfgang Hirczy and John C. Lane, "Malta: STV in a Two-Party System," in *Elections in Australia, Ireland and Malta under the Single Transferable Vote; Reflections on an Embedded Institution*

ed. Shaun Bowler and Bernard Grofman (Michigan: University of Michigan Press, 2000), 197.

²⁵ Pippa Norris, "Choosing Electoral Systems: Proportional, Majoritarian and Mixed Systems," *International Political Science Review* 8, no. 3 (1997), 297-312.

²⁶ Michael Gallagher, "Disproportionality in a Proportional Representation System: The Irish Experience," *Political Studies* 23, no. 4 (1975), 501-13.

contribution to knowledge of the specific issue, a paper presented at a conference commemorating John Howard's tenth year as Prime Minister, Mackerras's argument on the nature of the system had changed. He argued that Senate elections (which had developed into a pattern of six senators per state and two senators per territory) were in fact more likely to favour the coalition of Liberal and National Parties.²⁷

Research conducted for this thesis points to a strong link between six-member districts and Liberal-National success, with the Western Australian Legislative Council's experience between 2008 and 2017 showing the strongest advantage. Of the previous research conducted on this jurisdiction, only Harry Phillips addresses the question of partisan advantage, and that only to a minor extent.²⁸

In more recent years the level of Liberal-National advantage in Senate elections has progressively dropped over time. This has been due to a combination of changing voter behaviour (an increasing tendency of voters to vote for minor and micro parties) and the recognition of the ability of such parties to manipulate the (pre-2016) system to their advantage via preference harvesting.²⁹ In considering the 2016 Senate election, Nick Economou has emphasised the importance of ballot paper numbering requirements, but has paid little attention to district magnitude.³⁰

The difference in partisan patterns between five-member and six-member districts is cited as a deviation from the general rule that overall proportionality

²⁷ Mackerras, "Howard's Plan for Senate Control."

²⁸ Harry Phillips, *Proportional Representation in Western Australia: Its Principles, History, Outcomes and Education* (Perth: Western Australian Electoral Commission, 2012).

²⁹ Preference Harvesting (sometimes called "preference whispering" is the practice of using group voting tickets to enable (mostly small) parties to exchange preferences with each other in an attempt to secure election for one or more minor parties before transfer votes move to major parties

³⁰ Nick Economou, "An Instance of Cartel Behaviour: The Politics of Senate Electoral Reform 2016," (Melbourne: Electoral Regulation Research Network/Democratic Audit of Australia, 2016).

increases as district magnitude increases. However, this thesis argues that when district magnitude reaches seven, only at this point does the system become one that does not significantly favour any of the three largest parties over any of the others, although it might well still give them an advantage over the smaller parties. There appeared to be some advantage for Liberal-National in ten- and twelve-member districts in the Senate prior to 1990, but this was not the case in 2016. The eleven-member districts used for the South Australian Legislative Council do not appear to provide any particular advantage for either of the major parties. If anything, Labor has been slightly more over-represented than has the Liberal Party.

The fact that the Australian Senate, the Tasmanian House of Assembly, the Western Australian Legislative Council and the ACT Legislative Assembly have undergone changes to the number of members elected in their districts at various stages means there is now a large body of evidence to assess the changing nature of partisan advantage over a series of elections. This enables an assessment of how factors other than district magnitude have affected results over time. This is examined in detail in Chapters two, three, four and five.

The 2010 Victorian election threw up a deviating case: with a vote well short of 50%, the Liberal and National Parties won an overall majority of two in the Legislative Council, which uses five-member regions. This thesis explores whether there is any consistent pattern in the links, or whether the peculiarities of political geography of different jurisdictions help to explain the differences in patterns.

PR, Minor Parties and Independents

A commonly made claim articulated, for example, by Campbell Sharman,³¹ and, by implication at least, Rae,³² is that proportional representation favours smaller parties (and, in the case of the STV system, Independent candidates) at the expense of larger parties. This is, of course, partly true: it is clear, for example, that in recent years the Australian Greens have made gains under proportional representation systems that would not have been possible under a single-member system. However, it is important to note that once some success in PR-elected houses was achieved, success in the corresponding single-member house often followed several elections later. If Sharman's general point is applied to state politics, however, the picture is more complex than he suggests. Some counter examples do exist, either in the case of parties not doing as well as might be expected under PR systems (such as the Democratic Labor Party), or failing to achieve the success under a PR system that had been achieved under a single-member system (such as Katter's Australian Party).

In relation to independents, it is argued here that Sharman's claim is wrong. The evidence from Australia suggests that independent candidates are just as likely, if not more likely, to win seats in a single-member preferential system as in a proportional system. It is not claimed, however, that certain aspects of some proportional systems do not sometimes assist independents. Newman devoted almost half a chapter of his 1992 book to the success of independents under Hare-Clark in Tasmania, although the question mark accompanying the sub-heading suggests he was unsure of his claim that the

³¹ Campbell Sharman, "The Representation of Small Parties and Independents," in *Representation and Institutional Change: 50 Years of Proportional Representation in the Senate*, ed. Marian Sawer and Sarah Miskin (Canberra: Department of the Senate, 1999), 149-158.

. See also Rae, *The Political Consequences of Electoral Laws*.

³² Rae, *The Political Consequences of Electoral Laws*, 180. Differential Proposition Five claims that 'Plurality and majoritarian formulae tend to eliminate a larger number of small parties than proportional representation formulae.'

system assisted independents.³³ Later research by Costar and Curtin (Australia-wide), and Dawn Brancati (worldwide) attempted to construct general theories on what constitutes independent-friendly conditions,³⁴ with Brancati's claim that candidate-centred electoral systems favour independents the most compelling so far.³⁵ This thesis aims to refine the above argument to Australian conditions, taking account of major and minor differences in electoral rules applying in various Australian jurisdictions.

PR and Female Representation

Proportional representation has also been seen by its supporters as a way of getting more women elected.³⁶ This position has received some support in academic literature both in Australia and overseas, and has also received some criticism from, for example, former UK MP and current member of the House of Lords, Peter Hain, has suggested that cultural factors (most notably the strength of feminist movements and the influence of religions with male chauvinist traditions) are more important.³⁷

It is argued in this thesis that while the Australian experience suggests women do somewhat better in proportional systems than single-member preferential ones, the perceived importance of a particular house, the propensity of certain minor parties to select women in winnable seats, and the Labor Party's adoption of affirmative action policies have also had a significant impact on levels of female representation.

³³ Newman, *Hare-Clark in Tasmania*, 229-50.

³⁴ Brian J. Costar and Jennifer Curtin, *Rebels with a Cause: Independents in Australian Politics*, (Sydney: University of New South Wales Press, 2004) and Dawn Brancati, "Winning Alone: The Electoral Fate of Independents Worldwide" *The Journal of Politics* 70, no. 3 (2008), 648-62.

³⁵ *Ibid.*

³⁶ Janine Haines, *Suffrage to Sufferance: A Hundred Years of Women in Politics* (North Sydney: Allen & Unwin, 1992).

³⁷ Peter Hain, *Proportional Misrepresentation: The Case Against PR in Britain* (Aldershot: Wildwood House, 1986).

PR and Stability

While this thesis is not primarily focussed upon the relationship between PR and political stability, it is, nevertheless, worth making a brief comment. The potential for instability has long been seen by PR critics as systemic defect. This is because of the greater likelihood that PR elections will not produce a majority for a single party. The earliest (and most strident) proponent of this viewpoint was Ferdinand Hermens, who argued (during World War II) that the instability created by Germany's proportional representation system after World War I had facilitated the rise of Adolf Hitler.³⁸ Many years later, Bogdanor condemned this argument as a fallacy.³⁹

Suggestions of a link between proportional representation and instability have appeared in more recent research. For example, in the early 1970s Rae's cross-national study found that PR-elected cabinets lasted for shorter periods than did plurality-majority cabinets.⁴⁰ In the early 1990s, Catt et al suggested that New Zealanders who feared instability under proportional representation had "a justifiable concern".⁴¹ Some commentators (more frequently economists rather than political scientists) go further: they argue that when used in upper houses (in Australia), PR can lead to a thwarting of the democratic will of the people, and at other times that they hinder good government. The most notable example in Australia was former economics journalist Alan Wood,⁴² with Graeme Hunt being the strongest advocate for a similar point of view in New Zealand.⁴³

³⁸ Ferdinand Hermens, *Democracy or Anarchy? A Study of Proportional Representation* (South Bend: University of Notre Dame Press, 1941).

³⁹ Bogdanor, *What is Proportional Representation?*, 102.

⁴⁰ Rae, *The Political Consequences of Electoral Laws*.

⁴¹ Helena Catt, *Voters' Choice: Electoral Change in New Zealand?* (Palmerston North: Dunmore, 1992), 63.

⁴² Alan Wood, "Politics of Obstruction," *The Australian*, 9 February 1999, 13.

⁴³ Graeme Hunt, *Why MMP Must Go: The Case for Ditching the Electoral Disaster of the Century* (Auckland: Waddington, 1998).

The arguments raised by Hunt and especially Wood stray into the field of economics rather than political science, thus falling outside the scope of the core argument. This thesis does, however, note that a cross-national study by Arend Lijphart, found that, contrary to the claims of many PR critics, countries using proportional representation (Lijphart calls them 'consensus democracies') generally perform better on economic and social indicators than do countries using plurality-majoritarian systems.⁴⁴ Mackerras argues that a causal link is difficult to prove.⁴⁵

Concerns about PR thwarting the democratic will of the people have also gained some currency among Australian political players. Former Labor minister Fred Daly (in his post-retirement memoirs),⁴⁶ and former Liberal Party Senate Whip Helen Coonan (as part of a commemorative compilation),⁴⁷ both stressed the negative consequences of having a Senate elected by proportional representation. Their concerns had different origins: Daly's anxieties related to the Senate's blocking of supply during the period of the Whitlam Government (1972-75),⁴⁸ while Coonan's were based around the blocking of what she saw as positive economic reforms by the 1996-98 Senate. The issue was still of concern to the Howard Government as late as 2003 (by which time Coonan was a minister), when it sponsored a report suggesting ways to resolve deadlocks between the two houses.⁴⁹

⁴⁴ Arend Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty Six Countries*, 2nd ed. (New Haven: Yale University Press, 2012), 255-73.

⁴⁵ Mackerras, personal conversation with author, 4 June 2018.

⁴⁶ Fred Daly, *From Curtin to Hawke* (South Melbourne: Sun Books, 1984), 52.

⁴⁷ Helen Coonan, "Survival of the Fittest: Future Directions of the Senate," in *Representation and Institutional Change: 50 Years of Proportional Representation in the Senate*, ed. Marian Sawyer and Sarah Miskin (Canberra: Department of the Senate, 1999).

⁴⁸ The most comprehensive account of the 1975 constitutional crisis and the events that preceded it is provided by Paul Kelly, *November 1975: The Inside Story of Australia's Greatest Political Crisis* (St Leonards, NSW: Allen & Unwin, 1995). Also see Laurie Oakes, *Crash Through or Crash: The Unmaking of a Prime Minister* (Richmond, Victoria: Drummond, 1976). The latter book was written in the immediate aftermath of the crisis and is therefore, in the author's opinion, more emotionally charged and less scholarly.

⁴⁹ Commonwealth of Australia, *Resolving Deadlocks: A discussion paper on section 57 of the Australian Constitution* (Canberra: Commonwealth of Australia, 2003).

On the supply issue, this thesis notes that, of the nine occasions between 1967 and 1998 when a supply crisis occurred, in only two cases (at federal level in 1974 and 1975) was a PR-elected upper house responsible for blocking supply. Seven of the other cases involved conflict between lower and upper houses both elected via plurality or majoritarian methods, while the other (Tasmania in 1948) saw a lower house government elected by PR having its supply blocked by an upper house elected under a majoritarian system.⁵⁰

On the issue of blocking or seeking to amend legislation, this thesis acknowledges that some (mostly state) governments may not have had the same easy passage of their legislation through upper houses as was often the case in a pre-PR period. However, it is also argued that government carries on nonetheless, and therefore there is no substantive issue of stability.

The other opportunity for instability in any parliament is where no party holds a majority in the house of government. Because such a scenario is more likely to occur in a PR-elected house than a plurality / majoritarian one, the former method, so its critics say, is more likely to produce instability than the latter when so used.

This thesis notes that, in the first half of the twentieth century, Tasmania had a remarkable record of governments holding majorities and or lasting their full term: except for the 1948 supply crisis, only in 1912 was a parliament dissolved a year or more ahead of schedule, and that only because of party defections. Such a phenomenon is even more remarkable considering the obvious potential, as happened in the 1950s, for a 30 member house elected under a district magnitude of six to split 15-all between two major parties.

⁵⁰ For an account of these supply crises and their eventual resolution, see Geoff Gallop, *A State of Reform: Essays for a Brighter Future* (Perth: Helm Wood, 1998), 17-27.

This thesis concedes that hung parliaments and early elections became more frequent in Tasmania after the Greens' arrival, but it is also noted that South Australia, whose lower house is closest to Tasmania in terms of numbers, has elected more hung parliaments than Tasmania over the last sixty years.

The other two antipodean jurisdictions using proportional representation to elect their house of government show a very strong pattern of stability: of the sixteen elections held in the ACT and New Zealand since PR's adoption, all of the parliaments elected have lasted a full term, give or take a month or two, and only the 1989-92 ACT parliament saw a mid-term change of government. Ireland and especially Malta also conform to a pattern of rare early elections.⁵¹

Previous Research on Proportional Representation

Proportional Representation theorists (nineteenth and twentieth centuries)

Narelle Miragliotta has noted that Thomas Hill (an English schoolmaster) was the first person to devise a (STV) system of proportional representation, and that his ideas were later refined by Danish mathematician Carl Andre and English Barrister Thomas Hare, working independently of each other.⁵² Jack Wright also acknowledges Hill's contribution to knowledge and use of STV.⁵³ The works of both men were totally theoretical in nature: at the time of their writing in the 1850s, no major democracy used proportional representation at national or provincial level. Both men died in the 1890s and consequently did not live to see the systems they advocated put into practice.

⁵¹ Ian Gorvin, ed., *Elections Since 1945: A Worldwide Reference Compendium* (London: St James Press, 1989), 168-72; David M. Farrell, *Electoral Systems: A Comparative Introduction*, (Basingstoke: Palgrave, 2001), 121-52, and Wolfgang Hirczy and John Lane, "Malta: STV in a Two-Party System, in *Elections in Australia, Ireland, and Malta under the Single Transferable Vote*, ed. Shaun Bowler and Bernard Grofman (Michigan: The University of Michigan Press, 2000), 178-204.

⁵² Narelle Miragliotta, *Determining the Result: Transferring Surplus Votes in the Western Australian Legislative Council* (Perth: Western Australian Electoral Commission, 2002), 1.

⁵³ J. F. H. Wright, *Mirror of the Nation's Mind: Australia's Electoral Experiments* (Sydney: Hale & Iremonger, 1980).

Hare's original 1857 work, *Machinery of Representation*, advocated the representation of Britain as one whole constituency. Under Hare's original idea, the quota for election was to be determined by dividing the number of votes cast by the number of members to be elected, with the surplus seats to be distributed at random. (A similar system is used nowadays to elect national parliaments in the Netherlands and Israel.) Later works by Hare suggested that the adoption of proportional representation would reduce levels of corruption within government.⁵⁴

Hare's ideas were enthusiastically advocated by English thinker and politician John Stuart Mill, one of whose major concerns in relation to this thesis was, in an era of campaigns for greater voting rights, to find a method to prevent the domination of the educated minority by a poor, uneducated majority.⁵⁵ Mill had views about the (lack of) extension of voting rights that would be an anathema to modern-day liberals and social democrats, but said little about electoral mechanics beyond support for Hare's original idea of a single nationwide constituency.

Electoral mechanics were, however, at the forefront of the thinking of Australian advocates of proportional representation, most notably South Australian writer Catherine Helen Spence and Tasmanian lawyer Andrew Inglis Clark. They were writing in the context of limited use of proportional representation methods (until 1897, PR was only being used in some local government elections), but they had begun to address their minds to questions such as the number of members to be elected per district, a concept later to be known as district magnitude. In 1893 Spence turned her attention to the question of district magnitude, and asserted the belief that "no

⁵⁴ Newman, *Hare-Clark in Tasmania*, 11-12. Newman does not elaborate on why Hare thought PR would reduce levels of corruption.

⁵⁵ John Stuart Mill, *Considerations on Representative Government*, (London: Longman, 1865).

constituency should be less than to return six men. I should prefer seven or eight.”⁵⁶

There are two striking aspects about this observation. First, Spence was writing before her campaign to enfranchise women had success in South Australia (hence her reference to men). Second, Spence’s preferred minimum magnitude of seven also happens to be the magnitude, it will be argued, when no major party enjoys a particular advantage over any other major party. Spence could not have known this as Australia’s organised political parties were still in their infancy, but her comments, viewed from over one hundred years later, show remarkable foresight.

Other Australians of the time, such as Victorian mathematics professor Edward Nanson and the Ashworth brothers, showed interest in electoral matters, but in international terms, electoral systems study, for the first half of the twentieth century at least, were what Lijphart was later to refer to as ‘an underdeveloped field’.⁵⁷ The small volume of research published in the immediate post-WWII period had the weakness of being very polemical in nature, either in support of it, (such as Hoag),⁵⁸ or against it (such as Hermens).⁵⁹

The first attempt to construct a general theory about electoral systems to be applied cross-nationally was by Maurice Duverger in 1951, and the first English translation was not published until 1954.⁶⁰ As noted above, he proposed two theories, one of which was called a ‘law’, and the other a ‘hypothesis’. The law, as he saw it, was that single-member plurality systems tended to lead to a two-party system, while the hypothesis stated that both

⁵⁶ Catherine Helen Spence, "Effective Voting," (Adelaide: Burden & Bonython, 1893).

⁵⁷ Taagepera and Shugart, *Seats and Votes*, 47.

⁵⁸ C.G. Hoag and G.H. Hallett, *Proportional Representation* (New York: MacMillan, 1926).

⁵⁹ Hermens, *Democracy or Anarchy?*

⁶⁰ Duverger, *Political Parties*.

double-ballot systems and multi-member proportional representation systems tended to lead to multi-party systems.

The first attempt to disprove Duverger's theories was made by J.G. Grumm, who argued that in many cases, existing party systems had an influence on choice of electoral system rather than the other way round.⁶¹ Colomer made a similar argument many years later.⁶² On the other hand, William Riker and Giovanni Sartori attempted a refinement of 'Duverger's Law' in search of a general explanation for occurrences of a multi-party politics in spite of plurality-majority electoral systems.⁶³ In turn, and later, Duverger himself attempted a revision of his original theory in light of developments over the previous forty years.⁶⁴

In the meantime, Douglas Rae produced a cross-national study (first published in 1967, but referred to in this thesis as 1971 edition).⁶⁵ As well as coining the term 'district magnitude', Rae advanced a series of propositions about how electoral systems operated similarly to, as well as different from, other electoral systems across 20 democracies. Rae also coined the term 'manufactured majorities', in other words, a situation whereby a party can win a majority of seats without winning a majority of votes. Rae argued that both proportional representation systems as well as plurality systems, could produce such a phenomenon. As will be seen, there are number of examples of Australian PR elections producing such majorities, for example the 2004 Senate election. This thesis examines the circumstances under which they occur.

⁶¹ J.G. Grumm, "Theories of Electoral Systems," *Midwest Journal of Political Science* 2 (1958), 357-76.

⁶² Colomer, "It's Parties That Choose Electoral Systems (or Duverger's Laws Upside Down)".

⁶³ William Riker, "Duverger's Law Revisited," in *Electoral Laws and Their Political Consequences*, ed. Bernard Grofman and Arend Lijphart (New York: Agathon Press, 1986), 19-42.

⁶⁴ Maurice Duverger, "Duverger's Law Forty Years Later," in *Electoral Laws and Their Political Consequences*, ed. Bernard Grofman and Arend Lijphart (New York: Agathon Press, 1986), 69-84.

⁶⁵ Rae, *The Political Consequences of Electoral Laws*.

Not long after the publication of Rae's later edition, Enid Lakeman published *How Democracies Vote*,⁶⁶ and followed it some years later with *Power to Elect*.⁶⁷ While the first, because of its coverage of both proportional and non-proportional systems, is much longer, both make strong cases in favour of proportional representation. Lakeman picks out the major strengths, as she sees them, of the two types of PR systems, with list systems being seen as providing fair shares for political parties, and STV systems as giving voters greater control over who is elected to parliament.⁶⁸

A series of publications about electoral systems (the first few pertaining to Duverger's theories) was compiled in the 1980s by Bernard Grofman and Arend Lijphart.⁶⁹ Rein Taagepera and Mathew Shugart published *Seats and Votes: The Effects and Determinants of Electoral Systems* in 1989.⁷⁰ In it they accepted the general thrust of Duverger's hypotheses, but attempt a refinement via logarithmic equations and consideration of issue dimensions. One chapter is of particular interest: it is called '[m]agnitude: the decisive factor'.⁷¹ The authors argue that until then, magnitude had received less attention than it should have. This thesis similarly argues that, the work of Mackerras excepted, district magnitude has also received less attention in Australia than it should have. Taagepera and Shugart detail many useful statistical indices, for example a method for calculating the number of effective parties in a political system. They also confirm Rae's earlier finding that proportionality tends to increase with increasing magnitude. This thesis goes further and argues that, in the Australian context, preference allocation rules can play just as important a role.

⁶⁶ Enid Lakeman, *How Democracies Vote: A Study of Electoral Systems*, 4th rev. ed. (London: Faber, 1974).

⁶⁷ Enid Lakeman, *Power to Elect: The Case for Proportional Representation* (London: Heinemann, 1982), 54.

⁶⁸ *Ibid.*, 80.

⁶⁹ Grofman and Lijphart, eds, *Electoral Laws and Their Political Consequences*.

⁷⁰ Taagepera and Shugart, *Seats and Votes*.

⁷¹ *Ibid.*, 112-25.

Writers that followed Taagepera and Shugart tend to have a nation or system specific focus rather than a cross-national one. Shaun Bowler and Bernard Grofman's edited work, *Elections in Australia, Ireland and Malta under the Single Transferable Vote*, and Matthew Shugart and Martin Wattenberg (eds) *Mixed Member Electoral Systems*⁷² are the most notable examples of such an approach. Colomer's 2006 paper is an exception, as was that of Pippa Norris.⁷³ Both Colomer and Norris attempted to establish a link between electoral systems, proportionality and the number of effective parties. In 2012, Lijphart's *Patterns of Democracy* pays some attention to, among other things, the link between district magnitude and proportionality in electoral systems.⁷⁴

A different approach is taken in a slightly earlier book, David Farrell's *Electoral Systems: A Comparative Introduction*.⁷⁵ For each specific electoral system, Farrell picks out one particular jurisdiction that uses the system and lists a series of election results under that system before devoting later chapters to general issues of electoral systems, including stability. His chapter on Ireland is the most useful for the purposes of this thesis because that country's use of the Single Transferable Vote system makes it a valuable tool of comparative analysis.

Work on STV Electoral Systems in Australia

At the time of the adoption of proportional representation for Senate elections in 1949, only two Australian jurisdictions, Tasmania (House of Assembly since 1909) and New South Wales (Legislative Assembly 1920-1925) had used PR. It is not surprising there was little research on the practical workings of PR systems in Australia. It was not until 1980, by which time the NSW and South

⁷² Matthew Soberg Shugart and Martin Wattenberg, eds, *Mixed Member Electoral Systems: The Best of Both Worlds?* (New York: Oxford University Press, 2001).

⁷³ Norris, "Choosing Electoral Systems: Proportional, Majoritarian and Mixed Systems."

⁷⁴ Lijphart, *Patterns of Democracy*.

⁷⁵ David M. Farrell, *Electoral Systems: A Comparative Introduction* (Basingstoke: Palgrave, 2001).

Australian Legislative Councils and the Australian Capital Territory Legislative Assembly had joined the PR family, that an Australia-wide analysis of PR (and other electoral systems too) was published in book form, when the president of the NSW branch of the Proportional Representation Society, J.F.H. Wright, published *Mirror of the Nation's Mind: Australia's Electoral Experiments*.⁷⁶

Wright examined the systems that were used to elect Senators before the adoption of PR in 1948, casting a poor light on their fairness, and then later making references to the operation of PR in the Senate and in Tasmania. The book is very much an argument for what Wright calls the quota preferential system (but is generally called the Single Transferable Vote). Wright also advocates the use of having an odd number of members to ensure that a party winning more votes than another party can win more seats.⁷⁷

Other Australian works that offer analysis of multiple jurisdictions include those of Colin Hughes, who covers the Senate, Tasmania and New South Wales, and David Farrell et al, in which the co-authors assess the workings of all Australian jurisdictions using STV (only Victoria's Legislative Council has introduced PR since its publication), and also covering Ireland and Malta.⁷⁸ The authors examine the various STV jurisdictions and assess their performance in terms of proportionality, levels of democratic choice and the ability of certain systems to produce manufactured majorities.⁷⁹

Results of individual Senate elections in the last three decades of the twentieth century received some detailed analysis from Hughes and Mackerras (in his various election guides).⁸⁰ But the first comprehensive study

⁷⁶ Wright, *Mirror of the Nation's Mind*.

⁷⁷ *Ibid.*, 149.

⁷⁸ David M. Farrell, Malcolm Mackerras, and Ian McAllister, "Designing Electoral Institutions: STV Systems and their Consequences," *Political Studies* 44, no. 1 (1996), 24-43.

⁷⁹ Rae, *The Political Consequences of Electoral Laws*.

⁸⁰ Mackerras, *The Mackerras 1993 Federal Election Guide*. This edition gave an extensive analysis of the unusual results of the 1990 Senate election.

of Senate elections since the adoption of PR was a 1999 conference commemorating fifty years of proportional representation in the Senate, at which several noted academics, as well as then serving and former politicians, presented papers which were later published as a book edited by Marian Sawyer.⁸¹

Mackerras made a most valuable contribution to knowledge of Senate elections in a paper presented at a 2006 conference commemorating John Howard's tenth year as Prime Minister.⁸² He explains how Howard was able to obtain a majority in the Senate after the 2004 election in spite of falling well short of 50% of the vote in that chamber's election.

In more recent years, the unusual results of the 2013 Senate election produced a greater than usual interest among academic observers and journalists alike. Mackerras made his usual substantial contribution, and he was joined in debate by ABC election analyst Antony Green, who had a different point of view,⁸³ and Victorian academic Nick Economou.⁸⁴ Also making a contribution to the debate, via their blogs, were Tasmanian academic Kevin Bonham, and Perth-based William Bowe (writing as 'the Poll Bludger').⁸⁵

A slightly earlier book, *Australian Electoral System: Origins, Variations and Consequences* by Farrell and McAllister, makes general claims about STV,

⁸¹ Marian Sawyer and Sarah Miskin, eds, *Representation and Institutional Change: 50 Years of Proportional Representation in the Senate*, vol. 34, Papers on Parliament (Canberra: Department of the Senate, 1999).

⁸² Mackerras, "Howard's Plan for Senate Control".

⁸³ Antony Green, *Is it Time for a Fundamental Review of the Senate's Electoral System?*, *Papers on Parliament* (Canberra: Australian Senate, 2014).

⁸⁴ Economou, "An Instance of Cartel Behaviour".

⁸⁵ Bonham's blog can be found at <http://kevinbonham.blogspot.com.au>, while Bowe's can be found at <https://www.pollbludger.net/>.

noting its rarity, and also makes a rudimentary summary of the various STV systems operating in Australia. However, little detailed analysis is provided.⁸⁶

Works about the Australian states

The most comprehensive study of the operation of the Hare-Clark system in Tasmania was published in 1992 by Tasmania's parliamentary librarian, Terry Newman.⁸⁷ Earlier work on Tasmania tended to focus on individual elections rather than the overall picture, but there were two exceptions in the work of Wilfrid Townsley and Sharman et al, the latter also focussing on Western Australia.⁸⁸ A focus of the former work that is addressed in this thesis was Townsley's attempts to find an explanation why, at the time of writing, minor parties had not been able to flourish under Hare-Clark, while independents had.⁸⁹ In the last twenty years the pattern has reversed: this will be discussed further in chapter seven.

Three publications have analysed the use of proportional representation in the Western Australian Legislative Council since 1989. Mike Pepperday's Masters' Thesis⁹⁰ and Narelle Miragliotta's document written on behalf of the Western Australian Electoral Commission⁹¹ were both published in 2002, and hence do not cover the move to six-member districts after the 2005 election. Harry Phillips' pamphlet, *Proportional Representation in Western Australia*, covers the 2008 election, but not that of 2013 or 2017.⁹² This thesis fills that gap in the literature, and also provides some analysis of the Victorian

⁸⁶ David M. Farrell and Ian McAllister, *Australian Electoral System: Origins, Variations and Consequences* (Sydney: University of New South Wales Press, 2006).

⁸⁷ Newman, *Hare-Clark in Tasmania*.

⁸⁸ Campbell Sharman, Graham Smith and Jeremy Moon, "The Party System and Change of Regime: The Structure of Partisan Choice in Tasmania and Western Australia," *Australian Journal of Political Science* 26, no. 3 (1991), 409-28.

⁸⁹ Wilfred Townsley, *The Government of Tasmania* (Brisbane: University of Queensland Press, 1976).

⁹⁰ Mike Pepperday, "Improving Democracy Through Elite Power Struggle: The Introduction of Proportional Representation in the Western Australian Legislative Council," MA Thesis (University of Western Australia, 2002).

⁹¹ Miragliotta, *Determining the Result*.

⁹² Phillips, *Proportional Representation in Western Australia*.

Legislative Council and the ACT Legislative Assembly, both of which have received little, if any, attention.

Writings on Overseas Comparisons: Ireland and Malta

The above countries are useful points of comparison with Australia because of their long-term use STV at the national level. Writings on New Zealand elections, especially those held after the adoption of a mixed member proportional system, are less useful because they do not deal with issues relating to district magnitude and preference allocation rules, although some offer useful insights on how different electoral systems affect minor party and independent success rates.

Michael Gallagher has devoted much of his academic work to the study of single transferable vote systems, with the greatest emphasis placed on elections in Ireland. One of Gallagher's articles attempts to analyse which political parties are favoured by particular district magnitudes.⁹³ That is something that has not been substantially analysed in Australia, and something this thesis will address. Gallagher's more recent research includes a more general analysis of proportionality in STV systems, an analysis of MP turnover in Ireland, and also covers Malta.⁹⁴ Gallagher's most valuable contribution for the purposes of this thesis is the devising of the Gallagher Least Squares Index, which is used to measure the level of disproportionality at a single election, or series of elections, under any given electoral system.

Malta has remained a strictly two-party polity since 1966, which makes it quite atypical among STV jurisdictions which, for the most part, have allowed for the election of minor parties, independent candidates or both. It also continues to have a very low percentage of female MPs. Two studies analysing the latter

⁹³ Gallagher, "Disproportionality in a Proportional Representation System".

⁹⁴ Michael Gallagher, "The (Relatively) Victorious Incumbent Candidate under PR-STV: Legislative Turnover in Ireland and Malta," in *Elections in Australia, Ireland and Malta under the Single Transferable Vote; Reflections on an Embedded Institution*, ed. Shaun Bowler and Bernard Grofman (Michigan: University of Michigan Press, 2000).

two phenomena have been written: one by Wolfgang Hirczy and John Lane,⁹⁵ dealing mostly with electoral mechanics and the representation of parties, while the other, written by Hirczy alone, argues against the proposition that STV systems assist women.⁹⁶

The most useful book on New Zealand's electoral reforms is by Catt *et al*, published in the early stages of the referendum process which resulted in the adoption of MMP. In summarising the features of the alternative electoral systems, the book provides insights into the likely impact of each on partisan representation. A 1998 conference paper written by Mackerras, in which MMP is criticised because of the way it assists some parties and hurts others, and argues that an STV or parallel system would be much fairer, gives other relevant research on the NZ reforms.⁹⁷

Election-specific publications from New Zealand provide minimal analysis of the issues analysed in this thesis. A study of the 1996 election edited by Jack Vowles⁹⁸ and the study of the 1999 election, also co-edited by Vowles, pay next to no attention to partisan impact,⁹⁹ and the same is true of the Vowles *et al* 2002 election compilation.¹⁰⁰

⁹⁵ Hirczy and Lane, "Malta: STV in a Two-Party System".

⁹⁶ Wolfgang Hirczy, "STV and the Representation of Women," *Political Science and Politics* 28, no. 4 (1995), 711-15.

⁹⁷ Mackerras, "Prospects for Electoral Reform in New Zealand".

⁹⁸ Jack Vowles, *Voters' Victory?: New Zealand's First Election Under Proportional Representation* (Auckland: Auckland University Press, 1998).

⁹⁹ Jack Vowles et al., *Proportional Representation on Trial: The 1999 New Zealand General Election and the Fate of MMP* (Auckland: Auckland University Press, 2002). What attention is devoted to the mechanics of the electoral system (in Chapters 5 & 6) analyses the impact of tactical and split ticket voting.

¹⁰⁰ Jack Vowles et al., *Voters' Veto: The 2002 Election in New Zealand and the Consolidation of Minority Government* (Auckland: Auckland University Press, 2004).

Election Statistics

In addition to official election returns, this thesis has been assisted by the books of Australian election result summaries provided by Colin Hughes,¹⁰¹ and information on overseas elections provided by Ian Garvin and Adam Carr.¹⁰² Unfortunately there is a seven-year gap in the election statistics provided by the two, although for the three principal overseas countries mentioned, official and unofficial sources are sufficient to fill in the gaps.

Theoretical Framework and Methods

This thesis will examine a range of arguments relating to proportional representation and its use in various jurisdictions in Australia. It will also challenge many of the assumptions about it that currently appear in the literature. This will be achieved through detailed studies of the Australian PR jurisdictions and by applying the statistical indices to which I have already referred.

¹⁰¹ The first of these was Colin A. Hughes and B. D. Graham, *A Handbook of Australian Government and Politics*, vol. 1 (Canberra: Australian National University Press, 1968). Hughes published three further volumes under this title, the fourth volume covering elections held up to and including 1999.

¹⁰² Gorvin, *Elections Since 1945*. Adam Carr's election archive can be found at <http://psephos.adam-carr.net>.

Chapter 2

District Magnitude, Proportionality and the Number of Parties

The Importance of district magnitude (defined as the number of members to be elected in a district or series of districts) is well recognized in international political science literature. The term was first used by Douglas Rae in 1967,¹ although, as Taagepera and Shugart have pointed out,² the number of members elected per district was of interest to political scientists before Rae undertook his cross-national empirical analysis.³ In 1975 Michael Gallagher wrote about the impact of district magnitude on the partisan composition of the Irish lower house (the Dail). Taagepera and Shugart have called it 'the decisive factor' in one of their chapters,⁴ while Malcolm Mackerras drew attention to its importance in determining results of Australian Senate elections in books⁵ and articles⁶ he has written on federal elections, as well as referring to district magnitude in an article on British and New Zealand politics.⁷ Mackerras was also a co-author of a 1998 article by Farrell et al., which argued the vital importance of district magnitude in elections conducted under an STV electoral system,⁸ citing evidence from Australia, Ireland and Malta.

It is notable, however, that before Rae and since Taagepera and Shugart, overseas writers have placed much less emphasis on district magnitude as a decisive factor. Duverger refers to district magnitude only indirectly in his original 'law' and paid little attention to its effects beyond a distinction between single-member and multi-member systems. Gallagher also made only brief

¹ Rae, *The Political Consequences of Electoral Laws*.

² Taagepera and Shugart, *Seats and Votes*, 55.

³ Ibid.

⁴ Ibid.

⁵ Mackerras, *The Mackerras 1993 Federal Election Guide*.

⁶ Mackerras, "Howard's Plan for Senate Control".

⁷ Mackerras, "Prospects for Electoral Reform in New Zealand".

⁸ Farrell, Mackerras, and McAllister, "Designing Electoral Institutions".

reference to it in a 1991 article, and there is only oblique reference to district magnitude in an article by Norris.⁹ A more recent paper by Colomer deliberately downplayed the importance of district magnitude, although noting that a small number of large parties prefer a system with lower magnitudes,¹⁰ and a large number of small parties prefer a higher magnitude system.

Australian writers apart from Mackerras have tended to focus more on ballot paper numbering requirements than on magnitude. Antony Green emphasised the confusion created by the compulsory preferences/ticket voting system used for the Senate in his review of the 2013 Senate election.¹¹ He adopted the same approach in a 2014 public lecture delivered in Canberra.¹² Nick Economou also paid very little attention to district magnitude in a paper written after changes were made to the Senate voting system.¹³

The impact that differing district magnitudes have had on state (and the Australian Capital Territory) elections in Australia has received virtually no attention, and this thesis aims to address a significant gap in the literature by assessing what partisan advantage, if any, has accrued from such magnitudes in various PR elections. In one of the few studies carried out that related to a particular Australian jurisdiction, the workings of the Western Australian Legislative Council since the adoption of proportional representation for the 1989 election, Harry Phillips does not refer specifically to the impact of changes to levels of district magnitude that took place after the 2005 election.¹⁴

⁹ Norris, "Choosing Electoral Systems".

¹⁰ Colomer, "It's Parties That Choose Electoral Systems (or Duverger's Laws Upside Down)".

¹¹ Green, "Explaining the Results".

¹² Green, *Is it Time for a Fundamental Review of the Senate's Electoral System?*

¹³ Economou, "An Instance of Cartel Behaviour". Economou has also voiced his opinions in a public lecture. See Nick Economou, "Above the Line: Changes to the Way We Vote for the Senate," (Melbourne: University of Melbourne, Electoral Regulation Research Network Newsletter, October 2016).

¹⁴ Phillips, *Proportional Representation in Western Australia*.

A central argument of this thesis is that while district magnitude is an important factor in determining the partisan composition of a parliament elected under STV, the system has a preferential component as well as a proportional one and, consequently, laws relating to the distribution of these preferences can have an equal or bigger impact upon outcomes, especially in relation to the overall proportionality of the system and the number of parties elected to parliament. The results of the 2013 Senate election and some state elections held subsequently illustrate the fundamental importance of a ticket voting option, or the lack of such an option, and the question of whether preference distributions are optional or compulsory.

In the 2013 Senate election, three parties that had never previously won a seat in federal parliament were elected. This caused much angst among major party politicians, who in 2014 suggested certain legislative changes to the system to reduce the chance of micro parties being elected¹⁵. Many of these changes were legislated for by Malcolm Turnbull six months after becoming Prime Minister, via the *Commonwealth Electoral Amendment Act 2016*. In addition to analysing the success or otherwise of various parties, this chapter will analyse the impact of voting requirements and counting methods on the success or otherwise of minor parties and micro parties.

New South Wales and South Australia differ from the other Australian jurisdictions in that they use state-wide PR, with staggered terms for the Legislative Councils. The other jurisdictions have divided their state or territory into regions, enabling them to elect all members at one time. The staggered terms in NSW and SA ensure that the quota for election is not considered too low and reflects earlier concerns about the perceived value of overlapping terms for the upper house.

¹⁵ Parliament of Australia, Joint Standing Committee on Electoral Matters, *Second Interim Report on the Inquiry into the Conduct of the 2013 Federal Election: An Assessment of Electronic Voting Options*, 2014.

Later chapters examine questions regarding which parties are advantaged or disadvantaged by different magnitudes, so this chapter concentrates on the effect of district magnitude and ballot paper numbering requirements on the number of electoral and parliamentary parties emerging in different circumstances. It examines in greater detail the impact the changes in district magnitude in Tasmania have had on that state's three main parties, and the apparent deviating case thrown up by Victoria which, at the 2010 election at least, produced a situation where the Liberal and National Parties enjoyed an advantage in spite of an apparently unfavourable district magnitude of five.

Wright has suggested that the multiplicity of parties alleged to occur under proportional representation systems actually applies only to list systems, because of the inability of a voter to distinguish between the candidates of their preferred party that they like and those that they do not.¹⁶ Enid Lakeman makes the same point more cautiously: she suggests (in the context of Israeli politics) that party list systems do not discourage the emergence of many parties, while STV systems probably would.¹⁷

The Range of Magnitudes

At a federal level the magnitudes used in the Senate have ranged from a low of two (in the two represented territories since 1975) to a maximum of twelve in the various states at the double dissolution elections of 1987 and 2016. By far the most common magnitudes used in Senate elections since 1949 have been five (for half-Senate elections between 1953 and 1980) and six (at all half-Senate elections since 1990 and occasionally in the pre-1974 period). The other magnitudes used have been seven (at the transition elections of 1949 and 1984) and ten (at the double dissolution elections of 1951, 1974, 1975 and 1983).

¹⁶ Wright, *Mirror of the Nation's Mind*, 146.

¹⁷ Lakeman, *Power to Elect*, 78.

In the states, five, six and seven have been the most popular numbers of members per district. Since the adoption of state-wide Hare-Clark in 1909, the Tasmanian House of Assembly has used, at various times, five-, six- and seven-member districts, though always the same number per district at any particular election. The Victorian Legislative Council has used five-member districts for every election since 2006, while the ACT Legislative Assembly and the WA Legislative Council (from 1989 to 2005) have used a combination of five- and seven-member districts. Western Australia reverted to solely six-member districts for the 2008 election, while the ACT used solely five-member districts at the 2016 election.

The other, less common, numbers to be used have been three, eleven, fifteen and twenty-one. The New South Wales Legislative Assembly used a combination of three-member and five-member districts during its brief flirtation with STV in the 1920s, while that state's Legislative Council has used 15-member districts (from 1978 to 1991) and 21-member districts (since 1995). The South Australian Legislative Council has used eleven-member districts to elect its Legislative Council since 1975.

By definition, single member electorates are not proportional, and two- and three-member electorates using plurality systems have been used for both the federal Senate (before 1949, and the South Australian House of Assembly (before 1938) and the Legislative Council (before 1975). These types of systems are not included in this analysis.

The Single Transferable Vote method has been the proportional representation system overwhelmingly used in Australia. This chapter will provide a detailed analysis of the proportionality produced by these different magnitudes, and also whether the degree of proportionality and the number of parties produced by the results matches the theories of political scientists or conforms to the patterns observed in other countries. The argument being

made here is that results are frequently produced which defy conventional theory, because of the proportional component of the system.

How is the number of parties measured?

At first glance, the question seems easy to answer: the number of parties represented in a parliament equals the number of parties. However, an eloquent argument raised by Taagepera and Shugart is that not all parties gaining representation in parliament should be given the same weight.¹⁸ They therefore adopted a formula originally invented by economists to take into account the relative voting strengths of the various parties. This formula was obtained by calculating the sum of the squares of the percentage levels of representation gained by the relevant parties (they called it the Herfindahl-Hirschman concentration index), and then the number one was divided by the result to obtain the number of parties.¹⁹ Except in a situation where one party won all available seats, the concentration index would always be less than one, and the number of parties therefore always greater than one. Often the final result for the number of effective parties (N) will be a number with a single decimal place.

How is proportionality measured?

There have been several methods used over the years to measure the levels of proportionality in electoral systems all of which have been analysed by Gallagher. Such indices include Loosemore-Hanby, Rae, Gallagher's own Least Squares Index, and Lijphart's slightly modified version of the latter, which eliminates the votes and seats gained by 'others'.²⁰ This thesis takes the view that a form of Least Squares Index is the best one to use for, as explained by Gallagher himself, it strikes a happy medium between Loosemore-Hanby, which underestimates levels of disproportionality by

¹⁸ Taagepera and Shugart, *Seats and Votes*, 77-78.

¹⁹ *Ibid.*, 79. The authors initially envisaged using this index based on the vote shares of the parties, but seat shares are more relevant to the argument being made in this chapter. The same modification was made many years later by Lijphart, *Patterns of Democracy*, 65-66.

²⁰ Gallagher, "Proportionality, Disproportionality and Electoral Systems".

minimizing the over-representation of the larger parties, and Rae's which overstates levels of disproportionality by over-estimating the impact of the representation levels of smaller parties.²¹ It is also accepted that Lijphart was on the right track when he suggested that the original index be modified by excluding the amorphous category of 'others' from the calculation.²² In many elections, such a modification would not matter much. However, in the context of the 2013 Senate election, there were a series of what have become known as 'micro' parties, whose candidates polled a combined total of over 13% of the nationwide vote, but won no seats. If these are grouped together under the category of 'Others', they massively increase the disproportionality index, in the 2013 case by as much as five or more points, and would make the result look less proportional than it really was. David Farrell has agreed with Lijphart's suggested modification when calculating the Least Squares Index.²³ The approach seems to be a fair one, since because 'others' are not running as a combination, the fact that their combined total wins no seats should not reflect on the overall proportionality of the system.

In the context of this thesis, this approach poses a logistical dilemma. At what vote share is such a party given its own status, and at what point is it consigned to the 'others' category and therefore not regarded for the purpose of this analysis? The decision is made somewhat easier than it might have been due to results of the Senate elections in 2013 and 2016, and by the New South Wales Legislative Council elections in 1995 and 1999. In the former cases, parties with vote shares as low as 0.5% of the national vote won seats, while in the latter cases parties with a vote share as low as 0.2% won seats. This means that all unsuccessful parties with similar or higher vote shares can also justifiably be included in the analysis, since such an anomaly should definitely be regarded as an aspect of disproportionality within the system.

²¹ Ibid., 40-41.

²² Lijphart, *Patterns of Democracy*, 145.

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

There is a value judgment to be made about whether parties/groups polling very low proportions of the vote should be included in the calculation, especially in situations where such parties win no seats. This is especially so in jurisdictions where seats are allocated on a regional rather than jurisdiction wide basis, such as Western Australia. In that state there are cases of incumbent members who ran as independent candidates who would not qualify for inclusion on their state-wide vote, but polled a significant vote in the region in which they stood, and may have come close to, or indeed won, a seat. It has been decided to include such candidates for the purposes of this analysis.

Whatever judgement is made about the inclusion or otherwise of such parties/groups, it is clear that different scholars may come up with slightly different figures for a jurisdiction. Hence this thesis has Least Squares Index figures provided by Mackerras (for the Senate),²⁴ and Phillips (for Western Australia) to compare itself with.²⁵ As a general rule, the inclusion of each additional party/group polling around 0.5% or slightly less will increase the Least Squares Index by 0.1 or at most 0.2, while any party/group polling 0.2% or less will have no impact on it. The inclusion of either type of party/group has (as would be expected) no impact on the measurement of the number of parliamentary parties, hereafter referred to as N(s), and has only a minor (if any) impact on the measured number of electoral parties, hereafter referred to as N(v).²⁶

The Senate 1949-2016

Legislation to introduce proportional representation for Senate elections was passed by the Chifley Labor Government in 1948. While a single transferable vote system of PR remains in place today, both district magnitudes and ballot paper numbering requirements have undergone several changes over the

²⁴ Mackerras, "Howard's Plan for Senate Control".

²⁵ Phillips, *Proportional Representation in Western Australia*.

²⁶ The subscripts 'v' and 's' refer to votes and seats respectively.

years. District magnitudes have ranged from two (in each of the two territories since they gained Senate representation at the 1975 election) to twelve (in all states at the double dissolution elections of 1987 and 2016). At other times, district magnitudes of five, six, seven and ten have been used.

Ballot paper numbering requirements, on the other hand, have gone through three distinct phases. In the first 34 years of proportional representation, voters were required to number candidate boxes from 1 to the number of candidates standing in their state or territory, in sequential order, in order to cast a valid vote. Not surprisingly, as candidate numbers grew, the informal vote rate became very high (at nearly 10% in 1983) and was the major motivation behind the Hawke Government's decision to make changes to the system before the 1984 election.

Under the new arrangements, party boxes were printed above the various party's candidates and a horizontal black line. Voters had two methods of casting a valid vote: they could vote for a party box above the line (also known as a ticket vote), or they could vote for all candidates below the line, as before, although strict sequential numbering was no longer required. This system lasted until the 2013 election, by which time so-called 'preference whispering'²⁷ had brought the system into disrepute. At the 2016 election group voting tickets were no longer allowed, and voters had a wider range of choices, both above and below the line, for casting a valid vote.

As a result of the various changes, there exists a vast array of data to assess the impact of both factors on the overall proportionality of the system and the number of electoral and parliamentary parties that emerged, although there will be times when the two factors cut across each other and make precise differentiation difficult.

²⁷ An agreement between several small parties to exchange preferences amongst themselves before preferencing any other party.

It is possible, however, to group the various elections into six distinct magnitude (or combination of magnitudes) groups. Some of them did maintain the same ballot paper numbering rules across their period of use. The average Least Squares Index figures and average number of electoral and parliamentary parties across the magnitudes are shown in the table below:

Table 2.1 Least Squares Index and Number of Parties: Senate Elections, 1949-2016

Magnitude	LSQ (Evans)	LSQ (MM)	N(v)	N(s)
5	4.50	4.24	2.57	2.30
5 & 6	5.63	5.59	2.56	2.24
6	5.60	5.45	3.21	2.64
7	4.39	4.39	2.54	2.28
10	3.47	3.30	2.40	2.22
12	4.04	3.13	3.59	3.04

Sources: Calculations based on figures provided by Colin Hughes, *A Handbook of Australian Government and Politics*, Vols 1 – 4 and in Malcolm Mackerras, “Submission By Malcolm Mackerras To The Joint Standing Committee On Electoral Matters”, submission to the inquiry into and report on all aspects of the conduct of the 2016 Federal Election and matters related thereto, available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2013_General_Election/Submissions.

A general pattern for proportionality to increase as district magnitude increases (as Rae originally argued was the case) is evident from the above table. The notable exceptions are in the 10-12 differences, and the combination of five- and six-member divisions as compared with solely five-member divisions in the pre-1984 period. Only in the case of seven-member and twelve-member divisions do ballot paper numbering requirements cut across district magnitude, save for the fact that the five-member and ten-member figures are partially influenced by the inclusion of territory elections in the last two of each in 1975, 1977, 1980 and 1983.

There is also a clear pattern in the effective number of parties, but it appears to be affected much more by ticket voting than by magnitude. It is true that the highest index for both N(v) and N(s) occurred in the elections with twelve-

member districts, but it was partly influenced by the fact that a ticket voting system was in place for one of them. It is clear, however, that there was a consistently higher average for the solely six-member elections than in the solely ten-member elections.

It is important to note that $N(v)$ rose slightly at the 2016 election (after the abolition of ticket voting) while $N(s)$ fell slightly. The early evidence is that the change to the electoral system has made it harder for smaller parties to be elected to the Senate (in spite of the lower double dissolution quota theoretically making it easier) as it has not reduced the tendency of voters to vote for such parties. Whether this pattern continues in future elections when, presumably, the most common magnitude will be six, or whether Rae's distal effect will have a reductive impact on $N(v)$ as well, remains to be seen.

The New South Wales Legislative Council

Proportional representation was first used for elections for the New South Wales Legislative Council in 1978. In previous years, its members had been elected via an indirect method, whereby Legislative Assembly and non-retiring Legislative Council members elected 15 colleagues by proportional representation.²⁸

At the first proportional representation election, 15 members were chosen, and two other batches of 15 members were elected in 1981 and 1984. This pattern was to remain in place until the 1995 election, when three batches of 15 became two batches of 21, with the second batch chosen in 1999. The pattern of 21 members at alternate Assembly elections remains in place to this day.

What did change, however, were the voting options available to the voter to cast their Legislative Council vote. Initially voters were required to vote for at

²⁸ See Wright, *Mirror of the Nation's Mind*, 127.

least ten candidates in order of preference (this requirement was increased to fifteen at the 1995 election), with the option to vote for more candidates if they wished, but with no option to vote for a party ticket above the line.²⁹ In 1988 an above the line ticket option was introduced.³⁰ The ballot paper for the 1999 election was so large (dubbed a beach towel or a tablecloth by some observers),³¹ that the parliament took steps to discourage micro parties from standing for election. It did so by abolishing the use of preference tickets, but allowed voters to cast a '1' vote for their preferred party above the line, and give further preferences for parties if they wished, while the requirements for casting a valid vote below the line remained the same.

The usual practice of the parties and groups that stand candidates has been to offer a slate of fifteen candidates, and recommend, via their "how to vote" cards, that their supporters simply vote '1' above the line. Any voter doing so (as a substantial majority did) ensured that if that vote elected one or more of the party's candidates, subsequent preferences would flow to lower placed candidates of that party but go no further. The parties acting in this way thus freed themselves from the obligation to recommend further preferences.

The numbers of parties elected to the Legislative Council have tended to follow distinct chronological patterns, although they have not always been commensurate with changes to either the district magnitude or voting option.³² Just two groups were elected in 1978; four were elected in 1981 and three in 1984. In both 1988 and 1991 there were four groups elected, but the numbers went up dramatically to seven in 1995 and eight in 1999 (following the

²⁹ Ibid.

³⁰ Michael Hogan et al., *The People's Choice: Electoral Politics in Twentieth Century New South Wales*, vol. 1, New South Wales State Election Series (Sydney: Parliament of New South Wales ; University of Sydney, 2001).

³¹ Sydney-based ABC journalist Quentin Dempster used the latter term when compere on election night in 2003, while referring to the 2003 ballot paper as a tea towel.

³² Michael Hogan et al., *The People's Choice: Electoral Politics in Twentieth Century New South Wales*, vol. 3, New South Wales State Election Series (Sydney: Parliament of New South Wales ; University of Sydney, 2001).

increase in the district magnitude). These results partially validated the conventional wisdom that the number of parties elected tends to increase with higher magnitudes. However, the fact that number of elected parties went down again after the banning of group preference tickets suggests that the availability of such an option might have boosted party numbers in 1995 and 1999 as much as the increase in magnitude. Further examination is required to determine the overall impact of the two factors.

The nature and timing of the changes to the number of members elected at each election as well as the available methods of voting mean that the relative impact of district magnitude and preference tickets can be compared. The rough-sketch measurement of the number of parties suggest that district magnitude is of a more vital importance than the presence or absence of preference tickets, but it is argued here that the more scientific Gallagher Least Squares Index and the Taagepera-Shugart measurement of the number of parties is a more accurate measurement.

The averages for the Least Squares (LSQ) Index and the indices for the number of electoral (hereafter referred to as $N(v)$) and parliamentary (hereafter referred to as $N(s)$) parties was as follows for the four distinct periods:

Table 2.2 Least Squares Index and Number of Parties: New South Wales Legislative Council Elections, 1978-2019

Years	LSQ Index	$N(v)$	$N(s)$
1978-1984	3.98	2.44	2.22
1988-1991	4.10	2.81	2.59
1995-1999	5.07	4.05	3.72
2003-2019	4.63	3.58	3.08

Sources: Calculations based on figures provided by Colin A. Hughes, *A Handbook of Australian Government and Politics*, Vols 3 & 4, 298-311 (for elections held 1978-99) and the NSW Electoral Commission website: <https://www.elections.nsw.gov.au/Elections/past-results> for more recent elections (accessed 15 April 2019).

The overall evidence is that the number of electoral and parliamentary parties is higher under conditions of higher district magnitudes and no preference tickets than a combination of lower district magnitude and preference tickets. This suggests that, on balance, district magnitude is slightly more important than ballot paper numbering requirements in terms of the number of parties emerging. However, it is clear that a combination of the higher magnitude and preference tickets produced the largest number of parties.

The size of the Least Squares Index under the varying conditions produces results that, to some extent, contradict the conventional wisdom that proportionality increases as district magnitude increases. The fact that the highest level of disproportionality occurred under a combination of district magnitude of 21 (DM 21) and preference tickets suggests that preference allocation rules might have played a bigger role in producing the disproportionality than the magnitude level. Why there was more disproportionality under DM 21 after 1999 than in the DM 15 period between 1988 and 1991 remains a puzzle requiring further investigation.

Two other aspects of the results in New South Wales warrant further comment, namely the size of the informal vote and the levels of partisan advantage enjoyed by the larger parties. Perhaps surprisingly, the informal vote rate actually rose from an average of 5.85% between 1978 and 1984 to an average of 6.76% between 1988 and 1999, the opposite of what occurred after the introduction of ticket voting for the 1984 Senate election. This would tend to suggest that voters did not regard the marking of at least ten candidates on the ballot paper as too onerous a task. If anything, the fact that the informal vote rate was at its highest in the 1995-1999 period suggests that the size of the ballot paper might have been the major factor pushing up the informal vote rather than a requirement to number five more candidates below the line.

The changes in magnitude and ticket voting arrangements does not appear to have had much of an impact on the levels of partisan advantage enjoyed by the larger parties. The average levels of over/under-representation for larger parties across the four distinct periods was as follows:

Table 2.3 Levels of Partisan Advantage / Disadvantage for the Main Parties: New South Wales Legislative Council Elections, 1978-2019

Years	ALP average +/-	L/N average +/-	CTA/CDP* average +/-	AUS DEMOCRATS average +/-
1978-1984	+2.34%	+2.78%	-0.81%	-1.10%
1988-1991	+2.60%	+0.93%	+2.03%	+1.97%
1995-1999	+1.84%	+0.45%	+1.67%	+1.15%
2003-2019	+2.55%	+2.22%	+1.39%	-1.19%

* Call to Australia and Christian Democratic Party

Sources: Calculations based on figures provided by Colin A. Hughes, *A Handbook of Australian Government and Politics*, Vols 3 & 4, 298-311 (for elections held 1978-99) and the NSW Electoral Commission website: <https://www.elections.nsw.gov.au/Elections/past-results> for more recent elections (accessed 15 April 2019).

There is little difference in levels of major party representation under DM 15 as compared with DM 21, although both major party blocs, and especially Liberal-National, do better under systems without preference tickets in comparison with those with preference tickets. The relative ease of casting a valid vote below the line during the ticket voting period (1988-99) probably moderated this factor to some degree. As the next chapter will show, a combination of ticket voting above the line and compulsory preferential voting below the line has the greatest reductive effect on major party representation. For the record, the Greens, once they gained representation, tended to be slightly more over-represented under ticket voting conditions.

South Australia 1975-2014

Since adopting proportional representation in 1975, South Australia has used three slightly different types of PR system. The 1975 and 1979 elections used

a party list system, with voters only allowed to vote for two groups in order of preference.³³ In 1982 the system became candidate based, with voters required to number at least as many squares as there were candidates to be elected, namely eleven.

This system lasted for just one election, as the Bannon Labor Government elected at the corresponding House of Assembly election moved to the system which, district magnitude excepted, was essentially the same system which had recently been adopted for the Senate, and became so controversial after the 2013 Senate election. The ostensible reason for the change was the level of the informal vote, which stood at over 10% in 1982 in spite of the relatively easy requirements to cast a formal vote. The Senate voting system existing at the time would regularly see levels of informal voting of 9-10% in a situation where voters were required to number *all* squares to cast a valid vote.

The change caused little public controversy at the time, although it should be noted that the Liberal Party opposed the change in parliament. The lack of controversy was not surprising in view of the results of the elections: each returned a configuration of five Labor, five Liberal and one Australian Democrats. The same was to occur in 1989, when it became the fairness of the House of Assembly voting system that was in question,³⁴ before the Liberal Party gained an extra seat at Labor's expense in 1993. The averages of the respective indices for the three elections were $N(v)$ 2.79, $N(s)$ 2.34 and LSQ 6.39. It was noticeable that in spite of the opportunities provided to smaller parties by the high district magnitude, the number of effective parties

³³ For details and analysis on changes to the SA Legislative Council voting system, see Dean Jaensch, *Community Access to the Parliamentary Electoral Process since 1850* (Adelaide: State Electoral Office, 2003).

³⁴ For an account of the issues relating to the House of Assembly electoral system, see Glynn Evans, "Fairness and Unfairness in South Australian Elections," Masters Thesis (University of Adelaide, 2005).

remained low at both electoral and parliamentary levels, with only three parties gaining Legislative Council seats.

This pattern was to change significantly at the 1997 election when Nick Xenophon, running on an anti-poker machine platform, won a seat in the Legislative Council, along with two Australian Democrats and four each from the Liberal and Labor Parties. There were also four parties/groups elected in both 2002 and 2006, and five parties/groups won seats at each of the 2010 and 2014 Legislative Council elections. It should be mentioned that it was not always the same collection of parties/groups that won election, although it is remarkable that since 1997 there has only been one occasion when Liberal and Labor did not win exactly four seats each.³⁵

The increase in the number of parliamentary parties also manifested itself in the indices, with the average $N(v)$ for the 1997-2014 period averaging 3.70, $N(s)$ averaging 3.38 and LSQ averaging 6.64. These changes demonstrate that small changes in party system configuration can take place as a result of changed voter behaviour without any fundamental changes in the electoral system, although having the impact of reinforcing the nature of the system rather than altering it.

The Overall South Australian Pattern

Since 1975, South Australia has used three slightly different methods of proportional representation to elect its Legislative Council, though always with the constant that the district magnitude was set at eleven. The average for each index under each system was as follows:

³⁵ The exception was in 2002 when the Liberal Party won five seats.

Table 2.4 Least Squares Index and Number of Parties: South Australian Legislative Council Elections, 1975-2018

Years	LSQ Index	N(v)	N(s)
1975-1979	4.91	2.68	2.38
1982	4.51	2.49	2.37
1985-2018	6.55	3.36	3.12

Sources: Calculations for election 1975-1997 based on figures provided by Colin Hughes, *A Handbook of Australian Government and Politics*, Vol. 3, 208-214 and Vol. 4, 341-349. For elections 2002-2018, see Electoral Commission of South Australia: <https://www.ecsa.sa.gov.au/elections/past-state-election-results> (accessed 13 August 2018).

The figures do suggest that the system of compulsory preferential voting and ticket preferences helped to produce a situation where more parties proliferate at both electoral and parliamentary levels, though a causal relationship is hard to prove. The increase in the Least Squares Index under the post 1985 system, is clearly suggestive of a system that encouraged micro parties to stand and then largely denied them representation, thus increasing the overall disproportionality of the system, and negating the positive impact that the relatively high district magnitude may have had on this factor.

It is notable that in comparison to the situation in New South Wales, the requirements for numbering a ballot paper appear to have had a greater impact on influencing the number of parliamentary parties more so than the somewhat lower district magnitude. The fact that the Least Squares Index is higher for South Australia than in New South Wales (regardless of whether the latter used DM 15 or DM 21) indicates that district magnitude is more important than ballot paper numbering requirements in determining overall proportionality. However, the number of both electoral and parliamentary parties has been higher in South Australia than in New South Wales since the latter banned group preference tickets, suggesting that, at these higher magnitudes at least, ballot paper numbering requirements play a more important role in determining the number of parties in the polity. The propensity of non-major party voters to concentrate their vote behind a single, usually centrist, party may play a role in this phenomenon.

As in New South Wales, the South Australian Legislative Council system is relatively even-handed in the way it distributes seats to the two major parties. The Labor Party was over-represented by an average of 1.99% across the eleven elections, while the Liberal Party was over-represented by an average of 1.25% during the same period. If the first three elections (with no preference tickets) are excluded, Labor becomes slightly more-over-represented and the Liberal Party slightly less over-represented, thus suggesting a slightly different pattern from that of New South Wales.

The new rules put in place for the 2018 election resulted in higher levels of both $N(v)$ (4.33) and $N(s)$ (3.27) than the averages over the previous eight elections, although the experience of the 2016 Senate election (after similar rule changes) suggested a reductive effect on the number of parliamentary parties. The LSQ figure was also higher at 7.64, with the Labor Party having the highest level of over-representation. The Liberal Party was also over-represented, but early evidence suggests that parties of the right as a whole are disadvantaged by the new system.³⁶

The Western Australian Legislative Council 1989-2013

In the eight elections held in Western Australia prior to the adoption of proportional representation for the 1989 election, the Legislative Council was elected via a system of provinces made up from two or more neighbouring Legislative Assembly districts. Each province had two members, with just one elected for overlapping terms at alternate elections held in conjunction with an Assembly general election.

³⁶ If the Liberal Party, the Australian Conservatives and the Liberal Democrats are classified as parties of the right, this combination received 38.1% of the vote but just 36.4% of the seats (the four seats won by the Liberal Party). By contrast, parties of the left (Labor and Green) won 45.5% of the seats on a combined vote of 34.7%. This figure rises to 38.8% if unsuccessful parties of the left (Animal Justice and Dignity) are included in the total left vote. Results have been obtained from the Electoral Commission of South Australia website (www.ecsa.sa.gov.au/elections/past-state-election-results (accessed 13 August 2018)).

The system was characterized by a heavy, though not always consistently applied level of malapportionment in favour of non-metropolitan areas.³⁷ As members were elected on the basis of single-member elections, the system did not allow for the election of many parties. Between 1965 and 1986 the average $N(v)$ was 2.51, while the average $N(s)$ was 2.33. The average Least Squares Index for the period was 15.70.

A system of proportional representation was introduced for the 1989 election, and a combination of four five-member regions and two seven-member regions was also used at elections held in 1993, 1996, 2001 and 2005. The system was certainly more proportional than the old system, with the average Least Squares Index being 5.95.³⁸ The number of parties did not change nearly as dramatically, with $N(v)$ averaging 3.09 and $N(s)$ averaging 2.71.³⁹ For the 2008 election, the system was changed to one of six six-member regions. The system also applied at the 2013 and 2017 elections. At the three elections held so far, the Least Squares Index has averaged 7.46, suggesting that the system produced a slightly less proportional result than the 1989-2005 system. The average $N(V)$ rose to 3.29, while the average $N(s)$ rose to 3.37.

The results of these elections suggest that small changes in district magnitudes have very little impact on the number of parties drawing enough votes to make an impact on $N(v)$. The rise in $N(s)$ might indicate that it was

³⁷ For a detailed account of how the system operated and how it came to be changed, see Pepperday, "Improving Democracy Through Elite Power Struggle".

³⁸ This is the author's own calculation. The Phillips average for the same five elections is a somewhat higher 6.66, but there is a large discrepancy between the Evans and Phillips figures only in 1996. The latter's high figure for this election appearing to be caused by a miscalculation due to the difficulty created by the fact that the Liberal and National Parties ran a joint ticket in Agricultural, but separate tickets in the two other country regions. See Phillips, *Proportional Representation in Western Australia*, 101.

³⁹ The average $N(s)$ figure is probably a little lower than it should be because of a decision of the author to group Liberal and National together for the 1996 election. Because Liberal-National ran a joint ticket in one region at that election but not in other regions, a separation of groupings would make the overall results look less proportional than they really are.

slightly easier for minor parties to win seats under the new system, but this thesis argues, in Chapter 4, that this is more likely due to the fact that, especially in 2017, minor parties had learned how to 'game' the system. It will also be argued, however, that the new district magnitude did have a significant impact on the way it advantaged or disadvantaged the major parties.

The Victorian Legislative Council

Prior to the 2006 election, the Victorian Legislative Council, like its Western Australian counterpart prior to 1989, had been elected via a system of single-member provinces consisting of a series of neighbouring Assembly districts, with half its members elected at each election. The partisan impact of the system will be examined more closely in a later chapter. Like most single-member electoral arrangements, the system did not allow for a large number of parties. In Council elections held between 1979 and 2002 (the earlier year has been chosen as a starting point because it represented a return to competitive elections after a series of landslide Liberal victories),⁴⁰ the average number of electoral parties averaged 2.61 across the eight elections, while the index for parliamentary parties for the same period was 2.24. The Least Squares Index was a very high 13.43,⁴¹ this number inflated by landslides to the Liberal-National Coalition in 1992 and 1996 and a super-landslide to Labor in 2002.

A proportional representation system was introduced for the 2006 election, in which the state was divided into eight regions electing five members each. As with the previous system, these regions were made up of complete

⁴⁰ So comprehensive were these victories that the Liberal Party never needed Country/National Party numbers to form government. In these circumstances, the latter was sometimes willing to exchange preferences with Labor, provoking then Liberal Premier Henry Bolte to call the Country Party 'political prostitutes'. See Fred Daly, *The Politician Who Laughed* (Melbourne: Hutchinson of Australia, 1982), 37.

⁴¹ If the figures for earlier elections were included, the LSQ average would be even higher as this index reached 20.20 in 1976, 20.59 in 1973 and 20.28 in 1970. The other indices are hardly altered by the inclusion of earlier elections.

neighbouring Assembly districts, in this case numbering eleven per region. The results of the four elections held so far under the system have produced more proportional results than the previous system, though perhaps not as proportional as advocates of proportional representation would have hoped. The number of parties indices and the Least Squares Index for the three elections were as follows:

**Table 2.5 Least Squares Index and Number of Parties:
Victorian Legislative Council Elections, 2006-18**

Year	LSQ Index	N(v)	N(s)
2006	5.87	3.28	2.67
2010	8.65	3.05	2.27
2014	5.42	3.88	3.31
2018	7.87	3.94	3.43
Average	6.83	3.54	2.92

Source: Calculations based on Victorian Electoral Commission figures available at <https://www.vec.vic.gov.au/Results/results-state.html> (accessed 15 January 2019).

The relatively high least square average indicates that the quota of 16.7% had a reductive effect on the representation levels of small parties, even if a ticket voting option enabled the election of some of them. The average rise of 0.93 in N(v) was to be expected, given that the change to the system would have created a feeling among small parties that they at least had a chance of election, whereas under the old system, most of them would have considered their election chances as being negligible. The rise in the number of parliamentary parties (a slightly smaller average of 0.68) is also to be expected, given that the high quota is a much greater barrier to actual election chances of smaller parties than it is to enticing voters to vote for them.

Under a single transferable vote system, voters can cast their vote for a very small party in the knowledge that if that party fails to elect a candidate; their vote will transfer to a larger party of their choice, save for the case of voting below the line to exhaust their vote. These technical issues will be examined

more closely when discussed later in chapters on partisan advantage. What is noticeable is that while the 2006-18 LSQ average is over two points higher than for 2003-2015 New South Wales, the differences in $N(v)$ and especially $N(s)$ are much smaller (only 0.03 for the latter) in spite of the much lower quota in New South Wales theoretically improving the election chances of smaller parties.

Tasmania and the Australian Capital Territory

These two jurisdictions are considered together because, apart from the ACT's use of a system more closely resembling a party list system in 1989 and 1992, they have both maintained the purest of candidate-based STV systems, with no party ticket vote allowed, and allocations of preferences beyond a voter's first choice largely optional. Perhaps the most important difference between them and the upper houses so far examined is that when Tasmanian and ACT voters vote in their Assembly elections, *they choose a government*. In theory, it is arguable that this ought to make it more likely that more voters will vote for the two parties capable of forming government. The fact that analysis of other jurisdictions has shown that the more preference distributions become the responsibility of voters, the fewer effective parties emerge, suggests another reason why the two jurisdictions ought to have fewer effective parties. Is this actually the case?

The nature of Tasmanian elections makes the classification of 'others' more problematic than in the mainland states. Especially in the pre-1960 period, it was very common for one or more independent candidates to poll significant vote shares, but by definition in one division only. More often than not, at least one such candidate was elected. It therefore makes sense to include a category of Independents/Others in the calculation tables. In more recent elections, and especially since the rise of the Greens, independent success has been much rarer, though happily (for the purposes of this thesis), their

overall vote has been too low to have much of an impact on overall calculations.

There have been three distinct periods, divided by their differing district magnitudes. The average least squares indices and effective number of parties have been as follows:

Table 2.6 Least Squares Index and Number of Parties: Tasmanian House of Assembly Elections, 1909-2018

Years	LSQ Index	N(v)	N(s)
1909-1956 (DM 6)	3.59	2.31	2.17
1959-1996 (DM 7)	4.36	2.41	2.20
1998-2018 (DM 5)	6.01	2.78	2.36

Source: Calculations based on figures provided by Tasmanian Electoral Commission: https://www.tec.tas.gov.au/House_of_Assembly_Elections/index.html (accessed 15 October 2018).

The above figures show that a district magnitude of five produced a somewhat more disproportional result than did magnitudes of six or seven, as Rae's differential proposition had suggested.⁴² However, the fact that DM 7 produced a more proportional result than DM 6 is a contradiction of conventional wisdom as well as of the federal pattern mentioned earlier. Possible reasons for the relative proportionality of the 1909-56 period will be explored further in Chapter Four.

A comparison can be made with the Victorian Legislative Council for the 1998-2013 period, as the district magnitude was exactly the same, and three of the Tasmanian elections were held in the same calendar year as those in Victoria. It is notable that both N(v) and N(s) are lower for Tasmania than Victoria, suggesting that the absence of ticket voting in Tasmania does indeed have a reductive impact on the number of electoral and parliamentary parties. The extent to which ballot paper numbering requirements are a causal factor as

⁴² Rae, *The Political Consequences of Electoral Laws*.

distinct from its house of government status of the Tasmanian and ACT assemblies, is impossible to distinguish without information from opinion poll data on voter attitudes.

The Australian Capital Territory data does, however, tell us something about whether the Tasmanian experience is part of a general trend in a government-electing STV house and provides more information about the combined effects of the two main determining factors. A comparison can also be made with Western Australia because of the use of varying magnitudes within the same elections.

**Table 2.7 Least Squares Index and Number of Parties:
Australian Capital Territory Legislative Assembly Elections,
1989-2016**

Year	LSQ	N(v)	N(s)
1989-1992 (DM 17)	12.51	6.34	3.53
1995-2012 (DM 5/7)	7.94	3.48	2.69
2016 (DM 5)	9.15	3.37	2.32

Source: Calculations based on figures provided by Elections ACT: https://www.elections.act.gov.au/elections_and_voting/past_act_legislative_assembly_elections (accessed 16 October 2017).

A number of notable points can be made about this table. Firstly, it is the case that the combined five- and seven-member magnitude produced a more proportional result than the purely five-member election of 2016, although the quasi-list system of 1989-1992 was the least proportional of all. Secondly, a comparison of the 1995-2012 period with that of Western Australia 1989-2005 (a reasonable exercise because in each case there were two five-member regions for every seven-member region, thus eliminating one independent variable) shows that, although the difference in N(s) is very slight, a comparison suggests that the absence of ticket voting in the ACT follows the detectable pattern of such situations having a reductive effect on the number of parliamentary parties.

Such a trend is not evident in the size of $N(v)$, with the WA Legislative Council producing a higher value than in the ACT. This is not completely surprising, since while the absence of ticket voting might make it harder for tiny parties to be elected, it provides no disincentive for voters to vote for such parties. What it does suggest is that the ACT Assembly's status as a house of government provided no inclination for voters to vote for the larger parties in greater numbers. As a general rule, a low large party vote produces a higher $N(v)$.

Overall Conclusion

The general pattern evident from Australian jurisdictions using a single transferable vote system of proportional representation is that, in terms of proportionality as measured by the Least Squares Index, district magnitude remains the most important factor, and that, as a general rule, Rae's differential proposition that proportionality increases as district magnitude increases remains largely valid, notwithstanding some contradictory cases around the five-six-seven and ten-eleven-twelve clusters. Ballot paper numbering requirements can have a negative (or enhancing) impact on overall proportionality, but the pattern varies according to the electoral geography of particular jurisdictions.

In terms of numbers of electoral and parliamentary parties emerging, another clear pattern is evident: the absence of ticket voting, or more precisely, the inability of parties to direct (as distinguished from an ability to suggest to voters via how to vote cards) their preferences to specified other parties has an overall reductive impact on the number of parties emerging, especially on $N(s)$. This pattern generally prevails quite independently of district magnitude size. It is only when DM hits a (very high by world standards) level of 21 that, as conventional wisdom would have it, the increasing magnitude has an enhancing effect on the number of parliamentary parties. The effect of ballot paper numbering requirements on $N(v)$ is not nearly as stark, which makes logical sense, as under any STV system voters can still vote for micro parties

in the knowledge that, in the event of that party failing to win representation, they are allowed to transfer their second and later preferences to parties that can and will win representation.

Where district magnitude can have a decisive impact on the politics of a jurisdiction is in facilitating levels of partisan advantage enjoyed (or disadvantage suffered) by certain political parties. The following chapters, beginning with Chapter 3 on Senate elections, explore general patterns of advantage and disadvantage, and some of the reasons why such patterns exist.

Chapter 3

District Magnitude and Partisan Advantage in the Senate

In the previous chapter it could be seen that although the widely accepted belief that (a) overall proportionality and (b) the number of elective parties tend to increase as district magnitude increases is correct in general terms, the relationships in Australia can be quite variable, largely because of differences in ballot paper numbering rules in the various PR jurisdictions. It must be acknowledged that Rae's own diagram suggests that, especially around the 5-7 magnitude range, the relationship between magnitude and proportionality was not completely curvilinear, and that the line contained some irregularities¹

The tables included in the last chapter would also suggest the likelihood of irregularities in the 10-12 magnitude range, but they additionally indicate the likelihood that preference allocation rules can have as much of an impact on the number of elective parties as the magnitudes themselves. The New South Wales Legislative Council results from elections since 1978 provide the strongest illustration of the latter point.

This chapter refers specifically to Senate elections held since the adoption of proportional representation in 1948, and more specifically, the partisan advantage or disadvantage incurred by the major political parties under the various magnitudes used. It will be argued that the combination of six-member districts (for the states) and two-member districts (for the territories) that applied at Senate elections between 1990 and 2013 exhibited a systemic bias in favour of the Liberal and National Parties, and often, though not always, hurt the Labor Party.

¹ Rae, *The Political Consequences of Electoral Laws*, 116.

It will be argued that such was not the case between 1949 and 1987, when district magnitudes of states ranged from five to twelve: both major party blocs were usually over-represented by roughly similar amounts. In elections where either ten- or twelve-member divisions were used (the double dissolution elections held in 1951, 1974, 1975, 1983, 1987 and 2016) results generally showed some level of bias in favour of the conservative parties, thus lending weight to the idea that even-numbered districts favour the conservative parties, but also suggesting that ten- and twelve-member division did not favour them as much as did six-member divisions. The most recent double dissolution election in 2016 does suggest, however, that any disadvantage suffered by the Labor Party in previous elections did not apply in 2016. The extent to which the new voting rules for the Senate introduced ahead of the 2016 election played a role in this will be examined later in the chapter.

Five-member districts applied in most states at half-Senate elections held between 1953 and 1980, although there were occasions (before 1977) when if a senator elected at the previous half-Senate election vacated their seat during the first half of their own term, the state from which the senator came would elect six senators.

The district magnitude of six applied at all state Senate contests from 1990 to 2014, due to the enlargement of the Senate that took place in 1983 and the absence of a double dissolution during the 1990-2014 period. Seven-member districts applied for each state for the transition elections of 1949 and 1984, while ten-member districts were used at the double dissolution elections of 1951, 1974, 1975 and 1983. The largest magnitude to apply at a Senate election was the double dissolution general election for all senators in 1987 and the most recent election in 2016, when each state elected twelve senators.

The fact that the current mix of magnitudes appears to favour the Liberal and National Parties might lead some people to question the democratic legitimacy of the system, but the 2013 Senate election results raised much wider questions in relation to the allocation of Senate preferences and the fact that many more minor party and micro party senators were elected than is usually the case and, in some cases, on miniscule proportions of the vote. There was considerable doubt across some of the states as to whether the result actually reflected voters' preferences. This is potentially due to the Senate voting system that was in place from 1984 to 2014, which created a wider range for "unthinking" votes to be cast.

Because of the rarity of use of single transferable vote methods in other countries, there is little international comparison available. Gallagher has made some study of the Irish experience with STV in Ireland's lower house, and has found that the two largest parties in general, and the largest party in particular, will usually be over-represented.² Malta, the only other country using STV to elect its lower house, has a strictly two party system and therefore atypical. Nonetheless, it is notable that in a system using five-member districts throughout, there have been a few examples where the Nationalist Party has won a majority of votes, yet the Labour Party has won a majority of seats. Top up seats have since been legislated for to deal with this problem.

Wolfgang Hirschzy's analysis of Maltese elections does give some clues as to part of the reason for the lack of success of minor party and Independent candidates, and also the type of conditions in Australia that might limit the success rate of such candidates. This point will be examined later in the thesis.

² Gallagher, "Disproportionality in a Proportional Representation System".

The intricacies and idiosyncrasies of the 2013 Senate election will be analysed later in the chapter. But before that, it is useful to consider the two seat contests that have taken place in the two territories since they gained Senate voting rights in 1975. These represent a small part of the system that provides the Liberal-National coalition with a distinct advantage during the period 1984-2013.

Two-member Districts in the Territories: Always One Each

Since the first election for territory Senate seats in 1975, both territories have elected the same party configuration at every election, namely one each for Labor and Liberal in the Australian Capital Territory, and one each for Labor and Country Liberal Party (CLP) in the Northern Territory.

There are good logical reasons why this should be the case. Under a two-member system the quota becomes 33.33% of the vote plus one vote. It is extremely rare for either major party to fall below this figure. The Liberal Party has failed to reach the figure in just four ACT Senate elections, namely in 1983 (31.67%), 1984 (31.9%), 1998 (31.15%) and 2013 (33.08%), but in each case they received enough preferences to retain their seat. The Labor Party has never dropped below quota level in the ACT. In the Northern Territory Labor and Country Liberal have fallen short of a quota on just one occasion each: Labor's lowest vote was 32.8% at the 2013 election,³ while the low point for Country Liberal was 32.46% in 1987.⁴

Consequently, the two major parties have always won 50% of available seats in each territory. This has meant a slight over-representation for both parties in the Northern Territory. Labor has managed to poll over 50% on just three occasions (1987, 1990 and 1993), while the CLP polled over 50% just once, in

³ Australian Electoral Commission, <https://results.aec.gov.au/17496/Website/SenateStateFirstPrefsByGroup-17496-NT.htm> (accessed 13 March 2019).

⁴ *Parliamentary Handbook of the Commonwealth of Australia*, 24th ed., (AGPS, Canberra, 1984), 405.

1975. As a result, the average levels of over-representation for the two major parties are very similar: 6.8% for Labor and 6.1% for Country Liberal.

The ACT is a different matter. The Labor Party has polled over 50% on only two occasions (1980 and 1983), but has nearly always had a substantial lead over the Liberal Party. Only in 1975 did Liberal outpoll Labor (by 43.6% to 37%), and there were only two other elections (1977 and 2013) when Labor's lead over Liberal was smaller than 5%. The average level of Labor over-representation is 6.4%, while for Liberal it is a very large 15.2%, ranging from a low of 6.43% in 1975 to a high of 18.8% in 1998. Is this an indication that even-numbered electorates favour parties of the right? The best answer to this question is: not on its own. The ACT has always been the weakest jurisdiction for Australia's conservative parties, even in 1975, but it is fortunate from their point of view that they have always been able to maintain a vote above 30%.

A slightly lower vote might have seen them fail to win a seat, which would have left them grossly under-represented. The ACT situation is more an indication that the stronger party is not quite strong enough to win two seats, or help elect a minor party rather than being disadvantaged by two-member districts per se. The Northern Territory situation, where the votes are evenly matched, does not provide evidence to support the idea of a systemic bias against parties of the left.

The ACT results do, however, suggest a systemic bias against the third largest party. This was a scenario that Taagepera and Shugart suggested could be predicted almost by definition.⁵ In the late twentieth century the Democrats were the main victim, with healthy votes of 11.9% in 1983 and 16.7% in 1998 failing to yield a seat. In the twenty-first century, it has been the Greens who have suffered. Votes of 21.47% in 2007 and 22.97% in 2010 did

⁵ Taagepera and Shugart, *Seats and Votes*.

not win them a seat. It is a problem that will probably always exist: the ACT is never likely to have a sufficient population to justify having more than two senators. One solution might be to subsume the ACT into NSW for the purposes of Senate elections: there is nothing in the Australian Constitution to prevent this from happening (though this would exacerbate the level of under-representation in the Senate currently experienced by NSW).

Senate Elections in the States, 1949-2010

Until the enlargement of the Senate to twelve senators per state in 1984, the most common district magnitude for Senate elections was five. The exceptions occurred in 1949, when seven senators were elected in each State, the double dissolution elections of 1951, 1974, 1975 and 1983, when ten senators per state were elected, and on occasions where a senator not due to face re-election at a half-Senate election had died or resigned mid-term, in which case that senator's state would elect six senators. The latter situation occurred in Western Australia and Tasmania in 1953, Victoria and New South Wales in 1958, South Australia in 1961 and again for both Victoria and New South Wales in 1970. Those elections were therefore a mix of five-member and six-member contests, while all states chose five senators in 1955, 1964, 1967, 1977 and 1980.

These elections, and the mainly five-member elections of 1953, 1958, 1961 and 1970, can be broken down into three distinct periods. The 1953 election (the first separate half-Senate election) stands alone as the one held at a time when Senate contests were still two-party affairs. All Senate elections held from 1955 to 1970 were characterised by the significant presence of a minor party of the right, the Democratic Labor Party (DLP). By 1977, the DLP had lost all its Senate seats and its influence was waning, but a minor party then regarded as centrist, the Australian Democrats, had appeared on the scene, and played an important role in the 1980 election as well.

In addition to the different magnitude levels, the distinctive feature of the Senate voting system was the requirement that voters number the squares beside every Senate candidate: failure to do this rendered the vote informal. Not surprisingly, the informal vote across these elections was very high, ranging from a low of 4.6% in 1953 to a high of 10.8% in each of 1949 and 1974.⁶ What effect this factor had on levels of partisan support is not completely clear (although the anecdotal evidence quoted by Wright suggests that it significantly hurt the Labor Party).⁷ But it is highly likely such considerations were at the heart of the Hawke Government's move to change the voting system in 1984, and that it played a role in the controversy surrounding the result of the 2013 Senate election.

1953 stands alone as the only half-Senate election held which did not involve the presence of a significant minor party. In this election, the four states electing five members gave Labor 50.9% of the vote and 11 of the 20 seats (55%) while the Liberal-Country Party received 44.01% of the vote and 9 seats (45%).⁸ At this election, the Labor Party were over-represented by 4.1%, which may make it appear that five-member districts advantaged Labor at this election, but it was notable that these results included three of the four states where Labor outpolled the Liberal and Country Parties, namely New South Wales, Victoria and South Australia, and were therefore able to win three of the five seats in those states. In both Western Australia and Tasmania, where six senators were chosen, neither major party received 50% of the primary vote, so we cannot be certain who would have won the fifth seat if five had been chosen.⁹

⁶ Mackerras, "In Defence of the Present Australian Senate Electoral System".

⁷ Wright, *Mirror of the Nation's Mind*, 112-13.

⁸ Results of this and other Senate elections up to and including 1964 have been obtained from Colin A. Hughes and B. D. Graham, *Voting for the Australian House of Representatives, 1901-1964* (Canberra: Australian National University Press, 1974). Results of the 1967 and 1970 elections have been obtained from Colin A. Hughes, *A Handbook of Australian Government and Politics 1965-1974*, vol. 2 (Canberra: Australian National University Press, 1977).

⁹ Hughes and Graham, *A Handbook of Australian Government and Politics*, 1.

The apparent picture of Labor advantage in five-member seats was not to last after the arrival of the Democratic Labor Party. This party had been formed after the Labor split of 1955, and directed its preferences away from Labor in all House of Representatives seats and Senate contests, and Labor retaliated by giving preferences to the Liberal and Country Parties ahead of the DLP. An examination of these elections suggests that, while Labor was not particularly disadvantaged, the Liberal and Country Parties (L-CP) were significantly advantaged.

The average over-representation of the L-CP in five-member districts was 3.98%, while Labor was also over-represented, by an average of 1.02%. The brunt of under-representation was borne by the DLP (an average of -4.28%) and others (an average of -0.78%). It could perhaps be argued that five-member districts actually favoured the left, since any Liberal advantage was more than outweighed by DLP disadvantage. Labor's preference allocation played some role in the latter phenomenon. The most obvious case where such a decision made a crucial difference was in Victoria in 1961, and as will be seen in a later chapter, the Communist Party played some part in the outcome too. Labor preferences also enabled the defeat of the DLP's Vince Gair in the 1961 Queensland Senate election.

How did this compare with results in six-member districts during the same period? The data set is much smaller: only in 1953 (Western Australia and Tasmania), 1958 (New South Wales and Victoria), 1961 (South Australia) and 1970 (New South Wales and Victoria) did such contests take place. The 1953 election, held before the advent of the DLP, produced an average over-representation of 2.01% for Labor and 1.77% for Liberal-Country. The only reason for the higher Labor figure is a slightly smaller vote. Provided neither major party's vote dropped below 43% or rose above 57% in any constituency

(in this case an entire state) each major party bloc was always going to hold 50% of the available seats.

After the arrival of the DLP, it became more common for a major party's vote to drop below 43%, but only in 1970 did it ever result in the DLP winning a seat in a six-member contest. Consequently, the average over-representation for Labor in such contests was 2.1%, while for Liberal-Country it was a quite large 5.13%. The DLP was under-represented by an average of 3.39%, while 'Others' were under-represented by a still larger 4.57%.

These figures tend to suggest that while six-member districts definitely favoured the Liberal and Country Parties, they did not significantly disadvantage the Labor Party at this time. Only once (in Victoria in 1970) did Labor fail to win three seats in a six-member contest. The only way in which it could be argued that five-member districts would have suited Labor more is that they would have obtained three seats out of five in SA in 1961 and NSW in 1970.¹⁰ To counterbalance this, however, they would have been reduced to two out of five seats in both NSW and Victoria in 1958.

Moreover, Labor politicians of the day were aware that six-member districts could occasionally assist them. Consequently, the Whitlam Government in late 1973 hatched a plan which developed into what became known as the Gair Affair. The idea was that former DLP leader Vince Gair would accept a diplomatic post in Ireland, resign his Senate seat, and enable a six-member contest in Queensland at the scheduled half-Senate election in 1974. The plan fell through when Gair's resignation signature could not be secured in time, and Queensland Premier Joh Bjelke-Petersen was able to quickly fill the seat with a nominee of his own party. The other consequence was that the

¹⁰ Labor was not disadvantaged in either case, because the extra vacancy was caused by the death of a Liberal Senator. A five seat contest would have produced a 3-2 Labor advantage in each case, thus ensuring the Senate numbers would have been the same as actually occurred.

federal opposition, then led by Billy Snedden, claimed to be so outraged by the Government's trickiness that it blocked supply in the Senate, and Gough Whitlam opted for a double dissolution.¹¹ There will be more analysis of this election when ten-member districts are discussed later in this chapter.

Six-member contests have become a permanent feature of Australian Senate elections in recent years. But before considering them, a brief reference needs to be made to the last two Senate elections with five-member districts, namely 1977 and 1980. Two important changes to the political landscape had taken place. First, the DLP lost all its Senate seats in the 1974 double dissolution, and was no longer a relevant party by 1977. They had been replaced as the third force by the Australian Democrats, a party of the centre founded by former Liberal minister Don Chipp.¹² Second, then Prime Minister Malcolm Fraser had secured an alteration to the constitution that required any departing Senator to be replaced by a member of the party they represented at the time of their election. In an acknowledgement that the principle of proportional representation requires the replacement senator to serve for the balance of the term, that requirement was included in the amendment.

In the 1977 and 1980 Senate elections, the average over-representation for the Labor Party was 2.78%, while for the Liberal Party it was 3.36%. The average under-representation for the Democrats was 1.85% (a pattern which is common for third parties under five-member districts, as will be seen in later chapters), while for the others it was 4.08%. These figures seem to suggest a larger parties' bonus per se, rather than a system favouring any particular major party. It could be that the higher Liberal-Country Party over-representation was due to a winner's bonus, but the lack of evidence of what

¹¹ At the time there was no requirement for retiring senators be replaced by a member of their own party.

¹² Chipp was most notable for his performance as Customs Minister, in which he legislated to allow the publication of many previously banned books, including the D.H. Lawrence novel *Lady Chatterley's Lover*.

would have happened in successful elections for Labor means, at the federal level at least, it cannot be measured.

Double dissolution and transition elections in subsequent elections meant that normal half-Senate elections did not resume until 1990, by this time using six-member districts. On the basis of one election, Malcolm Mackerras was able to expound a theory that suggested that nearly all such half-Senate elections would result in a three-three split in each state between candidates of the left and right.¹³ This was generally true for subsequent elections, at least until 2013, but the details as to exactly which parties are advantaged or disadvantaged within this constellation needs further investigation.

Senate elections after 1990

Until the 2013 Senate election, a common pattern existed during the eight previous Senate elections. Of the 48 contests between 1990 and 2010, 41 (or possibly 42, depending upon the classification of Nick Xenophon) produced a three-three split between left and right. The exceptions have been New South Wales in 1990 and 1998, when four senators from the left were elected, Tasmania in 2007 and 2010, when four Senators from the left were elected, Queensland and Victoria in 2004, when four Senators of the right were elected. South Australia's status in 2007 is uncertain.¹⁴

It is important to define what is meant by parties of the left and right. This thesis takes the view that Senate elections are overlaid, and therefore influenced, by the House of Representatives election generally held on the same day. In the lower house, a pattern of two-party competition between Labor and Liberal-National exists. Hence the parties of the left are classified as Labor, and all other parties tending to favour Labor with their preferences

¹³ Mackerras, *The Mackerras 1993 Federal Election Guide*, 245.

¹⁴ The uncertain Senator was Independent South Australian Senator Nick Xenophon. Given that he tended to vote with each major party bloc approximately half the time, it is probably best to regard him as being a senator of the centre rather than of the right, which is what would be required to bring the number of 3-3 splits to 42.

and, if elected to parliament, their parliamentary votes. Liberal-National, and other parties similarly favouring them, are correspondingly classified as parties of the right.

The main reason for the even splits in most such contests is in the nature of the Droop quota. As Mackerras explains,¹⁵ 14.3% of the vote is the quota required to win one Senate seat (when 6 Senators are being elected), 28.6% for two, 42.9% for three and 57.1% for four seats. The feat of achieving four seats should be viewed as the equivalent of getting more than 57% of the two-party preferred vote in a state, something that does not happen very often.¹⁶

In a 2006 conference paper, Malcolm Mackerras claimed that half-Senate contests were 'thoroughly stacked in favour of the Coalition.'¹⁷ Later in the paper, Mackerras explains why six-member districts favoured the Coalition. Rejecting an argument by then Prime Minister John Howard that the 1983 reforms of the Hawke Government made it harder for the Coalition to achieve a majority, Mackerras claimed that:

While the changes made in 1983 did make it more difficult for the Coalition to get a majority of seats in a state at a half-Senate election it was also made very easy for the Coalition to get half the seats in a state on a lowish share of the vote. The Liberal Party knew this, but they were not in the business of allowing the truth to get in the way of their propaganda.¹⁸

Mackerras goes on to cite the 1993 New South Wales Senate race as an example of where the Coalition won the same number of seats as Labor despite an 8% primary vote deficit. This chapter will now analyse whether

¹⁵ Mackerras, *The Mackerras 1993 Federal Election Guide*, 244.

¹⁶ The Liberal-National Coalition achieved over 57.1% in both Queensland and South Australia in 1996, while Labor has achieved the feat three times, all in Tasmania, in 1998, 2001 and 2010. Only in the 2010 case did such results manifest themselves into a 4-2 majority for their relevant party bloc in the Senate.

¹⁷ Mackerras, "Howard's Plan for Senate Control," 6. In e-mail correspondence with the author on 27 March 2014 Mackerras mentioned that this claim related only to the post-1984 situation.

¹⁸ *Ibid.*, 12.

such a case is part of a more general pattern. For this purpose, the votes cast in the Territories were excluded from the analysis, as they have been analysed earlier in this chapter.

Detailed Results 1990-2010

It should be noted that the 2013 election will be treated separately, because the arrival of the Palmer United Party and several micro parties make classification of parties more difficult. If Palmer United is regarded as a party of the right (and its pattern of preference allocations suggest it should), the 2013 results definitely provide further evidence of six-member districts favouring the conservative side of politics. The 2016 election, of course, is analysed separately because it was held under a fundamentally different voting system.

The vote and seat shares for the two large party blocs in the 1990-2010 elections were as follows:

Table 3.1 Vote and Seat Shares for Major Parties: Senate Elections, 1990-2010

Year	LIB/NAT Vote Share	LIB/NAT Seat Share	+/- Rep Level	ALP Vote Share	ALP Seat Share	+/- Rep Level
1990	42%	47.2%	+5.2%	38.24%	36.11%	-2.13%
1993	43.18%	47.22%	+4.04%	43.32%	41.67%	-1.65%
1996	44%	50%	+6%	36%	33.3%	-2.7%
1998	37.79%	41.67%	+3.88%	37.18%	41.67%	+4.49%
2001	41.49%	50%	+8.51%	34.33%	33.33%	-1%
2004	44.74%	52.78%	+8.04%	33.02%	35.44%	+2.42%
2007	39.45%	44.4%	+4.95%	40.3%	44.4%	+4.1%
2010	37.99%	44.4%	+6.41%	35.13%	36.11%	+0.98%

Sources: Commonwealth Parliamentary Handbooks for elections 1990-1998, the Australian Electoral Commission website (<https://results.aec.gov.au/>) and *Electoral Pocket Books* (AEC, Canberra, 2001-2010). Note that votes cast in the territories have been excluded from the analysis.

It can be seen from the above table that the impact of the system on Labor is variable (its average under-representation is only 0.08%) the advantage given to the Liberal-National Coalition is obvious. Its average over-representation is 5.88%, and the lowest over-representation ever achieved was still a relatively high 3.88%. Why is it so? A partial clue can be found by looking at the votes of minor parties and Independent candidates for the same period:

Table 3.2 Vote and Seat Shares for Significant Minor Parties and Others: Senate Elections, 1990-2010

Year	DEM Vote Share	DEM Seat Share	GRN Vote Share	GRN Seat Share	Other Vote Share	Other Seat Share
1990	12.63%	13.39%	3.32%	2.78%	3.59%	0%
1993	5.32%	5.56%	3.24%	2.78%	5.02%	2.78%
1996	10.9%	13.8%	3.3%	2.78%	5.8%	0%
1998	8.33%	11.11%	2.69%	0%	13.98%	5.56%
2001	7.25%	11.11%	4.38%	5.56	12.58%	0%
2004	2.09%	0%	7.67%	5.55%	12.48%	2.78%
2007	1.29%	0%	9.04%	8.33%	9.92%	2.78%
2010	0.60%	0%	13.11%	16.67%	13.17%	2.78%

Sources: Commonwealth Parliamentary Handbooks for elections 1990-1998, the Australian Electoral Commission website (<https://results.aec.gov.au/>) and *Electoral Pocket Books* (AEC, Canberra, 2001-2010). Note that votes cast in the territories have been excluded from the analysis.

It should be noted here that, at least during the time they were winning Senate seats, the Democrats tended to be slightly over-represented, while the Greens were, for the most part, under-represented. Overall the Democrats were over-represented by an average of 0.83%, while the Greens were under-represented by an average of 0.31%. However, if the figures for the parties only include the elections at which they enjoyed the status of the largest minor party, the Democrats were over-represented by an average of 2.11%, while the Greens were over-represented by an average of 1.33%.

The overall picture is therefore one that suggests the Liberal and National Parties, while still over-represented in five-member districts, are given a much greater advantage by six-member districts. Labor seems to fare slightly worse in six-member districts as compared to five, while the Democrats, the only minor party to compete successfully in both six-member and five-member districts, did somewhat better in six-member districts. The relatively poor seat returns achieved by the DLP in its heyday might be an indication of minor parties not faring so well in five-member districts, although preference allocations were probably the main factor hurting the DLP.

Why has the Liberal-National coalition been so over-represented in six-member districts? Part of the answer, as Mackerras has argued,¹⁹ is that the Coalition needs to get its vote up to just 42.9% to win 50% of the seats in a district (i.e. a state), which is something it has rarely failed to do. Under a five-member district system, the Coalition needed to get close to 50% of the primary vote to win 60% of the seats. It did achieve this reasonably frequently, but not with the same regularity with which it could obtain 42.9% in elections after 1990.²⁰

A second factor at work is that, even in circumstances where the Coalition fell short of 42.9% in a state, it was assisted by the votes of small minor party and Independent candidates who were usually, though not exclusively, of a right of centre persuasion. Such candidates preferred the Coalition to both Labor and the larger minor parties, both of which sat on the left of the political spectrum. While in the pre-Whitlam period the largest minor party (the DLP) had a high enough vote to take seats from the Coalition, in the 1990s and 2000s such parties have rarely been strong enough to win seats for themselves. The exceptions have been Brian Harradine (Independent, Tasmania, 1993 and

¹⁹ Ibid.

²⁰ 1998 was an exception to this pattern, where the Coalition did not poll three quotas in any state. But in the 30 other contests held between 1990 and 2004, the Coalition polled three quotas in 20 of them. In only one of those (Western Australia in 1993) did the Coalition vote rise above 50%.

1998), Len Harris (One Nation, Queensland, 1998) and John Madigan (DLP, Victoria, 2010).²¹ This pattern altered somewhat in 2013, but even here, such gains for small parties of the right were mostly at Labor's expense, as will be seen.

Labor was not so fortunate. It competes hard for its potential third seat with other parties of the left. Sometimes it can win these contests, but more often than not, either the Democrats or Greens won those contests.²² It should be mentioned that four left senators were occasionally elected,²³ and on even rarer occasions, four senators of the right were elected.²⁴ These rare results have been caused as often by strange preference allocations as by overwhelming vote superiority.²⁵

Before considering the 2013 Senate election, which was most unlike any other since the adoption of proportional representation, it is worth examining the results of Senate elections conducted under district magnitudes of seven, ten and twelve as a test for whether the odd-even pattern is at all modified by the higher magnitudes and, therefore, lower quotas.

Seven-member Districts: 1949 and 1984

Both the 1949 and 1984 elections were transition elections, in each case to allow for an increase in the size of the Senate. Under Section 24 of the Commonwealth Constitution, the Senate is required, as nearly as practicable, to be half the size of the House of Representatives. Accordingly, the

²¹ Nick Xenophon and Steve Fielding are not included in this total. Xenophon did win his 2007 seat at the expense of the Liberal Party, but he is classed as being of the centre rather than the right, while Fielding, unequivocally of the right, won his 2004 seat at Labor's expense.

²² In the 42 contests between 1990 and 2010 where three, and only three, left senators were elected, Labor won all three of those seats on ten occasions.

²³ The four cases were New South Wales in 1990 and 1998 and Tasmania in 2007 and 2010.

²⁴ The two cases were both in 2004, in Victoria and Queensland.

²⁵ The New South Wales and Victorian cases were caused by unusual preference allocations, while the Queensland and Tasmanian cases were caused by overwhelming vote superiority. An excellent analysis of the 1990 NSW Senate contest is provided by Mackerras, *The Mackerras 1993 Federal Election Guide*, 245.

membership of the Senate is increased if there has been an increase in the size of the House of Representatives. The 1949 election was also the first conducted under proportional representation, and it produced the following vote and seat shares:

Table 3.3 Vote and Seat Shares for the Main Parties: Senate Election, 1949

Party	Vote Share	Seat Share	+/- level of representation
Liberal-Country	50.41%	54.76%	+4.35%
Labor	44.89%	45.27%	+0.38%
Communist	2.09%	0%	-2.09%
Others	2.6%	0%	-2.6%

Source: Colin A. Hughes, *A Handbook of Australian Government and Politics*, Volume 1 (Canberra, Australian National University Press, 1965), 379-85.

There were 42 seats contested at this election. The Liberal and Country Parties won 23 of these seats, with that total being made up of four seats out of seven in every state except South Australia, where it won three. The Labor Party's 19 seats were made up of four in South Australia and three in every other state.²⁶

The figures for this election show that the Liberal-Country Coalition gained an advantage from the seven-member district system. However, it is likely that such an advantage arises from a winner's bonus rather than systemic bias. A party receiving 50% of the vote in such a district would gain 57.1% of the seats, and the Coalition achieved this in five states. Also, with a reasonable proportion of the minor party vote cast for an unsuccessful party of the left (the Communist Party),²⁷ the Labor Party did not have the problem it had from the 1980s onwards of losing votes and seats to other parties on the left.

²⁶ Figures provided here have been sourced from Hughes and Graham, *A Handbook of Australian Government and Politics*, 1.

²⁷ See Chapter Six of this thesis for a further exploration of this point.

A guide to how this worked in practice is provided by the 1984 Senate election, which coincided with the House election that saw the Hawke Government re-elected for a second term. It was also the first election in which voters were given the option of voting for a party ticket in the Senate, an option that was utilised by 85.3% of voters casting a formal vote.²⁸ The vote and seat shares for the parties were as follows:

Table 3.4 Vote and Seat Shares for the Main Parties: Senate Election, 1984

Party	Vote Share	Seat Share	+/-Level of Representation
Labor	42.11%	42.86%	+0.75%
Liberal-National	39.6%	42.86%	+3.26%
Democrats	7.62%	11.9%	+4.28%
Other	10.67%	2.38%	-8.29%

Source: Malcolm Mackerras, *The Mackerras 1993 Federal Election Guide* (Canberra, Australian Government Publishing Service, 1993), 223.

The seat tallies were identical in five of the six states. Western Australia was the odd one out, returning three Labor, three Liberal-National and one Nuclear Disarmament Party (NDP), while the eastern states returned three Labor, three Liberal-National and one Democrat.

Part of the reason the Liberal-National Coalition was more over-represented than Labor is due to the fact that, in spite of polling a lower vote than Labor, the Liberal-National vote did not drop below three quotas (37.5%) in any state, thus ensuring an overall seat share of 42.9%. Labor's vote was also above three quotas in every state, and it enjoyed a primary vote lead over Liberal-National in all states except Queensland and Tasmania, but the strength of the Democrats and the Nuclear Disarmament Party (NDP) meant that Labor did not gain any extra seats from its vote advantage as the Liberal-Country Coalition had in 1949.

²⁸ Mackerras, "In Defence of the Present Australian Senate Electoral System".

In three of the four states where Labor enjoyed a primary vote lead over Liberal-National (New South Wales, Victoria and South Australia), the fourth Labor candidate had a lower vote share than both the leading Democrat and NDP candidates at the point where all other candidates had been eliminated, so it was Labor preferences that ensured wins for Democrat candidates over NDP rivals.²⁹ In Western Australia it was the preferences of sitting Democrat Senator Jack Evans that ensured victory for the NDP's Jo Vallentine over the fourth placed Labor candidate. (The ticket voting option ensured that they flowed very strongly.) The NDP was the party most under-represented at this election, but their preferences helped Democrat candidates defeat conservative rivals in Queensland and Tasmania.

This election does tend to give support to the proposition that the higher the district magnitude, the easier it is for minor parties to gain representation. This point will be revisited when the results from Western Australia, Tasmania and the Australian Capital Territory are examined.

Double Dissolution Elections 1951, 1974, 1975, 1983 and 1987

A comparison of these five elections is difficult given they were conducted in different political eras, and with the presence of different minor parties. However, the first three do have the twin features of having the same district magnitude (10 members) and a low success rates for minor party and independent candidates. The vote and seat shares for the parties were as follows:

²⁹ The most notable of these NDP candidates was Midnight Oil lead singer Peter Garrett, who was defeated by Democrat Senator Colin Mason for the last seat in New South Wales. Garrett later became a Labor member of the House of Representatives between 2004 and 2013, and a minister in the Rudd and Gillard Governments.

Table 3.5 Vote and Seat Shares for the Main Parties: Double Dissolution Senate Elections, 1951, 1974 and 1975

Year	L-CP Vote Share	L-CP Seat Share	ALP Vote Share	ALP Seat Share	Other Vote Share	Other Seat Share
1951	49.69%	53.33%	45.88%	46.67%	4.43%	0%
1974	45.94%	48.33%	47.29%	48.33%	6.77%	3.33%
1975	51.85%	55%	40.99%	40.67%	7.28%	3.33%

Sources: Colin, A Hughes, *Handbook of Australian Government and Politics*, Vol. 1 for 1951, 385-91; Vol. 2 for 1974, 98-104; and Vol. 3 for 1975, 129-40.

On average the Liberal-Country-Coalition was over-represented by 3.06%, Labor was over-represented by 0.51% and 'Others' were under-represented by 3.94%. The 'Others' figure suggests that any advantage gained by smaller parties due to the lower quota (9.09%) was more than counteracted by the polarised political climate that tends to apply at double dissolution elections. Under this system, a party required 54.54% to gain a sixth seat in any state. In 1951 the Coalition achieved this in Queensland and Western Australia. In 1974 they achieved it in Queensland, while in 1975 they achieved it in Victoria, Queensland and Western Australia. Conversely, a party was only at risk of not winning five seats if its vote dropped below 45.45%. In the first two of these elections, Labor suffered this fate only in the states previously mentioned where the Coalition won six seats. In each election this effect was compensated for by the fact that Labor polled above this figure in most states without going over 50%. In 1975, however, only in New South Wales did Labor win five seats. South Australia and Tasmania elected Steele Hall (Liberal Movement) and Brian Harradine (Independent) respectively, in addition to five Liberals. Consequently, Labor was slightly under-represented at this election.

The 1983 Senate election shared the similarity with the previous three double dissolution elections in that it used ten-member districts, but it differed from them in that there was a significant minor party (the Australian Democrats)

with strength in several states. The representation levels for the major parties were as follows:

Table 3.6 Vote and Seat Shares for the Main Parties: Senate Election, 1983

Party	Vote Share	Seat Share	+/- Level of Representation
Labor	45.32%	46.67%	+1.35%
Liberal-National	40.44%	43.33%	+2.89%
Democrats	9.55%	8.33%	-1.22%
Others	4.69%	1.66%	-3.03%

Source: Colin A. Hughes, *A Handbook of Australian Government and Politics*, Volume 3, 164-76.

Even in defeat, the Liberal-National over-representation was higher than Labor's. This pattern was to repeat at the 1987 double dissolution election (which was fought on the basis of twelve-member districts), as the table below shows, but as will be seen later, the advantage was not as big as the one the conservative parties were to enjoy in six-member districts between 1990 and 2010.

Table 3.7 Vote and Seat Shares for the Main Parties: Senate Election, 1987

Party	Vote Share	Seat Share	+/- Level of Representation
Labor	42.13%	41.67%	-0.46%
Liberal-National	42.64%	44.44%	+1.8%
Democrats	8.50%	9.72%	+1.22%
Others	6.73%	4.17%	-2.56%

Source: Colin A. Hughes, *A Handbook of Australian Government and Politics*, Volume 4, 221.

In addition to the small advantage for the Liberal-National Coalition, it is also noticeable the advantage enjoyed by the two largest parties is lower than in Senate elections previously discussed. This is consistent with conventional wisdom that suggests proportionality should increase as district magnitude

increases. However, this pattern was not to be repeated at the only other Senate election with twelve-member districts, the most recent election of 2016. As will be seen, the differing pattern of the 2016 election demonstrates the importance of ballot paper numbering requirements and preference allocation rules.

The Overall Pattern 1949-2010

It may be the case that there are too few cases of seven-, ten- and twelve-member district elections to make their results statistically valid. However, the number of two-member, five-member and six-member districts is now quite large. The table below shows the over-representation and/or under-representation levels for the main competing parties during the years in which particular district magnitudes were used and particular party constellations were in place.

Table 3.8 Vote and Seat Shares for the Main Parties: Senate Elections, 1949-2010

No. of Members	Liberal-CP/NP	Labor	DLP	D'crats	Greens	Others
2 member (Territories, 1975-2013)	+10.65%	+6.35%	-	-8.06%	-9.63%	-5.98%
5 member (1953-1970)	+3.90%	+1.02%	-4.28%	-	-	-0.78%
5 member (1977-1980)	+3.60%	+2.78%	-1.05%	-1.85%	-	-4.08%
6 member (1958-1970)	+5.13%	+2.01%	-3.90%	-	-	-4.57%
6 member (1990-2013)	+5.88%	-0.08%	-	+0.83%	-0.31%	-7.48%

Sources: Colin A. Hughes, *A Handbook of Australian Government and Politics*, Volumes 1-4 and Australian Electoral Commission website (<https://results.aec.gov.au/>)

It can be seen here that the Liberal and Country/National Parties have enjoyed a higher level of representation in seats than their vote percentage would suggest on every occasion and set of conditions. The advantage was,

however, most pronounced in six-member districts, and even more so in two-member districts. Since a combination of these two magnitudes applied for Senate elections held between 1990 and 2013, it is no surprise that Mackerras asserted in 2006 that Senate elections 'are stacked in favour of the Coalition.'³⁰ The three Senate elections that followed showed that while the level of Liberal-National advantage had diminished slightly, it still existed.

For the record, in the eight elections held between 1990 and 2010, the Liberal and National Parties were over-represented by an average of 5.78%, ranging from a high of 8.2% in 2001 to a low of 4.5% in 1993. There is clear evidence, therefore, that a combination of six-member and two-member districts produces a systemic bias in favour of the Coalition. On the occasions before the mid-1970s, where six-member districts operated, the Coalition was also advantaged, albeit by a smaller 5.1%.

However, the post-1990 landscape differed markedly from the earlier period in that a systemic bias against Labor appeared in the 1990s which had not applied up to 1970. The main demonstrable reason would appear to be the fierce competition with other parties of the left for the sixth Senate place. Of the 42 such Senate contests where parties of the left won three, and only three, seats, Labor won all three in just ten of the contests. In the pre-1970s examples Labor had no serious competition on the left, and there was only one contest (Victoria in 1970) where Labor failed to win three seats out of six. So it is fair to say that Labor is hurt more by the changing nature of the party system than by six-member districts per se.

The irony of this situation is that the change has resulted from legislation introduced by the Hawke Labor Government in 1984, which was then opposed by the Liberal Party but supported by the Nationals. It is also ironic that the Democrats, who had also opposed the expansion of parliamentary

³⁰ Mackerras, "Howard's Plan for Senate Control".

numbers, profited from six-member districts during the years they were a political force. The architect of the changes, then Labor Senator Graham Richardson, gives no indication in his memoirs that he envisaged such a situation occurring.³¹

The contrast with the situation that applied in five-member districts is different in some ways, but somewhat similar in others. The figures in Table 3.8 show that Labor did better in five-member districts than in six-member ones, although the pre-1970s pattern is less stark than a comparison of 1977-80 and post 1990 figures. Yet for the Liberal and National/Country Parties there was still some level of advantage, though not as great as the post-1990s situation. Again this is somewhat ironic, as both parties had opposed the introduction of proportional representation in 1948.

The 2013 Senate Election

The 2013 federal election ended six years of (mostly) divided Labor rule and installed Tony Abbott as Prime Minister. Such a result was not unexpected, but the accompanying Senate result certainly was. Four additional parties won at least one seat, with the Palmer United Party winning three seats (one of which came after a re-run of the WA Senate election following the disappearance of some ballot papers at the general election).³²

In its morning-after editorial the online journal *Crikey* referred to the Senate result and asked 'Australia, what were you thinking there?'³³ It is argued here that the 'what' should probably have been omitted: the strange results and especially some of the preference distributions suggest that many Australians cast an unthinking vote. This thesis is not being critical of those voters: as will be argued, the 1984-2014 Senate voting system made it very easy to cast an

³¹ Graham Richardson, *Whatever It Takes* (Sydney: Bantam, 1994), 144-47.

³² A summary of events leading up to the calling of a fresh Senate election is provided in the *West Australian*, "New Poll on Cards after High Court Ruling", 19 February 2014.

³³ *Crikey!* "Election night wrap." 8 September 2013.

unthinking vote, and made it much harder to cast a thinking vote than needed to be the case. Partly as a response to the 2013 Senate election, the *Commonwealth Electoral Amendment Act 2016* was passed. The new rules introduced by this Act made it much easier for voters to clearly indicate their voting preferences. The impact of these changes, as measured by results of the 2016 double dissolution election, will be analysed later.

The 2013 Senate vote (based on a combination of the general election of 7 September 2013 and the Western Australian re-run election of 5 April 2014) left the Liberal and National Parties over-represented. A nationwide primary vote of 37.7% delivered the Liberal and National Parties 42.5% of the seats. If the territories are excluded, the Liberal-National vote share was 37.2% and their seat share was 41.7%, meaning that the conservative forces were over-represented by either 3.8% or 4.5%.³⁴ It can thus be seen that, even allowing for the unusual nature of the Senate result, the Liberal and National Parties cannot claim to be disadvantaged by the system: they secured their standard over-representation in six-member districts. As will be seen, it is also difficult to justify Antony Green's claim that preference deals among smaller parties may have cost the Liberal Party two or three seats.³⁵

Where the democratic legitimacy of the result can be questioned is in the number of minor parties to win seats in parliament with very small primary vote shares. The Palmer United Party won three seats (7.5% of available seats) with an overall vote of 5.6%, but the legitimacy of this result was not widely questioned. The winners of seats whose legitimacy has been questioned were David Leyonhjelm (Liberal Democrats, NSW), and Ricky Muir (Australian Motoring Enthusiasts, Victoria). The South Australian result, where the final results were two Liberal, one Labor, one Greens, one Family First and Independent Nick Xenophon, also raises issues of democratic

³⁴ Results have been obtained from the Australian Electoral Commission website, with appropriate adjustments made by the author.

³⁵ Green, "Explaining the Results".

legitimacy that have not been as widely questioned by journalists or the general public. However, the greatest question of legitimacy posed by the 2013 Senate vote arose from the 2013 vote in Western Australia, where the Australian Sports Party's Wayne Dropulich was formally declared to have won a seat after a recount, despite receiving only 0.23% of the overall first preference vote. The Australian Electoral Commission had requested that the High Court overturn this result on the basis that some votes had disappeared during the recount process.³⁶ The High Court duly did so.³⁷

The reason for Dropulich's short-lived success lies in the fact that the Australian Christians had stayed ahead of the Shooters and Fishers Party during the recount. Consequently, the Shooters and Fishers were then excluded and their preferences went overwhelmingly to the Sports Party, keeping them in the count. Because of the existence of the original preference count, we know that if the Shooters and Fishers had finished ahead of the Christians, the Christians' preferences would have gone to the Shooters and Fishers, putting them ahead of the Sports Party and knocking the latter out. Even more bizarrely, the continuation of the Shooters and Fishers would have enabled the election of Labor's Louise Pratt and defeating the Greens' Scott Ludlam, while the latter was successful in the botched recount.

The irony of this situation is that the Australian Christians had placed the Greens last on their preference ticket, but by staying in the count for one stage longer, they would have enabled the election of a Greens senator ahead of Labor. Even more troubling from the point of view of democratic legitimacy was the ability for a party's candidate to be elected with as low a first preference vote as the Sports Party received (just 0.23%). It is especially troubling because many voters were not making a deliberate choice to prefer

³⁶ *West Australian*, "Hold new poll, AEC tells court", 21 January 2014.

³⁷ High Court of Australia; *Australian Electoral Commission v Johnston* (C17/2013), *Wang v. Johnston* (P55/2013) and *Mead v. Johnston* (P56/2013). The judgment was delivered on 18 February 2014.

this candidate but were, in effect, hostage to unknown preference deals carried out by minor parties and groups, due to (and understandable) considering the task of numbering all squares below the line too onerous.

A similar situation applied in Victoria, where the Motoring Enthusiasts' Ricky Muir was elected despite receiving only 0.51% of the first preference vote and finishing behind twelve other parties and groups. Muir's election did not depend on a close decision as to the order of elimination of unsuccessful candidates, but the Liberal-National coalition felt hard done by in that it won only two seats in Victoria after receiving 2.81 quotas, while the Motoring Enthusiasts won a seat in spite of receiving only 0.04 quotas. The consequence of the preference tickets was that small parties of the right, as well as some on the left, preferred the Motoring Enthusiasts to Liberal-National. Had the voters been allowed to vote below the line by, let us say, numbering from 1 to 6 with further preferences optional (an option they were given in 2016) there is little doubt that more of these preferences would have drifted off to Liberal-National (there is some evidence from Victorian Legislative Council elections that preference flows are not quite as tight where optional preferential voting below the line exists) and this would most likely have enabled them to win the last seat.

The controversy over the result in New South Wales stemmed not from unusual preference distributions, but because it was argued that some voters voted for the Liberal Democratic Party (LDP), who had drawn Group A (and were thus first listed) on the ballot paper, mistakenly thinking they were voting Liberal National. The Liberal Democrats, dubbed 'the party for Liberal voters who can't read' by *Insiders* compere Barrie Cassidy, received 9.5% of the Senate vote, compared to 3.91% across the country as a whole. There was a positive swing of 7.19% in NSW compared to an increase of 2.10% nationwide. Antony Green has presented even more convincing evidence that there were many intending Liberal-National voters among the LDP vote, with

the Liberal-National Senate vote being the lowest since 1934, while the Liberal-National House vote was the highest since 1975.³⁸ Further evidence of possible voter confusion is provided by the fact that the LDP support among postal voters was 11.1% and 13.8% among pre-poll voters. On the Monday before Election Day, 2GB radio announcers Alan Jones and Ray Hadley began a campaign to inform their listeners of the potential for confusion, and Hadley emphasised that the Liberal-National team occupied column Y. In a gesture of what he would consider fairness, Hadley also informed his listeners that Labor occupied column M.³⁹ The campaign probably had some impact, the LDP vote among ordinary voters was only 9%, although absentee voters gave the LDP 12.9% of their votes.⁴⁰

It is difficult to argue, however, that the confusion created by the Liberal Democrats and their position cost the Liberal-Nationals a seat. As Malcolm Mackerras has pointed out, Liberal-National did win three seats out of six, their usual tally in a half-Senate election. Secondly, there is some evidence that groups drawing the left hand column on a ballot paper can benefit from a donkey vote and this was true even in the days before ticket voting was introduced (see the following chapter on minor parties and the performance of the Communist Party in the 1950s). And most importantly, the evidence from other states is that parties like the Liberal Democrats received a far higher preference share from smaller parties than did the Liberal Party – witness Victoria, where Liberal-National's 2.81 quotas did not win it a third seat. Even if the entire increase in the Liberal Democrats vote is given to the Liberal-National ticket, bringing them to around 41.4% (around 2.9 quotas), there would still not have been four Liberal-National seats.

³⁸ Green, "Explaining the Results," 406.

³⁹ Ray Hadley on 2GB, 2 September 2013. Hadley also spearheaded an unsuccessful campaign to oust then Treasurer Chris Bowen from his seat of McMahan.

⁴⁰ AEC 2013 NSW Senate results see: <https://results.aec.gov.au/17496/Website/SenateStateFirstPrefsByVoteType-17496-NSW.htm> (accessed 27 October 2014).

South Australia seems a more likely, though less obvious example of where the democratic legitimacy of the result can be questioned. The major complicating factor was the incredible level of support gained by Independent Senator Nick Xenophon, whose 24.9% vote share broke the record for an independent Senate candidate set by Tasmania's Brian Harradine in 1980. Both the Labor (22.7%) and Liberal (27.5%) parties were reduced to less than two quotas, but of the three leading groups, only the Liberals won two seats. The seat that Labor might have won with its 1.58 quotas was won by the Greens with 0.49 quotas, while the seat that Xenophon's group might have won with its 1.74 quotas was won by Family First with 0.26 quotas.

Xenophon's number two, Stirling Griff, would appear to be the most obvious victim of preference ticket manipulation. It would not have been thought likely that Family First could catch up to him on the basis of minor party preferences. Both Labor and the Greens had placed Family First's lead candidate, Bob Day, higher than Griff on their preference tickets. It is at this point that the question 'did the voters get what they voted for?' arises. In one sense they did, as, in voting for a party ticket, the voter has allowed their preferred party to distribute their preferences as the party thought fit. But it is argued here that, especially in the case of Labor voters, they achieved the election of a man they would, if given the opportunity to choose for themselves, probably not have wanted to elect. Day, a former building company owner, is a founding member of the HR Nicholls Society, an organisation whose guiding objective is the complete deregulation of the industrial relations system and, although less explicitly stated, supported the emasculation of trade unions.⁴¹ This, it is argued, is the exact opposite of what a traditional Labor voter would desire.

The idea that Greens voters would prefer Day to Griff is less obvious, but it would still seem to be highly unlikely. Day had not been noted for expressing

⁴¹ For an explanation of how the HR Nicholls Society gained its name, see Paul Kelly, *The End of Certainty: The Story of the 1980s* (Sydney: George Allen & Unwin, 1992), 260-61.

concern for the environment in his pre-Senate days, and his status as a climate change sceptic was confirmed in late 2015 during a radio panel discussion.⁴² Furthermore, the fact that the Climate Change Sceptics placed Day very high up on their preference ticket suggests they were aware that he held a similar view to them on the subject.

Some Labor supporters would no doubt have felt aggrieved that their party failed to win a second seat in SA despite winning 1.58 quotas, while the Greens won a seat with just 0.49 quotas. These feelings would have been strengthened if they had been under the impression that the preferences of the Climate Change Sceptics had been decisive. While it is true that the latter's ticket gave preferences to Greens ahead of Labor, this factor was not of vital importance as, in the interim, Climate Change Sceptic votes went to Bob Day. It was the distribution of Palmer United Party (PUP) preferences that gave the Greens' Sarah Hanson-Young a decisive lead over Labor's number two candidate Don Farrell. Prior to this distribution, Farrell had led Hanson-Young on 88,276 votes to 85,365. Hanson-Young received 26,840 of the PUP's 28,187 votes, while Farrell received just 250 votes.

The decision of PUP to preference the Greens ahead of both Labor and Xenophon tickets may have been partly based on one piece of common policy ground (on asylum seekers) that Clive Palmer shared with Hanson-Young,⁴³ but it is also possible that the decision was based on tactical considerations alone. Whatever the reasons for the decision, it can be claimed with confidence that not nearly as many PUP voters would have given their preferences to the Greens had it been their choice alone. The evidence of the

⁴² 891 ABC Adelaide. 2 December 2015. Speaking to Matthew Abraham and David Bevan between 8.30am and 9am, Day argued that climate change was not caused by human behaviour but by the changing behaviour of the sun.

⁴³ The best account of Palmer's philosophies is provided by Guy Rundle, "Clivosaurus: the Politics of Clive Palmer," *Quarterly Essay*, no. 56 (2014). Palmer has expressed some sympathy for the plight of asylum seekers, while Hanson-Young has been one of their staunchest advocates for many years.

2016 Senate election suggests that very few PUP voters preferred the Greens to a range of other parties.

There is, however, one aspect of the results in which Farrell could claim to be hard done by, and at the same time call into question the idea that Stirling Griff deserved to win a seat. How many people who voted for Xenophon were really voting for Griff as well? On the face of it, quite a number did, as of the 109,873 surplus votes of Xenophon, 106,935 (97.3%) went to Griff. This is a very high number, though not as high as the 99.1% transferring from Labor's Penny Wong to her number two candidate Don Farrell, or the 99.9% transferring from Liberal's Cory Bernardi to his number two candidate Simon Birmingham. The point being made here is that like most other voters, most people wishing to vote for Xenophon found the task of numbering all 73 squares below the line too onerous, and therefore opted to vote for Xenophon above the line.

Supporters of Griff might well put the argument forward that people voting for the number one Liberal and Labor candidates may have been intending to vote for Bernardi and Wong and might have been expressing a personal vote for Bernardi and Wong without necessarily wanting to vote for Birmingham and Farrell. The evidence of the 2016 Senate election, when both a number '1' vote for group ticket or a vote from 1-6 vote for candidates below the line were both valid options, a far larger percentage of major party voters intend their votes to be for the ticket than do Xenophon team voters. While 95.3% of 2016 Liberal votes and 93.1% of Labor votes were ticket votes, only 88.6% of Nick Xenophon Team votes were ticket votes.

While Xenophon Team voters showed more independence than major party supporters, it pales in comparison with the supporters of Tasmanian Independent Brian Harradine over thirty years earlier. In the last two Senate election held before the introduction of ticket voting (1980 and 1983), voters were required to number all squares below the line if they wanted to cast a

valid vote. This task was not as difficult as it might have been in later elections, with only 13 candidates to choose from in 1980 and 17 in 1983.

In 1980, only 39.6% of Harradine's preferences flowed to his number two candidate, while the percentages for Liberal and Labor voters following their party's instructions were 94.1% and 96.8% respectively.⁴⁴ In 1983, 54% of Harradine's voters went to his number two candidate, while the corresponding figures for Liberal and Labor were 86.5% and 92.4% respectively. Hughes sounded a word of caution in that Tasmania could be quite atypical in the level of independence displayed by its voters at Senate elections.⁴⁵

Because of their long experience with a single transferable vote system in their state lower house, it could be argued that Tasmanians have more confidence in marking 'below the line' ballot papers. The fact that Tasmania usually has a lower number of Senate candidates than the mainland states probably also played a role in this. There was evidence that some level of independence still existed in 2013: 10.3% of Tasmanian electors voted below the line in the Senate, compared to only 3.5% across the nation.⁴⁶ This did have some impact on the result: the leakage of votes to the number three Labor candidate kept her in the count longer, and enabled the election of PUP's Jacqui Lambie instead of the leading Sex Party candidate. It will later be seen that in 2016, the independent spirit of Tasmanian voters rose to even higher levels.

What would Xenophon voters had done if the 2016 voting rules had existed in 2013? If we assume a transfer rate to Griff at the same rate as 2016, this would, on the 2013 figures, have left Griff on 7.95%, or 0.56 quotas. This is lower than both the second Liberal candidate (0.92 quotas) and Labor's

⁴⁴ Hughes, "A Close-Run Thing," 235.

⁴⁵ Colin A. Hughes, "An Election About Perceptions," in *Australia at the Polls: The National Elections of 1983 and 1984*, ed. Howard Penniman (Sydney: George Allen & Unwin, 1983), 316.

⁴⁶ See Appendix 1 for details of the above and below the line votes for the 2013 Senate election.

number two (0.59 quotas), but more than the Greens (0.50 quotas). Assuming the Greens still finished ahead of Labor on PUP preferences, Griff is eliminated before Farrell (he received next to no preferences from other groups), and when his preferences were distributed, half of the ticket votes went to Labor, the other half to Liberal. This, surely, was enough to keep Labor well ahead of the Greens, and Labor would thus have picked up Greens preferences when Sarah Hanson-Young was excluded.

On 14 September 2015, Malcolm Turnbull became Prime Minister after defeating Tony Abbott in a party room coup. Mackerras claims, without providing supporting evidence, that the leadership change was crucial in facilitating changes to the Senate voting system.⁴⁷ Whatever the accuracy of the claim, the new Turnbull Government initiated moves to change the system in February 2016. The *Commonwealth Electoral Amendment Act 2016* was passed by both houses on 18 March. Under the new system voters were instructed to vote for at least six groups above the line (though one box above the line would have been sufficient to cast a valid vote) or to vote for at least 12 candidates below the line. The new voting system was used for the first time at the double dissolution election of 2 July 2016, with very interesting results. What can we say about the situation as it has applied thus far?

The 2016 Election: A Batch of Paradoxes

The Turnbull Government secured re-election at the 2 July election with a majority of two seats over all other parties and independents. This was the close result that the polls had predicted, although the number of Labor gains was above that party's expectations.⁴⁸ The Senate result probably ran

⁴⁷ Malcolm Mackerras, "Recent Controversies Regarding the Senate Electoral System," Submission 106 to the Joint Standing Committee on Electoral Matters, 2016, regarding the Commonwealth Electoral Amendment Bill 2016, 22, available at <https://www.aph.gov.au/DocumentStore.ashx?id=1efc5d5e-f1ac-4633-be09-3b7d79906753&subId=409707> (accessed 7 May 2019).

⁴⁸ Labor sources quoted by Chris Uhlmann on ABC TV News and the ABC's *7.30* by Sabra Lane on the three nights before Election Day had predicted the party's seat gain would be in single digits. As it happened, Labor won 69 seats, 14 more than it had won in 2013.

contrary to both major party's expectations. It seems likely that Malcolm Turnbull might have hoped that calling a double dissolution would have meant that many of the non-Greens crossbench senators would be defeated. Had he chosen a normal half-Senate election, all but the independent (but elected as DLP member) John Madigan would have been guaranteed to serve another three years.

These hopes were dashed when 11 crossbench senators were elected, three more than in the old Senate. The decline in the major party vote continued: the Liberal-National vote fell 2.5% to 35.2% and was its lowest ever under proportional representation. Labor's vote of 29.8% was only 0.2% higher than its 2013 nadir. Yet the seat shares for the major parties only partly reflected this. The Liberal-National total of 30 seats was three down on 2013, yet its seat share of 39.5% meant it was over-represented by 4.3%. Labor's seat tally of 26 was just one seat more than in 2013, but its seat share of 34.2% saw it over-represented by 4.4%, the reverse of the 1990-2013 pattern.

The Greens vote of 8.7% was down 0.5% on 2013, and it lost one seat, but its seat share of 11.8% still left it over-represented by 3.1%. Other parties to win multiple Senate seats were Pauline Hanson's One Nation (4.3% of votes and four seats, 5.3%), and the Nick Xenophon Team (3.3% of the vote and three seats, 3.9 %.) The other seats were won by Liberal Democrats (David Leyonhjelm), Family First (Bob Day), Derryn Hinch's Justice Party and the Jacqui Lambie Network, the latter two represented by their respective founders. The Palmer United Party's Dio Wang, the Motoring Enthusiasts' Ricky Muir, Independent (former PUP) Glenn Lazarus and Madigan were all defeated.

In an ironic outcome, the Labor Party, which had opposed the voting changes, turned out to be the most over-represented party under the new system, while the legislation's co-sponsors, the Liberal-Nationals and the Greens, both lost

seats. The Xenophon Team was the only party that had supported the change and did better under the new system.

Just after the Electoral Act Amendment Bill had passed the Senate, Labor Senate leader Penny Wong predicted that Labor would benefit from the new system. Not many other politicians, journalists or commentators appeared to grasp this point, and one academic, Nick Economou, predicted that the changes would hurt Labor in certain circumstances.⁴⁹ Yet although not widely understood, this thesis argues that Labor was always likely to be a beneficiary of the new system, for one major reason.

The key to Labor's improved chances in the Senate lies in the introduction of optional preferential voting. While introducing such a system for the House of Representatives might well hurt Labor because it could reduce the flow of Greens preferences to Labor in many key seats, Labor got very little benefit from Greens preferences, or indeed any other party's preferences, in the Senate. Most of the small parties of the right favoured Liberal-National over both Labor and the Greens, so even in cases where such parties preferred Labor to the Greens, such preferences rarely went that far. On the other hand, small parties of the left have tended to favour the Greens over Labor on their preference tickets.

With preferences now likely to leak to Labor at higher rates under the new system, as well as the capacity for both above and below the line votes to exhaust, Labor does not have the vast majority of preferences ranged against it any more, and can now hope to win seats with candidates who have much less than a full quota after the exclusion of successful candidates higher up the ticket. Thus Labor benefitted from the new system in Queensland (3.43 quotas and four seats), Western Australia (3.67 quotas and four seats) and Tasmania (4.36 quotas and five seats). Only in South Australia (3.61 quotas and only three seats) where the existence of the Xenophon Team meant there

⁴⁹ Economou, "An Instance of Cartel Behaviour".

were effectively three major parties, did Labor fail to benefit from the new system.

The fact that distances from full quotas and orders of exclusion for unsuccessful candidates were not remotely similar in any of the critical states makes precise comparisons less reliable. But a comparison of the preference shares received by WA Labor's Senate candidate Louise Pratt at the 2014 re-run and the 2016 election clearly illustrate the point.

Table 3.9 Share of Minor and Micro Party Preferences Flowing to Labor: Western Australian Senate Elections, 2014 and 2016

Party	Total Vote 2014	Prefs to ALP	% to ALP	Total Vote 2016	Prefs to ALP	% to ALP	Exh. Votes	Exh. %
Palmer United	19,245	990	5.13	5,808	790	13.6	215	3.7
Shooters & Fishers	32,906	161	0.19	48,069	9,862	20.5	13,521	28.3
Christians	24,924	216	0.87	37,483	4,510	12.0	14,258	38.0
Liberal D'crats	46,286	401	0.87	13,895	1,352	11.0	1,191	8.6
HEMP	97,078	45,234	46.62	36,317	5,104	14.1	5,481	15.1
Animal Justice	8,467	34	0.41	21,289	2,183	10.3	2,731	12.8
Family First	9,227	29	0.31	12,864	1,314	10.2	745	5.8

Source: Australian Electoral Commission: <https://results.aec.gov.au/> (accessed 10 October 2016).

The deviating case of HEMP (simply explained by the fact that a Greens candidate remained in the count in 2016 but not in 2014) should not be allowed to obscure the general pattern: while Labor was receiving next to no preferences from small parties of mostly right of centre persuasion in 2013 (of the other groups in the table, only Animal Justice could be considered left of centre), it was receiving packages of a few thousand votes from such candidates in 2016, as well as 11,289 of the 40,289 votes (28%) flowing from the centrist Nick Xenophon Team candidate.

These preferences are all very useful when a candidate is somewhere between 35,000-40,000 votes short of a quota after the exclusion of their successful and unsuccessful team-mates, as Pratt was. The few exhausted votes recorded, although small, could have also been of assistance to Pratt (although they did not actually matter in 2016) as they left open the possibility of her election even if she fell just short of a full quota. Under pre-2016 rules, such votes would have stayed in the count and, more likely than not in the circumstances of 2013 or 2014, gone to a candidate other than Pratt.

The 2016 law changes similarly assisted both Liberal-National and Greens in some cases. The states where Liberal-National won more seats than quotas were New South Wales (4.68 quotas and five seats), Victoria (4.34 quotas and five seats) and Queensland (4.59 quotas and five seats). The Greens won more seats than quotas in all six states, although in the states where it won just one seat (New South Wales, 0.96 quotas, Queensland, 0.89 quotas and South Australia, 0.77 quotas) their vote was likely to be high enough to win a seat under any voting system. In the states where the Greens won two seats they were well short of two quotas in all of them, with 1.39 quotas in Victoria, 1.37 quotas in Western Australia and 1.45 quotas in Tasmania. Whether the Greens would have won a second seat in these states under the old rules is difficult to say. The answer is likely to be 'yes' for Victoria, where the Greens did not compete with a Labor candidate for the last spot on the left (leaving the status of Derryn Hinch to one side for a moment), and it is likely that the Greens would have received enough from small parties of the left had ticket voting arrangements still been in operation.

The two smaller states are more problematic. In Western Australia, the Greens' Siewert would have started well behind Labor's Pratt, and while the Greens might have received enough preferences from small parties of the left to push Siewert ahead, there is no guarantee of this.

One claim this thesis makes with confidence is that there is no way the left as a whole would have won six seats under the old rules. Labor received just 46.5% of the two-party preferred vote in WA House of Representatives seats, which is only just ahead of where a party would need to be to win 6 out of 12 Senate seats in a double dissolution. Given that some of this Labor vote came as a result of preferences from minor parties of the right which, in the context of Senate election, would have exchanged preferences among themselves before reaching Labor or Greens, and with the old rules ensuring a more disciplined flow of preferences than actually happened, it is likely a minor party of the right would have won a seat at the expense of either Labor or the Greens.

Tasmania provided the most interesting result of the 2016 Senate election. Australia's smallest state provided the closest contest for the final seat, with the Greens' number two candidate Nick McKim edging out One Nation's leading candidate Kate McCulloch by 141 votes to claim the twelfth spot. But the count was interesting for reasons other than just this. Given Tasmania's use of Hare-Clark at state level, it could reasonably have been expected Tasmanian voters would show a greater level of independence by voting below the line at a higher rate than in other states. The fact that Tasmanians did vote at a higher rate below the line played a major part in the election of Lisa Singh from a low level of the ALP ticket.⁵⁰

Tasmania: Singh Defeats the Party Machine: Colbeck Not So Lucky

As has been almost invariably the case in recent elections, parties of the left did much better in Tasmania than in any mainland state. At the 2016 election, Labor won five of the twelve Senate seats and the Greens two, thus beating the next best performance for this combination (six seats in each of Victoria

⁵⁰ See Appendix 2 for details of the above and below the line votes for the 2016 Senate election.

and Western Australia). The left's performance looks even better if re-elected Independent Jacqui Lambie is included among the senators of the left, as Mackerras has considered her.⁵¹ The Senate result largely mirrored the Tasmanian results in the House of Representatives, with Labor regaining the three seats it had lost to the Liberal Party in 2013.

The strong Labor/Greens result in the Senate appears somewhat incongruous when the vote tallies for the major parties are examined. Labor received 33.59% (4.38 quotas), the Liberal Party 32.53% (4.23 quotas), the Greens 11.16% (1.45 quotas) and Jacqui Lambie Network 8.30% (1.08 quotas). The highest polling unsuccessful party, Pauline Hanson's One Nation, polled 2.57% (0.33 quotas). On the basis of these figures, ten seats were certain with Labor or the Greens always likely to win one more seat after the distribution of preferences. Given that some other minor parties of the right, most notably Family First (0.26 quotas) and Shooters, Fishers and Farmers (0.18 quotas) polled a reasonable vote share, it might have been expected that a fifth seat would eventually head in this direction.

That this did not happen has two possible causes. A quick analysis of primary votes suggests the propensity of voters to support Labor candidate Lisa Singh was one factor assisting the left. Although listed at sixth position on the ALP ticket, Singh polled a personal vote of 6.12% (0.79 quotas), and, combined with the 3.57 quotas given to the party ticket or other Labor candidates, meant that Labor was always likely to win five seats. Singh did eventually win a seat, while Labor's fifth placed candidate, John Short, was unsuccessful. Singh's win also ensured an all-female Labor Senate delegation from Tasmania.

The unique feature of Tasmania in comparison with the other states is the significant primary vote given to candidates who were not on the top of their party's ticket, and had in fact been placed in positions which would normally

⁵¹ Mackerras, "Recent controversies regarding the Senate electoral system".

have condemned them to defeat. Like Labor Senator Lisa Singh, Richard Colbeck (a sitting Liberal Senator and junior minister) was placed below a non-incumbent candidate.

As it happened, ticket votes and distributed surpluses of winning candidates had only elected three senators from the two largest parties, as well as Lambie and the number one Greens candidate, Peter Whish-Wilson. After the distribution of number three Labor candidate Carol Brown's surplus, Singh had 21,653 votes, well ahead of number four candidate Carolyn Bilyk (12,289 votes) and Short (1,498 votes).

On the Liberal side, Colbeck, who had been demoted to the number five spot after a falling out with Senate colleague and Tasmanian Liberal powerbroker Eric Abetz, did not do as well. Despite leading the number four Liberal candidate David Bushby by 15,380 votes to 15,092 after the distribution of the surplus of Liberal number three Jonathon Duniam, Colbeck was not elected.

Singh did better among the voters who voted for lower placed candidates of the micro parties than her two Labor colleagues who remained in the count. This pattern began to change (as the system's designers intended) when the preferences from the leading candidates of those groups were distributed. (The majority of such votes would have been cast mostly by people voting above the line, and such votes go automatically to the highest placed candidates on other tickets.) Despite this, however, Short remained well behind the other two Labor candidates and when he was eliminated, 698 of his 1,534 votes went to Singh and 548 went to Bilyk. This left Singh on 22,537 votes and Bilyk on 13,031 votes. The quota for election was 26,090 votes.

At this stage Colbeck was still 503 votes ahead of Bushby, but at this point the preferences from other parties started to heavily favour the latter. By the time Colbeck was the lowest polling candidate in the count, he trailed Bushby by

6,918 votes to 24,371. At this point Singh led Bilyk by 23,923 votes to 22,006. Only 12,460 (73.64%) of Colbeck's votes went to Bushby. Another 2,171 votes (12.83%) leaked to Singh but only 592 votes (3.5%) leaked to Bilyk. Bushby and Singh were now both over the quota and were thus elected,⁵² but Bushby had a much larger surplus to pass on.

By this stage the only candidates remaining in the count were Bilyk, the Greens number two candidate Nick McKim, and One Nation's Kate McCulloch. Any Liberal voter who had followed the party's how to vote card would have given their next preference to Labor and Labor did indeed receive the largest share (though well short of a majority) of Bushby's surplus. McCulloch received a larger share of this surplus than did McKim, but it still left her 41 votes behind McKim. With only the surplus votes of the now elected Bilyk to be distributed, McCulloch was never going to bridge this gap and she eventually finished 141 votes behind McKim.

It was an earlier preference distribution that had most impact on the final transfer. It illustrates a fault in the new system that had also existed under the 1949-83 rules, but had not been a factor under the 1984-2013 rules (the 2013 New South Wales count notwithstanding): the influence of the donkey vote.

The leading Family First candidate, Peter Madden, had 11,074 votes at the time of his exclusion, of which 5,221 had been ticket votes. Crucially, Family First had drawn column A on the ballot paper, with Labor drawing Column B and the Greens Column C. The Tasmanian ballot paper instructed voters to number six boxes above the line, although any vote cast above the line for just one box would still have been formal. Those who followed instructions and voted 1-6 across the left hand side of the ballot paper cast a donkey vote

⁵² Singh thus became the first candidate since 1955 to be elected from a lower place on a party ticket while a higher placed candidate of the same party missed out. The other Senators who had performed a similar feat in Tasmanian Senate elections were Reg Wright (Liberal, 1951), George Cole (Labor, 1949 and 1951), Bill Aylett (Labor, 1951 and 1953) and Robert Wardlaw (Liberal, 1955).

that went, in order: 1 Family First, 2 Labor, 3 Greens, 4 Christian Democratic Party, 5 Nick Xenophon Team and 6 Liberal. Evidently a large number of Family First voters did so, for when Madden was excluded (just before Colbeck's exclusion), 3,049 votes (27.53%) went to Bilyk, Labor's highest placed candidate remaining in the count. This was a much higher percentage than was received by Labor from Family First in any other state.

As well as helping Bilyk in her eventual election, the subsequently larger surplus from Bilyk also helped the Greens. Similar assistance was provided to both Labor and the Greens by the Liberal Party. Any Liberal voter who followed that party's Senate how to vote card voted 1 Liberal, 2 Christian Democrat, 3 Shooters, Fishers & Farmers, 4 Liberal Democrat, 5 Family First and 6 Labor. Again quite a large number of voters followed the card, as Labor received 42.14% of Bushby's surplus, compared to 11.81% for the Greens, 5.207% for One Nation and 26.22% exhausting. While the Liberal Party did not directly assist the Greens, the Liberal assistance in building up the Labor surplus might have been helpful to the Greens, although it did not matter on this occasion.

Conclusion on the 2013 and 2016 Senate Elections

While the proportionality of the results in some states in 2013 could reasonably be questioned (Victoria being the most notable), it was still the case that the Coalition secured its normal level of over-representation that results from a combination of six-member and two-member contests. Using a combination of the 2014 re-run in Western Australia and the original count in other states and territories, the Liberal and National Parties received 37% of the primary vote and 42.5% of the seats. If the territories are excluded, the Liberal-National vote share is 37.2% and its seat share is 41.7%. The 4.5% over-representation enjoyed by the conservative coalition in this election is therefore not much lower than its 5.9% over-representation in six-member

districts since 1990 and so consistent with a long term pattern for Senate electoral contests when there is an evenly numbered district magnitude.

The 2016 election was conducted under twelve-member electorates in the states. While previous double dissolutions (whether under ten-member or twelve-member electorates) suggested that Liberal-National enjoyed a slight advantage, but at a lower level than in even-numbered districts of smaller magnitudes, the 2016 results suggest very little reduction in Liberal-National advantage. Their nationwide vote share was 35.2% and their seat share was 39.5%. This 4.3% over-representation was only 0.2% less than in 2013. Where the 2016 election differed from both the results in previous double dissolutions and recent half-Senate elections is the over-representation of the Labor Party which, in 2016, stood at 4.4%. The Greens also appear to have benefitted from the change to the voting system: a vote of 8.7% yielded them 11.8% of the seats.

There may well have been something fundamentally unfair about the fact that the third Liberal-National candidate in Victoria, Helen Kroger, missed out on a Senate seat after her group received 2.81 quotas, while a group receiving just 0.04 quotas eventually won a seat. Be that as it may, this failure by Kroger prevented the Coalition being over-represented by a substantial 7.2%. The Coalition could not claim to be hard done by in the other states either: only in Tasmania (two seats on the basis of 2.62 quotas) did they win fewer seats than quotas.

There may well have been some concern for the future of Australian democracy that a party then setting the political agenda was able to persuade so many journalists and commentators that it had been hard done by, as the Liberal Party was able to do after the 2013 election. As an example, consider Antony Green's comments on the 2013 Senate result, in which he notes that 'preferential voting in single-member House electorates may have protected

Labor from the consequences of its low vote share in 2013, but no such protection was afforded by the Senate's proportional form of preferential voting.⁵³ In other words, Green saw Labor as deserving its low level of Senate representation (31.5% of available seats) as being no better than it deserved for its primary vote of around 30%. For the Liberal and National Parties, however, he claimed that 'confusion caused by the record number of candidates and parties cost the Coalition one of its existing Senate seats (in Victoria) and prevented it from gaining one and possibly two extra seats.'⁵⁴

As has been demonstrated, there is no basis for claiming that the Coalition was deprived of a fourth seat in New South Wales by the confusion arising from the Liberal Democrats' left hand position on the Senate ballot paper. If one accepts the more realistic proposition that without the confusion in New South Wales (and preference harvesting in other states), the Coalition would have won an extra seat each in Victoria and Tasmania, this would mean that the Coalition would have won 50% of available seats with a primary vote of under 38%. Even if every vote cast throughout the country for the Liberal Democrats (3.9% of the nationwide vote) had been a vote intended for Liberal-National, this would only bring the Coalition's nationwide vote to 41.5%.

Green was not the only commentator who seemed to accept the line that many senators were illegitimately elected. On ABC's *Insiders* program on 19 April 2015, journalist Phil Coorey claimed that only two of the eight cross-bench senators were elected under their own steam, while the others relied on preference deals. In fact, almost the complete reverse is the case: only three (Day, Lambie and Muir) came from behind to defeat other candidates with larger remainders.

⁵³ Green, "Explaining the Results," 406.

⁵⁴ *Ibid.*

Overall, this thesis takes the view that concerns about the democratic legitimacy of the Senate voting system existing before the 2016 election were overstated, though it also takes the view that the onerous requirements for casting a valid below the line vote exacerbated a situation in which the last seat in a Senate contest became a result of decisions made by party machines rather than clearly expressed voter choice. In a major sense, the new system creates more accountability because any preferences cast by voters are now a genuine individual choice rather than a secret preference decision of which they may not be aware, but the changes have merely reinforced the advantage of the governing party that sponsored it rather than giving it an extra advantage. The position of that party's main rival has also been strengthened, something that the government may not have taken into account.

In the Australian states and territories that use proportional representation, there have been a wide range of district magnitudes used, including three (for the NSW Legislative Assembly 1920-25) five, seven, eleven (for South Australia's Legislative Council since 1975), fifteen (NSW Legislative Council 1978-91) and 21 (for the New South Wales Legislative Council 1995). The states and territories also vary in the obligations on voters to number squares on their ballot papers, although the importance of the latter factor was probably underestimated in the years before the 2013 federal election.

The comparisons of partisan advantage constitute the next chapter. The study begins with Western Australia, where it would seem that differing magnitudes have the greatest partisan impact. It will be argued that Western Australia offers an even more obvious example of how six-member districts provide an inbuilt advantage to the Liberal and National Parties. This remains the case in spite of Labor's landslide victory in 2017.

Chapter 4

District Magnitude and Partisan Advantage in Western Australia

In the previous chapter on federal Senate elections it could be seen that an increase in district magnitude does not necessarily result in more proportional results in Australia. It was also shown that even-numbered districts in general, and six-member districts in particular, provided a distinct advantage to the Liberal and National Parties and, to some degree, disadvantaged the Labor Party (although the latter was not the case in 2016). The following study of Western Australian elections is included to reinforce the point about the 1990-2013 system, but also to argue that the same principle applies even more strongly to Western Australia. It is also argued that the Western Australian case demonstrates that the use of five- or seven-member districts, or in the WA case a combination of both, does not actually reverse this trend to favour the Labor Party at mainstream conservative expense. It merely makes for a more even pattern where Labor, if it receives a small voting superiority over Liberal-National, can achieve a similar advantage in parliamentary seats.

The above combination appear to give the Labor Party an advantage *vis-a-vis* the Greens, a pattern that is also evident in south-eastern jurisdictions (to be analysed in the next chapter). Analysis of the situation prior to the introduction of proportional representation in the Legislative Council is included to make the point that the introduction of PR enhanced the democratic legitimacy of the chamber because, unlike the situation existing prior to 1989, the Liberal and National Parties were no longer guaranteed a majority in the chamber regardless of the actual vote. However, it will be argued that the move to solely six-member districts (engineered, ironically, by a Labor government) has restored the old order to some extent.

The requirements for casting a valid vote that have applied at WA Legislative Council elections since 1989 are essentially the same as those applying at Senate elections held between 1984 and 2014. Only in the range of district magnitudes does it differ to a major degree. Voters have had two options: to vote for a party or group ticket with a single '1' above the line, or to vote for all candidates below the line. For the first five elections under PR, two different ranges of magnitudes (five and seven) were used. By contrast, the Senate, by dint of Section 7 of the Constitution, has always required that each state have the same number of members elected. This requirement, incidentally, creates another similarity with the WA system. Section 7 creates a malapportionment in favour of states with smaller populations; the WA system legislates for malapportionment in favour of non-metropolitan areas.

The rural malapportionment is one aspect that makes Western Australia distinctive: no other state or territory using PR allows for malapportionment beyond 10% of the average enrolment. The other aspect is unique. Unlike the Senate, where voter support for the major parties is roughly even across all districts (the various states and territories) there is one particular WA region (Agricultural) that overwhelmingly supports the conservative side of politics.¹ As the Agricultural Region is one favoured by the malapportionment, this factor should favour the conservative parties to some degree. The extent to which it is a contributory factor will be investigated in this chapter, and an assessment made regarding its overall impact on the representation of the various parties as distinct from the impact of district magnitude. It will be argued that the move to six-member districts after 2008 has provided a much greater partisan advantage in favour of the conservative parties than the rural malapportionment did. This remains the case in spite of the 2017 Assembly Labor landslide.

¹ The ACT has used a mixture of five- and seven-member districts since its adoption of Hare-Clark since the 1995 election, while Tasmania has used a mixture of five-, six- and seven-member districts since the adoption of Hare-Clark in 1909, although it has always used the same magnitude for all seats at any one election. Victoria has used five-member districts in all Legislative Council elections since 2006.

Before the adoption of proportional representation for the 1989 election, Western Australia's Legislative Council had elected its members in staggered terms via a single-member preferential voting method and, prior to the 1965 election, was subject to a property franchise. Not surprisingly, the conservative parties always had firm control of the Legislative Council while the property requirement existed, although changing demographics and home ownership patterns meant this factor was beginning to weaken by the 1950s (as it was with the South Australian Legislative Council). The Labor Party had supported the abolition of the property franchise when it was proposed by the Brand Government, largely on principle, but also hoping and expecting that the change would finally give it a chance of obtaining a majority in that chamber. To their dismay, the disadvantage suffered by the Labor Party became worse after 1962. The nature and causes of the disadvantage have been extensively analysed by Pepperday.²

Others, such as Black,³ noted the Labor disadvantage at this time, but he noted that malapportionment was usually (without concrete evidence) given the blame, a position disputed by Pepperday who attributes its disadvantages to wasted votes in country seats.⁴ Staggered terms could also have been a contributing factor, although the fact that Labor failed to win a majority of available Council seats at any election between 1965 and 1983 rules this out as the main causal factor.

The 1983 and 1986 Legislative Council elections illustrate Labor's disadvantage under the old system. In 1983 the Labor Party, contesting all but one of the 17 seats being elected, achieved a primary vote of 50.63% but was able to win just seven seats, or 41.2% of available seats. The Liberal Party

² Pepperday, "Improving Democracy Through Elite Power Struggle," 1.

³ David Black, *The House on the Hill: A History of the Parliament of Western Australia 1832-1990*, Western Australian Parliamentary History Project (Perth: Parliament of Western Australia, 1991).

⁴ Pepperday, "Improving Democracy Through Elite Power Struggle".

won nine seats (52.9%) with a primary vote of just 41.57%. The combined 6.63% vote of the National Country Party and National Party yielded them a total of one seat.⁵

The Labor Party fared a little better in 1986, winning nine of the 17 available seats with a primary vote of 44.58%.⁶ This vote is slightly lower than it might have been because Labor made what appears to be a tactical decision not to contest the inner-city Metropolitan Province,⁷ in the (ultimately forlorn) hope that the Australian Democrats could win the seat. The Liberal Party, which had won nine seats of 17 in 1983 with a primary vote of 41%, got less value for votes in 1986, winning six seats of 17 with a primary vote of 41.97%. The other two seats were won by the National Party and the Country Party.

After this election, Labor had 16 of the 34 Legislative Council seats, and it was able, with the support of National Party Legislative Councillors, to push through a raft of electoral reforms affecting both houses. Pepperday analysed the process extensively in his Masters thesis in which he claims that most Labor MPs were unaware of how the adoption of PR would change the composition of the parliament and the polity.⁸ It will be argued that even in 2005, after proportional representation had been in use for a few elections, the group of Labor MPs then making the decision to further reform the system displayed a similar lack of knowledge, or indeed interest, about the impact of district magnitude in Legislative Council elections.

Like the federal Labor government in 1983, the WA Labor Party was well aware that the package of reforms would assist it in the Legislative Assembly.

⁵ Colin A. Hughes, *A Handbook of Australian Government and Politics 1975-1984*, vol. 3 (Sydney: Australian National University Press, 1986).

⁶ Colin A. Hughes, *A Handbook of Australian Government and Politics 1985-1999*, vol. 4 (Sydney: Federation Press, 2002), 333.

⁷ In the corresponding Legislative Assembly electorates, Labor easily retained Perth, won Subiaco from the Liberal Party and suffered small swings in the safe Liberal seats of Cottesloe, Floreat and Nedlands.

⁸ Pepperday, "Improving Democracy Through Elite Power Struggle," 17.

The reduction in the level of rural weighting in some northern seats and the removal of such weighting for Perth hills seats (one of which tended to swing with the electoral tide and three of which were reliably Liberal), were always likely to assist Labor. In the end the changes assisted Labor so much that they were able to win 31 of the 57 seats (54.4%) in spite of a primary vote of 42.5% (over 10% down on the 1986 figure) and an estimated two-party preferred vote of under 48%. Such an occurrence has not happened since, suggesting that the bias in favour of Labor was not systemic.

After changes in 1987, six regions were used for the Legislative Council elections. In the metropolitan area, the North Metropolitan Region elected seven members, while the East Metropolitan and South Metropolitan Regions elected five members each. In the country area, the South West Region elected seven members, while the Agricultural Region and the Mining and Pastoral Region elected five members each. This still left a significant level of weighting in favour of the country area, but it was smaller than it had previously been.

The Legislative Council results provided seat tallies that more accurately reflected the state mood: The votes in each region, and overall, are shown in Table 4.1:⁹

⁹ Results of the 1989 Legislative Council election have been obtained from David Black, *Legislative Council of Western Australia: Membership Register, Electoral Law and Statistics 1890-1989*, Revised ed. (Perth: Parliament of Western Australia, 1991), 372-90.

Table 4.1 Vote Shares for the Main Parties: Western Australian Legislative Council Election, 1989

Region	No. Seats	Labor	Liberal	National	Democrats	Grey-Power	Other
East Metro	5	47.3%	36.5%	2.3%	3.6%	5.9%	4.4%
North Metro	7	39.2%	44.7%	1.3%	3.4%	4.3%	7.1%
South Metro	5	43.4%	41.8%	2.1%	4.3%	4.9%	3.5%
Agricultural	5	25.6%	41.3%	26.8%	1.7%	-	4.6%
Mining & Pastoral	5	53.7%	33.6%	3.6%	2.7%	-	6.4%
South West	7	37.5%	42%	9.4%	2.2%	3.2%	5.7%
Overall	34	41.3%	41.1%	5%	3.3%	4%	5.3%

Source: David Black, *Legislative Council of Western Australia: Membership Register, Electoral Law and Statistics 1890-1989* (Perth: Western Australian Parliamentary History Project, 1991).

Only three parties, Labor, Liberal and National, won seats. The Democrats did not make their hoped-for breakthrough. Their vote fell below Greypower (a party purporting to represent the interests of older people), and neither party was able to win it a seat. The seat shares of the successful parties are shown in Table 4.2 (below).

Both sponsors of the new system (Labor and National) were over-represented overall, by 3% and 3.8% respectively. However, the Liberal Party, which had opposed the introduction of PR, were also over-represented by 3%.¹⁰ As is

¹⁰ The Liberal Party, sensibly, did not complain about its reduced level of over-representation in the Council, and made only minimal complaints about the less fair lower house result. The Liberal leader, Barry MacKinnon, devoted most of his energy to drawing attention to alleged corrupt dealings between government ministers and prominent business people, popularly known as 'WA Incorporated'. Mackinnon's constant calls for a Royal Commission into such matters were acceded to in 1991 by then Premier, Carmen Lawrence. By the time the Royal Commission findings had been published (in late 1992), Mackinnon had been replaced as Liberal Party leader by Richard Court. For an account of WA politics of this period, see Peter Kennedy, *Tales from Boomtown: Western Australian Premiers from Brand to Barnett* (Perth: UWA Publishing, 2014), 172-93.

usually the case in a single transferable vote system, the burden of under-representation was borne by the unsuccessful parties.

**Table 4.2 Seat Tallies and Shares for Successful Parties:
Western Australian Legislative Council Election, 1989**

Region	Labor Seats	Liberal Seats	National Seats	Labor Share of seats	Liberal Share of seats	National Share of seats
East Metro	3	2	0	60%	40%	-
North Metro	3	4	0	42.9%	57.9%	-
South Metro	3	2	0	60%	40%	-
Agricultural	1	2	2	20%	40%	40%
Mining & Pastoral	3	2	0	60%	40%	-
South West	3	3	1	42.9%	42.9%	14.3%
Overall	16	15	3	47.1%	44.1%	8.8%

Source: Black, Legislative Council of Western Australia: Membership Register, Electoral Law and Statistics 1890-1989.

It is also worth examining the results at macro level to determine whether a specific advantage exists with either seven-member or five-member seats, and whether there is any truth in the general assumption that larger district magnitudes either make results more proportional, as originally suggested by Rae,¹¹ or give minor parties a better chance.

The evidence in relation to the latter is unconvincing, since no minor party won a seat. In terms of partisan advantage or disadvantage, the Labor Party, on the surface at least, appears to be advantaged by five-member regions. In three of those regions (Mining and Pastoral, East Metropolitan and South Metropolitan), Labor won three of the five seats, while in the Agricultural Region it won just one. This represents a total of 10 of the 20 seats (50%) for a vote of around 45%. The Liberal Party won two seats in each region and

¹¹ Rae, *The Political Consequences of Electoral Laws*, 115.

eight in total, while the National Party won two seats, both in the Agricultural Region.

The appearance of Labor advantage may be misleading, since the five-member districts happen to coincide with Labor's three strongest regions. It will be seen later that this pattern persisted throughout the existence of these five-member districts. It seems a good idea to investigate levels of representation in individual regions to determine average levels of over- and under-representation.

Levels of over-representation and under-representation can be calculated from the results cited above. Labor was over-represented by 12.7% in East Metropolitan, 6.3% in Mining and Pastoral, and 16.6% in South Metropolitan. In Agricultural, on the other hand, Labor was under-represented by 5.6%. The average level of Labor over-representation was thus 7.5%. The corresponding figures for the Liberal Party were 3.5% over in East Metropolitan, 1.8% under in both South Metropolitan and Agricultural and 6.3% over in Mining and Pastoral. This adds up to an average over-representation of 1.6%. The Liberal Party could never gain more than two seats in any of these regions in later elections using five-member districts, though only in one election (2001 in both country regions) did they ever drop down to one seat.

The National Party stood in all four regions, but was successful only in Agricultural, where it was over-represented by 13.2%. In the other regions its vote share equals its under-representation level, giving it an average over-representation level of 1.3%. In subsequent elections the National Party did not bother contesting South Metropolitan and only rarely stood candidates in East Metropolitan and Mining and Pastoral.

It can thus be seen that Labor appears to have gained greatly from five-member district magnitudes, although it would seem to be at the expense of

the minor parties rather than their conservative rivals. However, it may be the case that Labor's advantage comes from a leader's bonus in its three strong regions rather than from five-member districts per se. The two seven-member districts appear to suggest this.

In North Metropolitan, the Liberal Party was over-represented by 12.4%, while the Labor Party was over-represented by 3.7%. The National Party was under-represented by 1.3%. In the South West region, the Liberal Party was over-represented by 0.9%, Labor by 5.4% and National by 4.8%. The average over-representation for the Liberal Party is 6.7%, while for the Labor Party it is 4.6% and for the National Party it is 1.8%. Thus the pattern for this election seems to suggest that all of the three largest parties gained some level of over-representation, although the Labor Party seemed to perform somewhat better in five-member districts and the Liberal Party better in seven-member districts. The minor parties would have been disappointed in their failure to win any seats at this election. However, the pattern was to improve for minor parties in general and the Greens in particular at future elections.

Western Australian Elections 1993-2005

The next four elections are easier to consider as a group than the 1989 election. They can be broken down into two pairs, the first two resulting in Liberal-National wins under Richard Court, and the second two resulting in Labor wins under the leadership of Geoff Gallop. The Liberal and National Parties co-operated more closely with each other at this time, so their combined vote can be considered together more easily.¹² The total number of seats won by the respective parties was as follows:

¹² Detailed results have been obtained from Western Australian Electoral Commission, *1993 State General Election Report 6 February 1993* (Perth, 1993).

Table 4.3 Seat Tallies for Successful Parties: Western Australian Legislative Council Elections, 1993-2005

Year	Labor	Liberal-National	Green	Others
1993	14	18	1	1
1996	12	17	3	2
2001	13	13	5	3
2005	16	16	2	0

Source: Western Australian Electoral Commission, 2005 Western Australian State General Election; Results and Statistics (Perth, 2006), 172.

The 'others' were ex-Liberal turned Independent Reg Davies in 1993, two Australian Democrats in 1996 and three One Nation in 2001. If the Democrats are regarded as a party of the left and One Nation is regarded as a party of the right, it is the case that parties of the left received at least half the seats at three of the four elections in this period. In most cases, this represented a very good return, as the vote and seat shares for each party show:

Table 4.4 Vote and Seat Shares for Main Parties: Western Australian Legislative Council Elections, 1993-2005

Year	% ALP Vote	% ALP Seats	% Lib-Nat Vote	% Lib-Nat Seats	% Greens Vote	% Greens Seats	% D'ocrats Vote	% D'ocrats Seats	% Other Vote	% Other Seats
1993	36.8	41.2	49.6	52.9	5.2	2.9	3.0	0	8.7	2.9
1996	33.1	35.3	46.5	50	5.6	8.2	6.6	5.9	14.8	5.9
2001	37.9	38.2	36.4	38.2	8	14.7	3.7	0	17.7	8.8
2005	43.4	47.1	39.3	47.1	7.5	5.9	0.9	0	9.8	0

Source: Western Australian Electoral Commission, 2005 Western Australian State General Election; Results and Statistics, 172.

If the Democrats' vote is included in overall left total, parties of the left received 45% of the vote in 1993, 45.3% in 1996, 49.6% in 2001 and 51.8% in 2005.¹³ It is therefore evident that, especially towards the end of the period, parties of the left were getting a distinct advantage from the dual

magnitude system. But equally, it is also evident that preference allocations have played a role in the improved performance of left of centre parties. The most notable of these was One Nation's decision in 2001 to direct their preferences to the Greens ahead of Liberal-National in the country regions.¹⁴

There was rarely a significant minor party of the right to compete with the Liberal and National Parties for the favour of conservative leaning voters. The most notable exception was 2001, when One Nation polled 9.9% of the Legislative Council vote and won three seats. Adding this vote to the Liberal-National total gives the right 46.3% of the vote, an over-representation level of less than 1%. Elections either side of this one produced slightly better results. There was no notable small party of the right in 1996, while in 2005 the largest such parties were Australian Christians 2.28% and Family First (2.01%). If these are added to the Liberal-National vote, parties of the right received 43.6% of the vote and therefore a significant level of over-representation.

Summary of Results for Legislative Council elections 1989-2005

Among the many varied results for these elections, one particular pattern is clear. The Labor Party got very good value for its vote in five-member districts. The table below shows the levels of representation in the different magnitude districts at the five elections fought under the system.

¹³ Western Australian Electoral Commission, *2005 Western Australian State General Election; Results and Statistics* (Perth, 2006).

¹⁴ As a result of this decision, the Greens were able to win seats in the Agricultural and Mining and Pastoral Regions at the Liberal Party's expense. For details of party ticket preferences, Western Australian Electoral Commission, *2001 Western Australian State General Election; Results and Statistics* (Perth, 2001). The Greens were to benefit to a lesser extent from this factor in 2005. See Western Australian Electoral Commission, *2005 Western Australian State General Election; Results and Statistics*.

Table 4.5 Average Labor Over-representation: Western Australian Legislative Council Elections, 1989-2005

Year	5 member districts	7 member districts	Overall
1989	7.5%	4.6%	5.8%
1993	3.8%	4.3%	4.4%
1996	4.1%	-0.9%	2.2%
2001	3.2%	1.9%	0.3%
2005	8%	2.9%	3.7%
Overall Average	5.3%	2.6%	3.4%

Source: Calculated from Western Australian Electoral Commission, 2005 Western Australian State General Election; Results and Statistics, 172.

There are two possible reasons why Labor was more over-represented in the five-member regions than in the seven-member ones. It could simply be that the seven-member regions (North Metropolitan and South West) were Labor's second and third weakest regions throughout the period, or because of the nature of the Droop quota. If a party can win 33.3% of the vote in a five-member district, it will win 40% of the seats, and if it gets 50%, or just below, it will receive 60% of the seats. Only if a party polls less than 30% or in the low 40% range will a party be under-represented. Labor was always in the former situation in Agricultural, but rarely faced the latter situation.

In a seven-member district, on the other hand, the respective quotas are 25% for a second seat, 37.5% for three seats and 50% for four seats. Possibly because the difference between the quota and the resulting seat percentage is smaller (37.5% of the vote wins a party 42.9% of the seats), the resulting over-representation level is, on average, not as great.

An examination of Coalition representation levels gives some clues as to which factor was more important.

Table 4.6 Coalition Over-representation: Western Australian Legislative Council Elections, 1989-2005

Year	5 member districts	7 member districts	Overall
1989	3%	8.4%	6.8%
1993	1.3%	4%	3.3%
1996	1.1%	0.6%	3.5%
2001	-1.6%	2.9%	1.3%
2005	9.3%	0.6%	7%
Overall	2.6%	3.3%	4.4%

Source: Calculated from Western Australian Electoral Commission, *2005 Western Australian State General Election; Results and Statistics*, 176-77.

The impression given here is that the Coalition enjoyed a lower level of over-representation in five-member regions than in seven-member regions.

However, this is largely a function of the aberrant result of 2001, caused by the unusual distribution of One Nation preferences mentioned earlier. This was a rare case of one aspect of the system, namely the onerous requirements for casting a formal vote below the line, working to the disadvantage of the Liberal and National Parties.¹⁵ Indeed, this election disguises a trend that was evident from the previous two elections: that the Coalition was doing progressively better in five-member regions, and less well in seven-member regions. The latter phenomenon was probably caused by a weakening of Liberal dominance in the North Metropolitan region.

The other noticeable aspect of the system is that it did not disadvantage the Coalition overall, although the level of over-representation came nowhere near the gross levels of the old system. This may partly be a function of the

¹⁵ As a result of One Nation's decision to favour the Greens over Liberal-National in country regions, Greens candidates were able to unseat sitting Liberal MLCs by margins of 228 votes in Agricultural and by 1001 votes in Mining and Pastoral. It is argued that in a voting system that allowed voters an easier option for marking their own preferences, enough One Nation voters would have voted below the line to enable the Liberal Party to have held their second seat in Agricultural, and possibly in Mining and Pastoral too. The distribution of One Nation preferences in Legislative Assembly seats contained within the two regions is strongly indicative of this likelihood. Liberal-National supporters could thus claim with some justification that the aforementioned aspect of the system enabled the transfer of at least one seat from right to left.

maintenance of malapportionment for country regions, but it follows a pattern observable for the Senate and other jurisdictions where Labor Governments have adopted a proportional representation system for the upper house.

The calculation of levels of representation for the Greens and Democrats is much trickier, because in some cases one or either did not contest all seats, and in 1989, Greens candidates ran under different names such as the Alternative Coalition. Given this, the total votes for these parties has been combined to produce an overall level of representation for what could be classed as 'minor parties of the left.'

Table 4.7 Representation Levels for Greens/Democrat Candidates: Western Australian Legislative Council Elections, 1989-2005

Year	5 member regions	7 member regions	Overall
1989	-5.9%	-6.7%	-6.2%
1993	-1.5%	-9.4%	-4.3%
1996	0.6%	8.6%	2.4%
2001	6.3%	2.3%	2.6%
2005	-7.4%	5.3%	-2.5%
Overall	-1.5%	0.02%	-1.6%

Source: Calculated from Western Australian Electoral Commission, *2005 Western Australian State General Election; Results and Statistics*, 176-77.

The unusual preference allocations of 2001 assisted the Greens in five-member districts, so this magnitude probably disadvantaged them even more than the averages suggest. Also, a botched Labor how-to-vote card submission in 1993 had the effect of reducing the flow of Labor surplus votes to the Greens candidate in North Metropolitan Region.¹⁶ Had the Greens won

¹⁶ The failure of the Labor Party to submit a preference ticket complying with the rules meant that intending Labor voters were forced to vote for every candidate below the line to cast a formal vote. As had happened at federal level between 1949 and 1983, Labor's vote is likely to have been reduced in the North Metropolitan region, thus meaning that fewer Labor preferences transferred to the Greens than would otherwise have been the case.

one of the seven seats in this region, their seven-member district average would have improved at this election from -9.4% to -2.8%, and the overall average over-representation in seven-member districts would be 1.3%.

The Greens were also assisted in one case at the 2005 election, but this was in a seven-member district. In the South West region, the National Party ticket had given the Greens a higher place for the number one Greens candidate Paul Llewellyn (number 10) than for the leading Family First candidate (number 14).¹⁷ Consequently, when the Nationals' leading candidate was the last candidate excluded, his preferences favoured the Greens rather than, as would have happened in most circumstances, a fellow party of the right in Family First. Llewellyn was thus able to overcome a small deficit at the last exclusion to win the last seat comfortably.¹⁸

The pattern here suggests that both Labor and Liberal-National were somewhat over-represented, and that the Greens' success or otherwise was variable. The Liberal and National Parties were more over-represented than Labor was. Such over-representation can have several sources. Part of it lies in the nature of the Droop quota itself. A party need receive only 33.3% of the vote in a district to win two seats out of five, but such a result yields that party 40% of the seats. Parties receiving votes in the range of 33-38% tend to be over-represented in such circumstances. Similarly, once a party reached 50% of the vote in a five-member district it could expect to win three of the five seats, or 60%. Provided a party did not reach 60% of the vote, this would produce a significant over-representation effect.

Under-representation effects were only likely to happen in circumstances where a major party's vote dropped below 33%. This was the fate of the Labor Party in the Agricultural Region, where it comfortably reached the 16.7%

¹⁷ Western Australian Electoral Commission, *2005 Western Australian State General Election; Results and Statistics*, 168.

¹⁸ *Ibid.*, 249.

required to win one seat, but never got close to the 33.3% needed for two. On only two occasions did the Liberal Party fail to gain at least two quotas in a five-member district (East Metropolitan in 2001 and 2005), but it received enough preferences from smaller parties to hold two seats.

In the seven-member regions, opportunities for over-representation arise from the fact that if a party can get around 50% of the vote, it can go on to win four of the seven seats, or 57.1%. This is indeed what happened for the Liberal Party in 1993 in North Metropolitan and for the Liberal-National combination in South West at the first three PR elections. There were also opportunities for lower polling parties to be over-represented in certain circumstances. Labor was over-represented by an average of 4.3% during the period, in spite of a generally poor vote share. While the Greens were under-represented by 6.4% in 1993, largely because the seat they might have won in North Metropolitan was won by Independent MLC Reg Davies (in spite of a primary vote of less than 6%),¹⁹ the situation improved for them 1996 and there was further improvement in 2001.

Between the 2005 and 2008 elections, the defection of a Liberal MLC, Alan Cadby, to the crossbenches gave Labor an opportunity to implement its much-cherished goal of introducing a one vote one value electoral system to the Legislative Assembly. However, the Greens' condition for supporting the Legislation in the Council was a move to six-member regions for that chamber, while Cadby would not support the removal of malapportionment for the Council. The Labor Party would nevertheless have felt confident of maintaining its numbers in the Council and increasing its numbers in the Legislative Assembly. However, some strange events were to turn WA politics upside down and anticipated Labor gains were not to eventuate.

¹⁹ Davies had been elected as a Liberal MLC for the same region in 1989, and surplus Liberal preferences helped him beat Greens candidate Brenda Roy in 1993. His vote dropped to less than 4% in 1996 and he was defeated.

The 2008 and 2013 Election: System Favours Liberal-National

In early 2006, Premier Geoff Gallop shocked the state when he announced his resignation due to suffering depression. The Labor Party accomplished a smooth leadership transition to former television journalist Alan Carpenter, who made a good initial impression with the public. In spite of the loss of four ministers through minor scandals, Labor maintained a lead in the polls during the 2005-08 term.²⁰ This was largely due to the leadership turmoil in the Liberal Party, which had four leaders during the period. The third and most controversial of these, Troy Buswell,²¹ resigned as leader two days before the Labor government called the election five months before it was due, and was replaced by Colin Barnett, who had unsuccessfully led the Liberal Party to the 2005 election.²²

A favourable redistribution had created a number of new, mostly notional Labor seats. The analysis of Antony Green suggested that a bigger swing than before would be needed to defeat Labor in the lower house, and made little difference in the Legislative Council.²³ Initial polls suggested a close election was on the cards, but a Labor win was still expected.

²⁰ For an account of these affairs, see Kennedy, *Tales from Boomtown*, 248-75.

²¹ After a short career including allegations of sexual harassment and (after becoming Treasurer) engaging in an affair with newly elected Greens MLA Adele Carle, Buswell was forced to resign as treasurer after revelations that when (presumably) drunk, he had crashed his government car after leaving a wedding.

²² Barnett had been set to retire at the election. The short-lived replacement candidate in his safe Liberal seat of Cottesloe, Deidre Willmott, was briefly to become his chief of staff after the election before taking the position of CEO of the WA chamber of Commerce and Industry, a position Barnett had held before his entry to Parliament in 1991.

²³ Antony Green, "2007 Redistribution Western Australia: Analysis of Final Electoral Boundaries," Election Papers Series No. 2 (Perth: Western Australian Parliamentary Library, 2007). Green estimated that in a situation where 2005 support levels were maintained, the combined Labor-Greens total in the Council would be 19 seats out of 36, thus maintaining the situation whereby parties of the left could pass legislation requiring a simple majority, but would lack the constitutional majority required to pass (as the most cogent example) electoral boundary legislation. This is because, under the convention applying in that chamber since 1993, the incumbent government is required to supply a Legislative Council President who, unlike their Senate counterpart, has only a casting vote in the event of a tie, but not a deliberative vote.

The election did not go well for Labor. Results in the Legislative Assembly left Labor two seats short of an absolute majority.²⁴ After a week of negotiation, the four National MLAs agreed to form a coalition with the Liberal Party, and with three Independents supporting the Coalition on supply and confidence, Colin Barnett became Premier.

Although Labor lost, it was still over-represented in the Legislative Assembly, receiving 35.8% of the vote but winning 47.5% of the seats. But the opposite was the case in the Legislative Council, as the Table 4.8 shows.

Table 4.8 Vote and Seat Shares for the Main Parties: Western Australian Legislative Council Election, 2008

Party	Seats Won	Vote Share	Seat Share	+/- Rep.
Labor	11	36.1%	30.6%	-5.5%
Liberal	16	39.6%	44.4%	+4.8%
National	5	5.3%	13.9%	+8.6%
Greens	4	11%	11.1%	+0.1%
Others	0	8%	0%	-8%

Source: Calculated from Western Australian Electoral Commission, *2008 Western Australian State General Election; Results and Statistics* (Perth, 2009), 174.

It can be seen that the Labor Party was significantly under-represented, while the major conservative parties in general and the Nationals in particular, were grossly over-represented. Others, as usual, bore the brunt of under-representation. However, most of this vote was for small right of centre parties, and this vote flowed strongly to the Liberals and Nationals via preferences. The Greens received roughly the same share of seats as votes.

Why was Labor so disadvantaged? Part of the problem may lie in the malapportionment still applying in the Council in favour of rural areas (former Labor Legislative Council whip Ed Dermer saw it as the major factor assisting

²⁴ Western Australian Electoral Commission, *2008 Western Australian State General Election: Results and Statistics* (Perth: Western Australian Electoral Commission, 2009), 33.

the conservative parties²⁵), but the explanation may lie mostly in the nature of the Droop quota. The move to six-member regions meant the quota to elect one member in a region was 14.3%, which meant for a party to win three seats in a region, it needed 42.9%. The Labor Party could not manage this in any region. In the Agricultural region, it could not muster the 28.6% needed to win two seats.

Labor's two strongest regions, East Metropolitan and South Metropolitan, provide a stark illustration of the point. Labor achieved 2.88 quotas in East Metro and 2.84 quotas in South Metro, ahead of both the Coalition (2.71 quotas and 2.75 quotas respectively), and the Greens (0.82 quotas and 0.83 quotas respectively). However, Family First and Christian Democrat preferences resulted in the third Liberal comfortably winning, and the resulting surplus was mostly made up of a combination of Liberal, Family First and Christian Democrat preferences. With Liberal and Family First preferences directed to the Greens ahead of Labor, and with other minor candidates tending to favour the Greens, the latter won the last seat quite comfortably in both regions.²⁶

One way of testing whether the Liberal-National advantage, and Labor's disadvantage, is caused by malapportionment in favour of the country regions, is to measure the average over- or under-representation per region type,²⁷ in comparison to the total. If Labor's overall disadvantage was higher than the average per region type, then malapportionment would appear to be the most likely reason.

²⁵ Ed Dermer, *Address in Reply Motion*, Western Australian Parliamentary Debates (Legislative Council), 1 March 2009, 1581. He argues that 'the malapportionment distorts the mirror'.

²⁶ Western Australian Electoral Commission, *2008 Western Australian State General Election: Results and Statistics*.

²⁷ Metropolitan or Country region.

Labor won 33.3% of the seats in all regions except Agricultural, where it won just 16.7%. Its average under-representation per region type was 4.5%, compared to an overall under-representation of 5.6%. This does indeed suggest that the malapportionment plays some role, but does not tell the full story. After all, the Labor Party had been over-represented at all of the previous elections, and by an average of 3.42%.

The Coalition's over-representation shows a similar pattern: its total over-representation was 13.4%, while its average over-representation was 9.7%. However, it is the last two figures, and a comparison with the same indices over the previous five elections that provide the most telling story. The overall level of over-representation is higher than any advantage achieved by the conservative parties in the previous five elections (the average total over-representation was 4.90%, with a high of 7.75% in 2005). In other words, the malapportionment mattered little: it would seem to be the change in the Droop quota and, to a lesser extent, the more solid flow from micro parties of the right, which produced the hefty Liberal-National advantage. It is also notable that the percentage by which overall Liberal-National over-representation exceeded average Liberal-National over-representation was 3.22% in 2008, compared to an average of 2.06% over the previous five elections.

Remarkably, the margin by which overall disadvantage exceeds average under-representation by region type (2.18%) is exactly the same as the average difference between the two indices when Labor was over-represented at the previous five elections. This perhaps suggests that the overall impact of malapportionment was similar, with the change in district magnitude producing a change in direction.

The Greens appear to be relatively unaffected by the change, being over-represented by 0.03%. However, this compares poorly with the previous four elections at which the Greens won seats, when they were over-represented by an average of 1.56%. Moreover, the new configuration produced a bad

combined result for the parties of the left. The combined Labor-Greens vote of 47.2% yielded just 41.7% of the seats, an under-representation of 5.5%. Again, this compares very poorly with the 1989-2005 period, when parties of the left were at least slightly over-represented at each election, even if the Democrat vote is included.²⁸ As will be seen, overall Greens disadvantage was to re-appear at the 2013 election.

2013: Conservative Advantage Again Evident

The Barnett Coalition government increased its majority in the Legislative Assembly to 17 seats on a two-party preferred vote of 57.3%, an improvement of 5.4% on 2008. Both sides of politics acknowledged that the unpopularity of Julia Gillard's federal Labor Government had been a drag on the state Labor vote.²⁹ In the Legislative Council, however, Labor suffered no net loss of seats, although the Greens' loss of two seats meant the left lost out overall. The overall vote and seat shares for the parties elected were as follows:

Table 4.9 Vote and Seat Shares for the Main Parties: Western Australian Election, 2013

Party	Seats Won	Vote Share	Seat Share	+/- Rep
Liberal	17	47.2%	47.2%	0%
National	5	4.9%	13.9%	+9%
Labor	11	32.5%	30.6%	-1.9%
Greens	2	8.2%	5.6%	-2.6%
Shooters & Fishers	1	1.8%	2.8%	_1%
Others	0	5.4%	0%	-5.4%

Source: Calculated from Western Australian Electoral Commission, *Legislative Council Comparative Summary 1993-2008* (Perth, 2013), 174.

²⁸ The lowest level of over-representation for the three main parties of the left was 0.07% in 1993, and the highest was 4.76% in 1996. For a summary of the official results from which the author made these calculations, see Western Australian Electoral Commission, *2005 Western Australian State General Election; Results and Statistics*, 172.

²⁹ The party spokespeople voicing this opinion were federal deputy Liberal leader Julie Bishop and Labor's then Defence Minister Stephen Smith. Both were guests on ABC TV's election night coverage, 9 March 2013.

The impression created by the above figures would suggest that the Greens lost one seat to Liberal and one to Shooters and Fishers. In fact, the outcome at region level was that the Greens lost their seats to Liberal (North Metropolitan) and Labor (East Metropolitan), while the Nationals compensated for a loss to Shooters and Fishers in Agricultural with a gain from Labor in Mining and Pastoral.

As in 2008, average over or under-representation can be compared with the overall measure to test the impact of malapportionment. For Labor, it does not appear to have hurt them as it did in 2008: their average under-representation was 5.2% compared to the overall 1.9% under-representation. The Greens' average under-representation (3%) was also higher than its overall representation, but not by much. The Coalition's overall over-representation of 8.61% is higher than its average over-representation by region type (6.29%). This is a lower figure than in 2008, but at 2.32% it is still higher than all but one (1996) of the elections held under the five- and seven-member district combination.

The 2017 Election: Council System Favours Conservatives Despite Labor Landslide

Labor's landslide victory in the Legislative Assembly, largely attributable to a deterioration in the state's economic conditions between 2013 and 2017,³⁰ broke the record for the number of seats gained by a single party at a WA election (20 seats) and the seat share for one party or Coalition (69.5%).³¹ The result in the Legislative Council was, however, not nearly as good for Labor, although both it and the Greens improved considerably on their 2013 performance. The vote and seat shares for the main parties was as follows:

³⁰ A sharp decline in the mining industry had impacted severely upon the state's revenue stream, resulting in increases in state debt and the government losing its AAA credit rating.

³¹ The previous highest seat share was 68% (also for Labor) in 1911. See Hughes and Graham, *A Handbook of Australian Government and Politics*, 1, 572.

Table 4.10 Vote and Seat Shares for the Main Parties: Western Australian Legislative Council Election, 2017

Party	Seats Won	Vote Share	Seat Share	+/- Rep
Labor	14	40.5%	38.9%	-1.6%
Liberal	9	26.8%	25%	-1.8%
National	4	4.5%	11.1%	+6.6%
Greens	4	8.5%	11.1%	+2.6%
One Nation	3	8.2%	8.3%	+0.1%
Shooters, Fishers & Farmers	1	2.4%	2.8%	+0.4%
Liberal Democrats	1	1.8%	2.8%	+1%
Others	0	7.3%	0%	-7.3%

Source: WA Electoral Commission: <https://www.elections.wa.gov.au/elections/state/sgelection#/sg2017>, (accessed 23 January 2018).

Labor received no winners' bonus; in fact, it was under-represented. The Liberal Party was also under-represented, but this was more than compensated for by the usual over-representation of the Nationals. The Greens were over-represented by a slightly larger margin than Labor was under-represented, while the three smaller parties of the right that won seats were all slightly over-represented.

Labor's disadvantage was noted by veteran local Journalist Paul Murray, but he argued that the situation now existing was Labor's own fault for agreeing to the continuation of Council malapportionment as the price for establishing one vote-one value in the Assembly.³² Murray is correct to say that Labor is partly the author of its upper house misfortune, but he overlooks the fact that Labor had used every method possible (each of them in vain) to have malapportionment removed from the Western Australian electoral system.

³² *West Australian*, "Upper House rots robs Labor", 1 April 2017. Murray had been editor of the *West Australian* during the 1990s and early 2000s, and later hosted a mid-morning talkback show on radio station 6PR.

Moreover, Murray does not appear to be aware that it is the change of district magnitude, rather than the level of malapportionment, that has made Labor's task harder. He also does not consider the question of whether the maintenance of a pre-2016 Senate style voting system may have cost parties of the left a seat or two. Only in two regions (North Metropolitan and South Metropolitan) does this seem a realistic possibility, as in three others (Mining and Pastoral, East Metropolitan and Agricultural), the combined total of seats won by Labor and Greens is higher than their combined total of quotas, while in South West, the quota total is only 0.08 quotas higher than the combined number of seats.

The South Metropolitan Region looks to be the most likely region to have produced a different result under different numbering requirements. Labor had received 3.18 quotas, Liberal received 1.76 quotas, the Greens received 0.62 quotas and One Nation 0.49 quotas. On these figures, it might be expected that the number of elected members would be three Labor, two Liberal and one Greens, given that Labor preferences were directed to the Greens and One Nation preferences were assumed to favour the Liberal Party under the much-criticised preference deal between the two (for more on this deal, see below). As it happened, it was the next highest polling party, the Liberal Democrats, (0.28 quotas) who won the fifth seat after being favoured by the preferences of smaller parties (and also One Nation, after micro party preferences put the latter behind the Liberal Democrats), and the Liberal Party defeated the Greens for the sixth seat after distribution of the Liberal Democrat surplus.

Had the new Senate voting system been in place, it is highly likely that the Greens would have held their seat. As we saw in the 2016 Senate election, many votes from micro parties drifted away to the three largest parties, even where the major party and micro party are in ideological opposition. It is unlikely that the Liberal Democrats' Aaron Stonehouse would have overtaken

One Nation's Phillip Scott under these circumstances, and if the likely scenario had occurred, it is highly likely that the drift from the micro parties of the left to the Greens would have seen sitting MLC Lynn MacLaren re-elected. The Liberal Party would also have gained some benefit from the drift of right of centre micro party preferences, so Stonehouse would have been the likely loser under a 2016 Senate-style system.

The North Metropolitan Region was far less likely to produce a different result. Here Labor received 2.61 quotas, Liberal 2.55 quotas, the Greens 0.70 quotas and One Nation 0.45 quotas. It is true that the Greens benefitted from a much larger flow of micro party preferences than did Labor, thus enabling the exclusion of Labor's number three candidate and the election of former East Metropolitan Greens MLC Alison Xamon on her preferences. However, this would have been the likely result under any system. It can also be claimed with near certainty that the Liberal Party would have won a third seat under any system, because of a high likelihood of a reasonably strong flow of One Nation preferences to the third Liberal candidate, Tjorn Sibma, especially in the presence of a One Nation how to vote card in some Assembly seats within the region.

The maintenance of compulsory preferences with ticket voting and its potential to assist a Greens candidate over a Labor candidate is illustrated by results in two other regions, South West and Mining and Pastoral, where the final seat tallies in each region were three for Labor and one each for Liberal, National, Greens and One Nation. Labor had received 2.39 quotas in Mining and Pastoral and 2.55 quotas in South West, while the corresponding figures for the Greens were 0.40 quotas and 0.53 quotas respectively. It is true that the number one Greens candidate had more quotas than the number three Labor candidate, but it is quite possible that under a 2016 Senate style voting system, the Labor candidate would have received enough preferences to reverse the direction by the time one of these candidates was due for

exclusion. South West provides a starker illustration of the same pattern. The third Labor candidate, John Mondy, did lead the Greens' leading candidate, Diane Evers, after the election of Labor's number two candidate Adele Farina, but Evers received substantial help from Animal Justice Party, Daylight Saving Party and Fluoride Free WA, thus ensuring she was well ahead of Mondy at the point they were the two lowest polling candidates remaining in the count. Under the 2016 Senate voting system, it is likely that Labor would have received a much higher share of preferences from the three aforementioned micro parties, as well as a better share of preferences from micro parties of the right, thus making a Mondy win a likelihood.³³

In spite of the high level of campaign publicity received by Pauline Hanson's One Nation, and especially its controversial preference deal with the Liberal Party,³⁴ the results achieved by the party were unremarkable. Its overall Council vote of 8.2% (a better indication of its overall support than its lower Assembly vote because not all Assembly seats were contested by the party) yielded it 8.3% of the seats, a result that could only be regarded as very fair. Despite the apparent assumption among some local commentators that One Nation would be assisted by the decision of the Liberals to give it their preferences ahead of The Nationals, Labor and the Greens,³⁵ none of the three successful candidates relied on Liberal Party preferences to get elected.

³³ With official preference distributions as yet unavailable, the calculations and assumptions contained in this paper are based the calculations of Antony Green's Legislative Council calculator. See www.abc.net.au/news/elections, and follow the links starting with WA votes 2017. It may seem strange to imply that Fluoride Free WA is a party of the left, as the desire to de-fluoridate the water supply has generally been seen as an extreme right cause, although former Labor Premier John Tonkin was the chief critic of fluoridation when it was carried out in the late 1960s. However it is regarded as a party of the left for the purposes of analysing the South West region, as Fluoride Free WA and the Greens gave each other high preference allocations on their respective tickets.

³⁴ The most notable article written in the aftermath of the election commenting on the impact of the deal was by *West Australian*, "Hanson cops out in poll denial", 14 March 2017.

³⁵ See, for example, Peter van Onselen, "Disgrace, foolish, stupid," *Sunday Times*, 19 February 2017, 41.

As it happened, the one case of a region where One Nation was not favoured by Liberal preferences cost it a seat. In Agricultural, One Nation had received 0.82 quotas, and the Liberal Party 1.31 quotas. This would have ensured a seat for One Nation had they been the direct beneficiary of Liberal preferences. However, the latter party directed preferences to the sitting Shooters, Fishers and Farmers MLC Ricky Mazza. The party had initially received 0.40 quotas, and with Nationals (2.15 quotas) preferences also favouring Mazza, he was already ahead of One Nation candidate Rod Caddies at the point at which Labor's number two candidate, Laurie Graham, was elected with the help of Greens and micro party preferences. With the Labor surplus strongly favouring Mazza, he comfortably won the sixth seat. A 2016 Senate voting system would probably have seen Mazza lose because of the likely higher preference flow to One Nation.

Liberal preferences were not required for the election of Robin Scott in Mining and Pastoral and Colin Tinknell in South West, because micro party preferences of the right had elected them before the exclusion of the highest placed unsuccessful Liberal candidates in each region. The failure of One Nation to win a seat in Agricultural was compensated for by an improbable win of a seat in East Metropolitan at the expense of second placed Liberal candidate and sitting MLC Alyssa Hayden. Here the Liberal Party had received 1.75 quotas and One Nation just 0.56 but, as in the two aforementioned country regions, preferences from micro parties of the right put One Nation lead candidate Laurie Smith ahead of Hayden at the point that all such parties had been eliminated. On the calculation models provided by Antony Green, however, Hayden ought to have beaten Smith on the basis of surplus preferences from successful Greens candidate Tim Clifford.

The reason for the difference in result, as seen by Green, was the fact that groups of preferences from excluded candidates are distributed in individual bundles rather than in a bloc as in Senate elections. Although not mentioned

by Green, such a method is known as the weighted inclusive Gregory method.³⁶ Consequently, Clifford received only as many preferences as were necessary to elect him. These preferences had been resting with the Fluoride Free WA (FFWA) group. Those that were not required were distributed between Smith and Hayden. Roughly two-thirds of these went to Smith, putting him 347 votes over quota without having to rely on leakage of votes from the Greens surplus.

Although immaterial to the final result, the behaviour of Greens voters may have been influenced by a system that still allowed preference whisperer Glenn Drurey to weave his magic. In East Metropolitan Drurey created a situation where Fluoride Free WA's leading candidate John Watt had a strong chance of being elected, something that was noticed by Green as well as the local media.³⁷

Regardless of what the other micro parties did in relation to their preferences, the preference decision that made a FFWA win a distinct possibility was that the Greens had put Watt ahead of Labor's third placed candidate Matthew Swinbourn on their ticket. Many Greens voters, possibly aware of the potential for an above the line vote to result in a FFWA win, decided to vote below the line: 12.63% of Greens voters took this option, compared to just 4.58% across the region as a whole. There was also a higher percentage of below the line Greens voters than in any other region: the figures ranged from 12.39% in North Metropolitan to 4.06% in South Metropolitan.

Had Labor failed to reach three quotas, there was potential for both Clifford and Swinbourn miss out on a seat. In the event, Labor received 3.26 quotas, and with the Greens receiving their second preference, Clifford was always

³⁶ For a detailed description of the method, see Miragliotta, *Determining the Result*, 31.

³⁷ *West Australian*, "Potential win for Fluoride Party shows decay in democracy", 17 February 2017.

well ahead of Watt at the time the latter was the lowest polling remaining candidate.

It is distinctly possible that these below the line Greens voters might have preferred One Nation ahead of the Liberal Party, thus giving Smith a further buffer over Hayden. Anybody casting an above the line vote for the Greens was deemed to have preferred Liberal to One Nation. However, the evidence from corresponding Assembly results is that where Greens voters had to choose their own preference order, the split between the two was relatively even. In the four Assembly districts within the East Metropolitan region where the Greens candidate was eliminated before the One Nation candidate, One Nation received more preferences than Liberal on two of them,³⁸ although in every case the combined preference total for the two parties was lower than that of the (eventually successful) Labor candidate. It is reasonable to assume a similarly even flow among below the line Greens voters.

Conclusion

With three WA elections now having been held under the six MLCs per region configuration (and all producing vastly different results in the three corresponding Assembly elections), there is sufficient evidence to suggest distinctive patterns in Legislative Council representation. The overall assessment of the 2008-2017 period is that while malapportionment may have played some role in Coalition over-representation, there are more important factors at play, most notably the use of six-member regions and the concentration of conservative strength in the Agricultural Region, although this had a lesser impact in 2017. There is also no doubt that the use of six-member regions has hurt the Labor Party (an average under-representation of 3% in the three elections covered) and the left in general (the average Greens over-representation is so miniscule as to be virtually non-existent). The

³⁸ The two Assembly seats in question were Forrestfield and Thornlie, while in Darling Range and Midland the Liberal candidate received a higher share.

combination of compulsory preferences with ticket voting has provided some disadvantage to the left, and a cursory examination of 2017 results shows the potential for left gains in the event of the (probably unlikely) replacement of the current system with a 2016 Senate style voting system, as the results of the 2016 election show is likely to happen in practice.

In some other states and territories, a form of regionalised proportional representation has been used, most notably for the Victorian Legislative Council (since the 2006 election), the Tasmanian House of Assembly (since the 1909 election) and the Australian Capital Territory Legislative Assembly (since the 1995 election). These jurisdictions have used a narrow range of district magnitudes ranging from five to seven. Nevertheless, they provide enough evidence to assess what, if any, level of partisan advantage exists in the jurisdictions, and how much responsibility is borne by the magnitudes used as distinct from the political geography of the jurisdictions. Analysis of these results form the basis of the next chapter.

Chapter 5

District Magnitude and Partisan Advantage in South Eastern Jurisdictions

In the last two chapters it could be seen that both district magnitude and ballot paper numbering requirements could have a significant impact on which, if any, major party bloc was favoured and the success rate of larger and smaller minor parties, with distinct patterns evident. This chapter examines three more jurisdictions (Tasmania, the Australian Capital Territory and Victoria) with varying rules to ascertain if the patterns in them are similar or notably different.

These jurisdictions share with the Senate and WA the characteristic that their houses that use proportional representation are divided into a series of multi-member electorates. Furthermore, with the minor exception of federal double dissolutions, they have operated within a narrow range of district magnitudes, namely five, six, seven or a combination of two of these magnitudes. They do, however, offer voters a much greater level of choice in the method of allocating their preferences than in Western Australia and in the Senate under the voting rules used from 1984 to 2014.

As well as the fact that Tasmania and the ACT use proportional representation for their house of government, they are similar in that neither offer voters the option to vote for a party ticket. Voters are instructed to vote for individual candidates in order of preference from 1 to the number of members to be elected, although the ACT allows for a vote to remain valid if the voter has voted for fewer than that number. Victoria, on the other hand, has given voters a choice between voting for a party ticket above the line, or to vote below the line by numbering candidates from 1 to at least the number of candidates to be elected (always five).

The impact of district magnitude and its effect on the number of parties elected has been partly covered in Chapter 2. This chapter examines in greater detail the impact the changes in district magnitude in Tasmania have had on the three main parties in that state, and the apparently deviating case thrown up by Victoria which, at the 2010 election, produced a result in which the Liberal and National Parties enjoyed an advantage in spite of an apparently unfavourable district magnitude of five. Of more recent interest, however, was the 2014 Victorian election in which, like the 2013 Senate election, a large number of small parties won seats in the Legislative Council, in spite of the lower district magnitude and the less onerous requirements for casting a valid vote below the line.

This chapter will also examine individual contests in the various jurisdictions to illustrate occasions where preference distributions were important. It will argue a case for the particular partisan patterns mentioned earlier, as well as the particular influence of optional preferential voting in assisting, more often than not, the Labor Party.

Tasmania

From the time of its adoption of Hare-Clark in 1909 until the 1956 election, Tasmania elected 30 members to the House of Assembly, with five districts each electing six members. The potential problem such a system could cause is fairly obvious: in a close election, and with two dominant parties, it is highly probable that each district will elect three members from each major party, and the result would be parliamentary deadlock. The wide-ranging but non-comprehensive account by Newman suggests that politicians and commentators alike were aware of this potential problem quite early in the system's existence. Yet strangely this situation did not manifest itself until the 1950s.¹ In 1980 Jack Wright set out the vote and seat shares for the parties

¹ Newman, *Hare-Clark in Tasmania*, 76.

during this period in his book *Mirror of the Nation's Mind*.² The figures suggest that more often than not, one of the major parties won over 50% of the seats. Only in six elections did either party win exactly 50% of the seats, and only in the last two of those elections did both major parties win exactly 50% of the seats. Wright does not attempt to assess whether one particular party enjoyed an overall advantage from the system. This chapter answers this question and applies the same technique to later elections and assesses some of the possible reasons for the similarities and differences with patterns in other jurisdictions.

Between 1909 and 1956, Labor received an average 47.43% share of the vote and won 48.63% of the seats, an average over-representation of 1.2%. The Nationalist/Liberal Party received an average vote share of 46.75% and an average seat share of 48.04%, so its average over-representation was 1.29%. It can thus be seen that during these years the Liberal Party was still favoured, but not by nearly as much as would become the case in later years in other parts of Australia. The amorphous category of 'others' was under-represented by 2.48%, which is quite low compared to more recent elections (and reflects the significantly lower 'other' vote in early years).

The figures for the period provided by Wright do not suggest any particular partisan pattern.³ The Labor Party received a higher proportion of seats than its share of the vote would have suggested in 13 of the 17 elections held during this period, though in many of them the margin was miniscule. The Liberal Party, or the combined Liberal-Country Party at elections where the Country Party contested, was over-represented on nine occasions and under-represented on eight others.

² Wright, *Mirror of the Nation's Mind*, 100.

³ *Ibid.*

These figures do not suggest a systemic bias against parties of the left in six-member districts. Unlike WA Labor, Tasmanian Labor has never had to battle against rural malapportionment. It may be the case that the long existence of Hare-Clark system in Tasmania has led to a better Labor performance in rural areas, although such a link is hard to prove. Enid Lakeman has suggested a possible reason for the latter phenomenon. She argued the absence of a country party was because rural voters could vote for farmers within the party they naturally prefer.⁴

One factor assisting the Labor Party in Tasmania was that there were a number of elections where it was able to win over 57% or more of the vote in some districts,⁵ thus enabling it to win four seats.⁶ This phenomenon did not occur in Western Australia until the 2017 election,⁷ although Antony Green's modelling prior to the 2008 election suggested the possibility of a Labor-Greens tally of four seats in two regions had the 2005 result been repeated.⁸ The Tasmanian Nationalist/Liberal Party, while suffering at those elections at which Labor was able to win 4 seats in some districts, were compensated overall by the fact that they won three seats out of six at other elections with a vote just above 40%.

The problem with six-member districts was made clear by the results of the 1955 and 1956 elections. In each of these, both major parties won three seats in each district, although the Labor Party received slightly more votes each time. The deadlock was resolved on each occasion by the party with the lower

⁴ Lakeman, *Power to Elect*, 80.

⁵ The occasions when this happened were 1909 (Darwin), 1925 (Denison), 1937 (Bass, Darwin, Denison, Franklin), 1941 (all five electorates) and 1946 (Bass). In 1937 and 1941, Labor received over 57% of the overall vote.

⁶ Detailed results in individual districts can be found in Colin A. Hughes and B. D. Graham, *Voting for the South Australian, Western Australian and Tasmanian Lower Houses, 1890-1964* (Canberra: Dept. of Political Science, Research School of Social Sciences, Australian National University, 1976).

⁷ In the 2017 election, Labor won three seats and the Greens one seat in East Metropolitan. See analysis in Chapter 4.

⁸ Green, "2007 Redistribution Western Australia: Analysis of Final Electoral Boundaries".

vote (the Liberal Party) choosing the speaker, but the Parliamentarians decided the situation was unsatisfactory, and legislated to add a seventh elected member for each district. This arrangement was to last until 1998.

Seven-member districts 1959-1996

Between 1959 and 1996 eleven elections were held in Tasmania. There was a relatively even spread of success for the two major parties, with Labor winning six of these elections and the Liberal Party five, although, as Sharman et al have noted, there have been very few changes of party hegemony.⁹ In these elections, the Labor Party received an average vote share of 43.98% and an average seat share of 45.95%. This gave it an average over-representation of 1.97%. The Liberal Party's vote share over this period was 44.97% and its average seat share was 47.58%, giving it an average over-representation of 2.61%. 'Others' were under-represented by an average of 4.91%, although it should be noted that the average over the last three elections was somewhat lower at 3.58%. These were the three elections where a group of organised Greens candidates contested.

At one level, these figures fly in the face of the conventional academic wisdom that proportionality increases as district magnitude increases, as the over-representation of the major parties was slightly higher under the seven-member arrangement than it had been under the six-member arrangement. The possible reasons for this are complex, but it is argued here that the rise in support for candidates other than those for the two major parties can actually lead to an increase in the latter's levels of over-representation. The seven-member period happened to coincide with a decrease in support for both major parties: the average Labor vote was 1.45% lower during the 1959-1996 periods than it was during the 1909-1956 period, while the Liberal Party's vote was, on average, 1.78% lower in the 1959-1996 period than it had been previously.

⁹ Sharman, Smith and Moon, "The Party System and Change of Regime".

While it is certain that the Greens took some votes away from Labor, the latter did not suffer a loss in seat share beyond what would have been expected. Labor was over-represented by an average of 1.49% at the three elections between 1989 and 1996, compared to 1.97% overall. The Liberal Party was also slightly less over-represented at these three elections: their 1989-1996 average over-representation was 2.00% compared to 2.61% overall.

During the 1959-1996 period there was little controversy over the fairness or otherwise of election results or the electoral system generally. There were only four elections that did not result in a clear majority for one of the major parties, and there were only two elections (1969 and 1989) at which the party receiving the largest vote share did not form government. The second of these elections caused consternation in some circles,¹⁰ but it did result in as much public controversy as the move made after the 1996 election to reduce the size of the House of Assembly from 35 seats to 25 seats, via the passing of the *Parliamentary Reform Act* (No. 31 of 1998).¹¹ The controversy came because the reform appeared to be motivated, in part at least, by a desire to reduce the influence of the Greens,¹² whose parliamentary members emphatically argued that this was the main motivation of other politicians who supported the change.

Five-member electorates 1998-2018

In 1998 the Liberal Government, by this stage led by Tony Rundle after Ray Groom's resignation, moved to reduce the size of the parliament, ostensibly justified as a way to save costs. The legislation passed with Labor support. The significance of the move was that with five members to be elected from each electorate rather than seven, the quota for election was increased from

¹⁰ *Launceston Examiner* proprietor Edmund Rouse spearheaded an unsuccessful attempt to bribe newly elected Labor MP and former *Examiner*, journalist Jim Cox to defect to the Liberal Party. Rouse was later to be imprisoned for this offence.

¹¹ The new Act necessitated amendments to both the Constitution Act 1934 and the Electoral Act 1935.

¹² Mackerras certainly thought so. See Malcolm Mackerras, "A more solid reflection of popular preferences," *The Australian*, 14 July 1998, 15.

12.5% to 16.7%. The Greens opposed the legislation on the grounds that it was designed to make it harder for them to win seats,¹³ and Malcolm Mackerras agreed with their argument.¹⁴

The results of the 1998 election showed the Greens had good reason to fear the change. The Greens' vote dropped to 10.2% (in 1996 it had been 11.1%), but the slump in seats was more dramatic. Of the four seats the Greens had won in 1996, only Peg Putt's Denison seat was retained.¹⁵ The Labor Party ended up being grossly over-represented: its 44.8% vote share netted it 56.5% of the seats, while the Liberal Party was not quite so over-represented, with its 38.1% vote share winning it 40% of the seats.¹⁶

Part of the reason why levels of over-representation increase as district magnitude decreases is the widening gap between the level of vote received by (especially) the winning party: under a seven-member system, a vote of 12.5% nets a party 14.3% of the seats, while in a five-member system a vote of 16.7% nets the same party 20% of the seats. The 1998 election, however seems to suggest there are more factors in play that help to explain the Labor over-representation. The distribution of preferences among parties is important, bearing in mind that in Tasmania casting of preferences beyond the number of members to be elected is optional, unlike the situation prevailing in Senate elections held between 1990 and 2014.

There were no particular electorates where a party polled markedly better than it did in the rest of the state, with both Labor and Liberal receiving enough votes to have two quotas in each seat, but not enough to win three

¹³ Greens MPs expressed such views during the second reading stage of parliamentary debates on the said bill, *Tasmanian Parliamentary Debates (House of Assembly)*, 22 July 1998.

¹⁴ Mackerras, "A more solid reflection of popular preferences". The argument that the main motivation was a reduction in the cost of running parliament was not helped by a decision made around the same time to grant members of parliament a 40% pay rise.

¹⁵ Tasmanian Electoral Office, *Report on Parliamentary Elections 1998* (Hobart, 1999).

¹⁶ *Ibid.*

outright anywhere, while the Greens failed to reach a quota in all five seats. There was some difference as to which party had the highest remainder (which would have seen that party winning the fifth seat had the system not allowed for cross-party preference distribution). The Greens held that advantage in Bass and Denison, while Labor held it in Braddon, Franklin and Lyons. Only in Bass, where Labor won the final seat, was the initial position altered by preferences.

In Bass, the Greens candidate, Kim Booth, was a victim of the relatively even distribution of votes among the Labor candidates. There were three Labor candidates, Peter Patmore, Jim Cox and Gill James, who each polled a higher primary vote than Booth, and the number of votes polled by lower placing Labor candidates was higher than that given to other Greens candidates. Labor also did better from the preferences from the fourth-placed Tasmania First Party than the Greens did. When Booth was eliminated, the vote that was passed on to other candidates went strongly to Labor, thus defeating the third Liberal candidate in spite of its initial higher remainder.¹⁷

The results in the other four seats were more straightforward, but one of them warrants a few words of explanation. Why did the Greens hold their seat in Denison, in spite of the party holding a smaller quota lead over Labor than it did in Bass?¹⁸ The answer appears to lie mainly in the number of votes that drifted off to other parties via preferences. There were 1,209 votes originally cast for Labor candidates that ended up with other parties after the preference count. Of these votes, 320 went to the Greens and 107 exhausted. By contrast, only 348 Greens votes were so lost: 175 going to Labor and 25 exhausting.¹⁹ It would seem likely that some people chose to cast a vote for

¹⁷ Liberal had received 2.517 quotas compared to Labor's 2.467 quotas. The Greens had received 0.54 quotas.

¹⁸ In Denison, the Greens had 0.79 quotas and Labor 2.78 quotas. In Bass the Greens had 0.55 quotas to Labor's 2.47 quotas. See Tasmanian Electoral Office, *Report on Parliamentary Elections 1998*, 15.

¹⁹ *Ibid.*, 84.

Jim Bacon, the popular Labor candidate who would become premier, and then chose to support candidates of other parties.

As a consequence, by the time there was just one candidate from each party in the field, the Greens' Peg Putt held a lead of 1,561 votes over Labor's Andy Bennett. The preferences from the surplus votes of three Liberal candidates (two elected and one excluded) narrowed this margin by only 141 votes, so Putt was elected.

Although the results of this election did defy the prediction of Mackerras that 'This plan to scupper the Greens will not work',²⁰ later elections showed that the changes did not turn out to be a permanent barrier to Greens success. Nor was Labor to be as grossly over-represented as it was in 1998, although it is acknowledged that the five seat configuration worked well for Labor in five of the six elections. Only in 2014 was it less over-represented than the Liberal Party.

Table 5.1 Vote and Seat Shares for the Major Parties: Tasmanian Elections, 1998-2014

Year	% ALP Vote	% ALP Seats	% +/- Rep	% Liberal Vote	% Liberal Seats	% +/- Rep	% GRN Vote	% GRN Seats	% +/- Rep
1998	44.8	56	+11.2	38.1	40	+1.9	10.2	4	-6.2
2002	51.9	56	+4.1	27.4	28	+0.6	18.1	16	-2.1
2006	49.5	56	+6.6	31.8	28	-3.8	16.6	16	-0.6
2010	36.9	40	+3.1	38.9	40	+1.1	21.6	20	-1.6
2014	27.4	28	+0.6	51.4	60	+8.6	13.5	12	-1.5
2018	32.6	40	+7.4	50.3	52	+1.7	10.3	8	-2.3
Avge	40.5	46	+5.1	39.6	41.3	+1.8	15.1	12.7	-2.4

Sources: Calculated from official results published by Tasmanian Electoral Office *Report on Parliamentary Elections 1998* (Hobart, 1999); *Report on Parliamentary Elections 1999 to 2002* (Hobart, 2003); Tasmanian Electoral Commission. *Report on Parliamentary Elections 2003 to 2006* (Hobart, 2006); *Report on Parliamentary Elections 2007 to 2010* (Hobart, 2010); *Report on Parliamentary Elections 2011 to 2014* (Hobart, 2014).

²⁰ Mackerras, "A more solid reflection of popular preferences".

Table 5.1, however shows a consistent, if small, bias against the Greens. On average, Labor was significantly more over-represented than the Liberal Party, and this was particularly evident in 2018, in spite of the Liberals' election win. The 2014 election had appeared to indicate a pattern of a winners' bonus rather than a systemic bias in favour of Labor.

Elections held between 2002 and 2018 have received little attention in psephological literature, probably because of their generally uncontroversial nature. However most of these elections produced quirky results in one or more divisions, though usually in a way that resulted in a fairer overall result. In both 2002 and 2006 it was the Launceston-based division of Bass that conformed to the latter pattern, and the south-western division of Franklin that provided an exception in 2006 by under-representing the Liberal Party.

Bass is odd one out – on two occasions

As in 1998, Labor won 14 seats in both 2002 and 2006, but the seat configuration was different. Labor won three seats in Denison in both elections, but won only two seats in Bass in spite of its vote being over 49% in both elections as compared to 41.11% in 1998.²¹ The Greens were the beneficiary in Bass, the Liberal Party the loser in Denison.²²

Labor's 2002 gain in Denison is straightforward: its vote of 50.84% amounted to 3.05 quotas.²³ Results in Bass, however, look peculiar for both 2002 and 2006. They illustrate how different Tasmania can be as a result of the optional preferential nature of the Hare-Clark system,²⁴ the rotation of candidates on

²¹ Tasmanian Electoral Office, *Report on Parliamentary Elections 1999 to 2002* (Hobart, 2003), 25.

²² *Ibid.* The Liberal member to lose his seat in 2002 was then Liberal leader Bob Cheek.

²³ The Greens gained a seat from the Liberal Party in Franklin and Lyons, where its vote had risen above a quota and the Liberal vote had dropped well below two quotas.

²⁴ In Tasmania, voters are required to number their ballot paper from 1 to the number of candidates to be elected to cast a formal vote, with further preferences optional.

the ballot paper, and a prohibition on handing out how to vote cards on polling day. With no ticket voting option available, voters are encouraged to think more independently about how they distribute their preferences. It is clear that many Bass voters displayed such thinking and exercised their right to a wide level of choice for distributing their preferences to the full extent.

The 2002 Labor vote in Bass was 49.14% (2.95 quotas), while the Liberal vote was 31.37% (1.88 quotas), and the Greens received 16.55%, or 0.99 quotas. The Greens did win a seat with this vote, as would be expected, but the winning of a second seat by the Liberal Party appears surprising at first glance. Why did this happen?

The answer lies in the higher than average leakage of votes from the Labor ticket upon the elimination of candidates. The average leakage level from an eliminated major party candidate (either excluded or elected), is around, but usually just under, 10%. As the figures below show, the rate was much higher for Labor in Bass in 2002 (and 2006).

Table 5.2 Preference Leakage from Elected/Excluded Labor Candidates: Bass Election, 2002

Candidate Name	Votes Transferred	Votes Leaked	% Votes Leaked
Jim Cox	690	53	7.68%
Katherine Hay	367	24	6.54%
Brian Roe	1,550	222	14.32%
Jenni Jarvis	2,487	259	10.41%
Geoff Lyons	4,301	746	17.34%
Total/Average	9,395	1,309	13.93%

Source: Tasmanian Electoral Office: *Report on Parliamentary Elections 1999 to 2002*, 85-86.²⁵

²⁵ Cox was elected immediately on first preferences, while Hay was elected after the distribution of Cox's surplus. The other Labor candidates were excluded.

Of the 1,309 votes that leaked away from the unlucky third placed Labor candidate Anita Smith, 753 of these found their way to Liberal Party candidates. By contrast, when Liberal candidates were eliminated (almost always through exclusion), 579 of their 6,915 votes (8.37%) were lost to the Liberal Party, with only 270 of them going to Labor candidates.²⁶

Labor's pre-election pledge to only form government in majority (the same promise it had made before, and kept after, the 1996 election) probably cost Smith some Greens preferences. When the leading Greens candidate, Ken Booth, was declared elected with a surplus of 129, it became evident that nearly half of Greens voters had availed themselves of the right to express no preference beyond their own party (a practice that Mackerras calls the 'party linear vote').²⁷ Consequently, only 49 votes of Booth's surplus transferred to Labor, with 18 going to the Liberal Party and the other 62 either exhausting or being lost by fraction. The exclusion of unsuccessful Greens candidates had seen leakages of 251 votes to Labor candidates and 194 to Liberal candidates.

The irony of the Bass result is that the overall state-wide result was fairer than if Labor had won the last seat. The same was to occur (for similar reasons) in 2006, although the Liberal Party received the rough end of the quirks of the Hare-Clark system in Franklin.

The 2006 count in Bass

In spite of another rise in Labor's primary vote to 49.16% (2.98 quotas), the party could win only two seats in Bass, a result which helped make party representation in each division identical to 2002. This time it was the Greens' turn to come from further back to win the last seat with a vote of 13.56% (0.81 quotas), with Booth eventually holding on by 136 votes from Labor's Steve

²⁶ For details of the distribution of preferences in Bass, see Tasmanian Electoral Commission, *Report on Parliamentary Elections 2011 to 2014* (Hobart, 2014), 86.

²⁷ Mackerras, personal conversation with author, 12 October 2012.

Reissig.²⁸ The Liberal Party won a comfortable second seat with a vote of 33.78% (2.03 quotas).

Labor again suffered a significant leakage from its column, though at a higher rate from its elected candidates and at a lesser rate from its excluded ones, as the table below shows.

Table 5.3 Levels of Leakage from Elected/Excluded Labor Candidates: Bass Election, 2006

Candidate Name	Votes Transferred	Votes Leaked	% Votes Leaked
Michelle O'Byrne	4,029	421	10.45%
Jim Cox	900	79	8.89%
Mike Greene	1,258	127	10.10%
Grant Courtney	2,883	327	11.34%
Michelle Cripps	4,122	770	18.60%
Total	13,192	1,725	13.08%

Source: Tasmanian Electoral Commission: *Report on Parliamentary Elections 2003 to 2006*, 81-82.²⁹

Of the 1,725 Labor votes that leaked, 503 went to the Greens. By contrast, when Greens candidates were eliminated, only 423 of the 3,851 such votes (10.98%) leaked away, of which 175 ended up with Labor.

Labor's misfortune in Bass was compensated by its good luck in Franklin, where it won three seats for its 2.83 quotas,³⁰ while the Liberal Party won just

²⁸ For overall results of this election, see Tasmanian Electoral Commission, *Report on Parliamentary Elections 2003 to 2006* (Hobart, 2006), 23. The preference distribution for Bass can be seen on p. 82

²⁹ The higher than usual leakage away from first placed candidate O'Byrne may reflect a personal/sympathy vote, as she had represented Bass at the federal level between 1998 and 2004. The loss of Bass, and also Braddon, at the 2004 federal election, was largely interpreted as a backlash against Labor's forestry policy. If this is so, it seems reasonable to suggest that some voters voted for O'Byrne out of sympathy without wishing to support the rest of the Labor team.

³⁰ For the full preference distribution in Franklin, see Tasmanian Electoral Commission, *Report on Parliamentary Elections 2003 to 2006*, 88.

one seat for its 1.88 quotas. Table 5.4 illustrates one factor hurting the Liberal Party which mirrored, to a lesser extent, Labor's problem in Bass.

Table 5.4 Levels of Leakage from Elected/Excluded Liberal Candidates: Franklin Election, 2006

Candidate Name	Votes Transferred	Votes Leaked	% Votes Leaked
Will Hodgman	3,395	418	12.31%
Sue Bastone	1,391	158	11.36%
Tony Scott	1,688	227	13.44%
Steve Allie	4,049	449	11.09%
Total	10,223	1,252	11.90%

Source: Tasmanian Electoral Commission: *Report on Parliamentary Elections 2003 to 2006*, 88.³¹

Of the 1,252 Liberal votes that leaked, 759 ended up with Labor. By contrast, far fewer Labor votes (615 out of 8,668 transferred votes, or 7.1% of the total) leaked to other groups,³² and only 176 of these ended up with the Liberal Party. The second problem for the Liberal Party in Franklin was that, unlike the 2002 Bass situation, there was a substantial package of Greens preferences to pass on, and they flowed strongly to Labor.

The Greens had polled well enough to have 1.17 quotas, and therefore had a significant surplus to pass on once its leading candidate, Nick McKim, had been elected. McKim had needed only one Greens colleague to be excluded to bring him up to a quota. Labor did not do significantly better than the Liberal Party among those voters who leaked from the Greens ticket: they received 80 such votes and the Liberal Party 61. But when the second placed Greens candidate, Jane MacDonald, was excluded, 941 of her votes went to Labor compared to 540 for the Liberal Party. 700 votes were exhausted. The irony of

³¹ Will Hodgman was not Liberal leader at this election.

³² The leakage level was particularly small from incumbent Premier Paul Lennon: of the 6066 surplus votes transferred, only 262 (4.32%) drifted away.

the Bass results is that the overall state-wide outcome became more equitable.

Had Labor won a third seat at either election, the party would have been even more over-represented than was actually the case.³³ The Franklin result left the Liberal Party under-represented, the only occasion over five elections that either of the two largest parties suffered this fate. But it would seem hard to argue against the overall fairness of a system that delivered such results on the basis of voters freely expressing their preferences, or lack of them, among candidates of the same or different parties.

2010 No Quirky Results

The only election of the 1998-2018 period to cause controversy in terms of the formation of a Labor-Greens coalition government, was paradoxically the most straightforward in seat allocation terms.³⁴ In 2010, each Division returned two Labor, two Liberal and one Greens member. The Greens' under-representation was well below average for the period, while Labor and Liberal over-representation was also below average.³⁵ On the three occasions where parties won seats without full quotas, the party with the highest remainder won an extra seat in each case.³⁶

In the only remotely close contest for an individual seat (the fifth In Denison), the second placed Liberal, Elise Archer, defeated Independent candidate Andrew Wilkie by 815 votes after the distribution of all preferences.³⁷ Wilkie

³³ The Labor Party won 51.4% of the vote in 2002 and 49.5% in 2006, and won 56% of the seats on each occasion. Had Labor won a third seat in Bass, it would have had 60% of the seats, pushing its over-representation up to 10.5% in 2006.

³⁴ The Labor Premier, David Bartlett, had offered his resignation to Tasmania's Governor Richard Butler, but the Governor had refused to accept it, probably doubting the Liberal Party's ability to secure the Greens' support to form a government.

³⁵ Results of this election can be found in Tasmanian Electoral Commission, *Report on Parliamentary Elections 2007 to 2010* (Hobart, 2010).

³⁶ The three cases were in Braddon (Greens, 0.83 quotas), Denison (Liberal, 1.79 quotas) and Franklin (Labor, 1.83 quotas).

³⁷ For this distribution, see Tasmanian Electoral Commission, *Report on Parliamentary Elections 2007 to 2010*, 83-84.

was later to win the co-existent federal seat later that year, and his performance is discussed in the analysis of independent candidates in Chapter 7.

2014 & 2018: Contrasting Liberal Wins Show System's Quirks

Both of these elections saw the Liberal Party win overall majorities under the leadership of Will Hodgman. They differ greatly, however, in the representation levels of the major parties. In 2014 the Liberal Party achieved a record-equalling seat share and was over-represented by 8.8%. In 2018 the Liberal Party was over-represented by 1.7%, which was close to the 1998-2018 average. By contrast, Labor, which had achieved next to no over-representation in 2014, was over-represented by an above-average 7.1% in 2018. Why the stark contrast?

Braddon stands out as the main cause of the large Liberal over-representation, as it is the only division in which it won more seats (four) than its quota share (3.53). Without the fourth seat, the Party would have been over-represented by 4.8%, close to the average for the highest polling party across the period.

In similar circumstances on the mainland, it would generally be expected that Labor (0.39 quotas) and the Greens (0.42 quotas) would combine their preferences and defeat the fourth placed Liberal. The actual result illustrates how the Hare-Clark system, though more democratic in theory because of the stronger control that voters have over their preferences and weakening the influence of major party machines, will sometimes allow for greater major party over-representation.³⁸

One factor assisting the Liberal Party was the distribution of the surplus votes of their two highest polling candidates, Alan Brooks and Jeremy Rockliff.

³⁸ For the preference distribution in Braddon, see Tasmanian Electoral Commission, *Report on Parliamentary Elections 2011 to 2014*, 82.

These tended to go to other Liberal candidates, but did not go especially strongly to any particular one. The eventual consequence was that after the exclusion of the fifth-placed Liberal candidate, Kyron Howell,³⁹ the two remaining Liberals, Roger Jaensch and Joan Rylah, had 8,477 and 7,758 votes respectively. These totals amount to 79.1% and 72.4% of the 10,717 votes required for a quota. In a mainland system with a ticket vote option, it is likely that Jaensch would already have been elected, with Rylah struggling on a total somewhere around 50% of a quota.

As it was, both were fighting hard with the leading Labor candidate, Bryan Green (8,007 votes), and while Green was now elected on the preferences of third placed Labor candidate Shane Broad, there were not enough preferences from Broad's surplus, Greens candidate Paul O'Halloran and Palmer United's Kevin Morgan to re-elect Labor's other MHA Brenton Best. Three factors hurt Best: the most notable being that only 83.26% of Broad's 3,734 preferences flowed to the remaining two Labor candidates, with 5.03% going to Liberal candidates and the rest exhausting or going to the sole Greens and Palmer United candidates.

Labor would also have been disappointed to receive just 44.22% of O'Halloran's preferences, with 15.23% going to Liberal candidates and 40.80% exhausting. The rather weak (70.3%) flow of Bryan Green's preferences was by that stage immaterial to the result (Best could not have won even if he had received all of them), and Palmer United Party voters had little impact, as 53.33% of the votes held at the point of exclusion by its leading candidate Kevin Morgan exhausted.

In 2018 it was Labor that enjoyed the largest (7.4%) over-representation, in spite of its overall loss. That the Liberal Party's over-representation was just

³⁹ Of the 2,791 votes Howell held at the point of exclusion, 2,555 (91.5%) of them went to the two remaining Liberals. This was a much higher flow than that achieved among the leading Labor candidates.

1.7% rather than being closer to the winner's average of 5.7% was largely due to an above average leakage of Premier Will Hodgman's surplus votes away from the Liberal column in Franklin, but this worked to the advantage of Greens candidate rather than Labor. The latter's overall advantage was to some degree caused by factors that assisted it in Braddon in a manner similar to those that helped the Liberals in the same division in 2014, but Labor also now seems to be in the happy position of being a semi-Condorcet party in Tasmania.

The Condorcet concept refers to a situation where a particular party, although not necessarily the most popular, can nearly always win because supporters of other parties will choose it in a two-way contest with any other party. Labor's gain of a second seat in Bass looked far from assured with a vote amounting to just 1.59 quotas, with the Greens close behind on 0.56 quotas, and the Liberal Party (3.53 quotas) also potentially in the running. However, provided the second-placed Labor candidate stayed ahead of one of the others, they were always likely to win because they would receive the bulk of preferences from whoever came third. In Braddon Labor was always likely to win a second seat because its 1.64 quota share put it well ahead of the Liberal Party (at 3.36 quotas), its nearest rival for the fifth seat. Even if the margin had been closer Labor could have been confident because it was the second preference party for most Greens and Jacqui Lambie Network voters.

Conclusion from Tasmania

It is evident from Table 5.1 that the Greens were rarely relatively disadvantaged in five-member districts, This outcome, Mackerras had argued,⁴⁰ was what Labor and Liberal politicians had sought when they legislated for a 25 member House of Assembly, although their parliamentary speeches at the time denied this was their intention.⁴¹ In recent elections, the level of disadvantage has gradually reduced from the high point of 1998, but a

⁴⁰ Mackerras, "A more solid reflection of popular preferences".

⁴¹ Tasmanian Parliamentary Debates (House of Assembly), 22 July 1998.

level of disadvantage remains. Labor appears to be more advantaged by the system than the Liberals. The 2014 election showed that the Liberal Party can profit from a winners' bonus when it is in the ascendancy, but it was far less evident in 2018.

Neither the six-member system used from 1909 to 1956⁴² nor the seven-member system used between 1959 and 1996 suggest either a particular bias towards one major party or the other, or that the Greens were disadvantaged in the three elections in which they stood.⁴³ However, it should be noted that, had six-member divisions been used during the 1998-2018 period, and people had voted the same way (not necessarily a reliable assumption), the Liberal Party would have received a higher percentage of representation on four occasions, and a lower percentage on only one. The Labor Party would have been at a comparative disadvantage more often than not, while the Greens would have fared slightly better than was actually the case.

The 2014 result in Braddon showed how a system of optional preferential voting can assist a major party by diluting the effect of preference flows from minor parties, though the reverse happened in Bass in both 2002 and 2006. However, it is hard to argue that the Braddon result is unfair on democratic principle. It is likely that some Labor and Greens voters did not wish to give preferences to Brenton Best,⁴⁴ but did not want to give a vote to a Liberal either.⁴⁵ It is not an unreasonable idea for voters without a clear preference for Best or Rylah to have the option not to indicate one, thus enabling those

⁴² Between 1909 and 1956 the Labor Party was over-represented by an average of 1.20%, while the major conservative party was over-represented by an average of 1.29%.

⁴³ Between 1959 and 1996 the Labor Party was over-represented by an average of 1.97%, while the Liberal Party was over-represented by an average of 2.61%.

⁴⁴ These Labor and Greens voters would have been especially pleased to see the end of Best after having seen the ABC's election night coverage on 15 March 2014, in which Best had expressed his opposition to the formation of a Labor-Greens coalition in 2010. It also revealed that he had failed to attend caucus meetings in 2013, and (according to witnesses) had during the campaign referred to Labor Premier Lara Giddings as 'Lala'.

⁴⁵ Evidence of the reluctance of Labor voters to vote for Best was provided by the countback that took place after Bryan Green resigned from parliament in 2017. His replacement was Broad, not Best.

voters who had a definite preference for one or the other to decide the fate of the last seat.

The next jurisdiction to be examined is the ACT, which provides more evidence that when party machines have less control over the distribution of their own preferences, overall outcomes paradoxically become more favourable for them.

Australian Capital Territory: More Greens Disadvantage in Five-member Divisions?

The ACT has used some form of local assembly since 1973,⁴⁶ but the territory did not achieve the status of a self-governing jurisdiction until 1989. The first two elections for the new Legislative Assembly were conducted under a modified d'Hondt system, the major features of which were a threshold of approximately 5.56% required to achieve representation and no requirement for voters to express preferences beyond their first choice candidate.⁴⁷

The threshold, no doubt designed to limit the number of small parties elected, was only partially successful: as table 2.7 shows, both $N(v)$ and $N(s)$ were higher than those accruing from the post-1992 system. The main reason for this was the remarkably low vote for the two major parties (a combined vote of 37.69%) with Labor's share 22.82% and the Liberal's an even more paltry 14.87%. Even so, their seat shares saw them over-represented by 6.32% and 8.66% respectively. Three other groups (Residents Rally, No Self-Government Party and Abolish Self-Government Coalition) won seats, but most attention became focussed on the large number of unsuccessful parties that stood, with some of the names suggesting they were registered more as a joke than a real desire to be elected.⁴⁸

⁴⁶ For an analysis of the first two elections for the consultative assembly, see Wright, *Mirror of the Nation's Mind*.

⁴⁷ An outline of the rules of this system, and the results of this and later elections can be found at the Elections ACT website. (www.elections.act.gov.au)

⁴⁸ Examples of apparently joke parties were the Sun-Ripened Warm Tomato Party, the Surprise Party and the Party! Party! Party. The results of this and later ACT elections can be

Public confidence in the system would not have been enhanced by the fact that the inaugural parliament saw the formation of two governments, the first a Rosemary Follett-led Labor one and the second a Trevor Kaine-led Liberal one after the Residents Rally swapped allegiance. This administration lasted until the 1992 election, but by then the members had recognised the unsatisfactory nature of the system, and a concurrent referendum was held at which voters were asked to choose between a Hare-Clark system or a single-member preferential voting system for future elections.⁴⁹ In the end the voters opted for Hare-Clark, and the election gave the two major parties a much higher vote share.⁵⁰

As in 1989, results in 1992 showed how unsatisfactory the system was, with the major parties again grossly over-represented. The Labor Party received 39.9% of the vote and 47.06% of the seats, an over-representation of 7.16%. The Liberal Party received 39.03% of the vote and 35.29% of the seats, an over-representation of 6.26%. The other two groups elected won seats in inverse proportions to their vote: the Mike Moore Independent Group won two seats (11.76%) with a vote share of 5.6%, while the Abolish Self-Government Coalition won one seat (5.85%) with a vote share of 7.1%. It was the parties polling just underneath the threshold that had the greatest reason to complain about the system. Residents Rally, under whose banner Mike Moore had been elected in 1989, received 4.56% of the vote and the Australian Democrats received 4.47%. Neither won a seat.

found at the Elections ACT website: https://www.elections.act.gov.au/elections_and_voting/past_act_legislative_assembly_elections/1989_election, (accessed 3 May 2013).

⁴⁹ Some of the arguments for and against the two systems are contained in Newman, *Hare-Clark in Tasmania*, 284-86.

⁵⁰ The reasons for this increase are probably many and varied. One possible reason is that with several incumbent members now known to the public, the major parties were best placed to take advantage of it, but some voters may also have been thinking that their jurisdiction would be a laughing stock if the result had been similar to that of 1989.

The thin margin between triumph and disaster under the system was illustrated by the fact that the Michael Moore Independents' Group polled only just over the 5.56% threshold but ended up being over-represented by 6.16%. Had it polled 74 fewer votes it would have won no seats at all. On the other side of this divide, Residents Rally would have gained representation with just another 1,547 votes.

In accordance with the voters' wishes as expressed in the referendum result, a Hare-Clark system was introduced in preparation for the 1995 election. A 17-member, three-division system was created, in which the central electorate of Molonglo was allocated seven members, while the northern electorate of Ginninderra and the southern electorate of Brindabella were allocated five members each. This arrangement was used at a total of six elections. Analysis now turns to the results of those elections.

Overall Results 1995-2012

Of the six elections, the Liberal Party formed government after the first two with the support of independents Mike Moore (his colleague Helen Szuty having lost her seat in 1995), Paul Osborne and (in 1998) Dave Rugendyke. Labor formed government after the last four elections with the support of the Greens in last two of those, and the combined support of the Greens' Kerri-Lee Tucker and Democrat Ros Dundas in 2001 (the only ACT election where the Democrats won a seat). Only in 2004 could Labor form government in its own right. The 2012 election was the only one in which the party forming government after the election (Labor) polled a lower primary vote than its major rival, the difference being a mere 40 votes. The overall vote and seat shares for the various parties were as follows:

Table 5.5 Overall Vote and Seat Shares for Major Parties: ACT Elections, 1995-2012

Year	% ALP Vote	% ALP Seats	% +/- Rep	% LIB Vote	% LIB Seats	% +/- Rep	% GRN Vote	% GRN Seats	% +/- Rep	% Other Vote	% Other Seats	% +/- Rep
1995	31.6	27.6	41.7	46.8	37.4	38.9	9.1	11.8	+2.8	18.8	11.8	-7.1
1998	35.3	35.3	47.7	52.9	41.2	47.1	9.1	5.9	-3.2	25.5	17.7	-7.8
2001	+3.7	+7.7	+5.3	+6.1	+3.8	+8.2	9.1	5.9	-3.2	17.7	5.9	-11.9
2004	40.5	37.8	31.6	34.8	31.6	38.9	9.3	4.9	-3.4	9.1	0.0	-9.1
2008	41.2	41.2	41.2	41.2	35.3	47.1	15.6	23.5	+7.9	15.4	0.0	-15.4
2012	+0.7	+7.3	+9.5	+6.4	+3.7	+8.2	10.7	5.9	-4.8	11.5	0.0	-11.5

Source: Calculated from results at Elections ACT: https://www.elections.act.gov.au/elections_and_voting/past_act_legislative_assembly_elections (accessed 22 May 2013).

Patterns of partisan advantage in the ACT have both similarities and differences with those of Tasmania. The most notable difference is that the ACT produced a bigger runner-up bonus than it does a winner's bonus.⁵¹

Discounting the 2012 election, where the votes were so close as to be regarded as a draw, the Labor Party was over-represented by an average of 5.09% in the three elections that it won, compared to an over-representation of 5.67% in the two elections that it lost. The level of the Liberal Party's representation levels look even stranger: it was over-represented by an average of just 2% in the two elections that it won, compared to an average over-representation of 6.54% in the four elections it lost.⁵² The Greens appear to be disadvantaged overall by the system, but it is not the case that they have been disadvantaged at all elections. Their average under-representation

⁵¹ The reasons for this phenomenon are not obvious, but they could include the fact that in the ACT the winning party has never reached, and very rarely approached, an overall vote of 50%, and that the 'Other' vote in the ACT is nearly always over 10%, while in Tasmania it has always been under that level, save for the early 1980s period when Green Independents would have fallen into this category. Both major parties have been able to stay above the 30% or below danger zone in the five-member electorates.

⁵² If the 2012 result was included, the Liberal Party would have got an even higher runner-up bonus than was actually the case, and while Labor's average winners bonus would now have been above that for the two elections in which it was runner-up. Its inclusion would make no sense because its win was not based on a primary vote superiority.

level was 0.68%, but the difference between their best and worst results (12.78%) is much higher than those of the two larger parties.

The most likely reason for such discrepancies would appear to be the differing nature of five-member and seven-member districts. As is usual in all STV systems, the amorphous category of 'Others' was under-represented, by an average of 10.46% across the six elections. It is important to note that 'Others' were still significantly under-represented (average 8.91%) at the three elections where at least one 'other' was elected.⁵³

It is noticeable that the Greens have achieved consistent success in only one electorate: the seven-member district of Molonglo. Since 1995 the Greens have always had at least one member elected there, and in 2008 had two elected. Its vote and seat shares at each election in Molonglo have been as follows:

Table 5.6 Vote and Seat Shares for the Greens: Molonglo Election, 1995-2012

Year	Vote Share	Seat Share	+/- Rep Level
1995	10.12%	14.29%	+4.17%
1998	10.11%	14.29%	+4.17%
2001	12.57%	14.29%	+1.72%
2004	11.50%	14.29%	+2.79%
2008	18.20%	28.57%	+10.37%
2012	13.20%	14.29%	+1.09%

Source: Calculated from results at Elections ACT: https://www.elections.act.gov.au/elections_and_voting/past_act_legislative_assembly_elections (accessed 22 May 2013).

At every election the Greens were over-represented in Molonglo. The over-representation reached its high point at the Greens' best election. It may of course be that, as will be seen, the Green vote is higher in Molonglo than in

⁵³ The only 'other winner' in the six elections was Dave Rugendyke, who in 1998 won a seat running under the banner of Osborne Independent Group. Both Osborne and Rugendyke were defeated in 2001, when they ran as individual candidates.

the other two districts. This conforms to a common pattern across Australia, whereby the Greens poll higher in inner suburban areas than in outer suburban ones. By contrast, the two five-member electorates (Brindabella and Ginninderra) showed a consistent pattern of the Greens' failure.

Table 5.7 Vote and Seat Shares for the Greens: Brindabella and Ginninderra Elections, 1995-2012

Year	Brindabella Vote Share	Ginninderra Vote Share	Total Vote	Seat Share	+/- Rep
1995	7.95%	8.71%	8.32%	10%	+1.68%
1998	8.08%	8.69%	8.67%	0%	-8.67%
2001	5.43%	7.94%	6.68%	0%	-6.68%
2004	7.30%	8.20%	7.74%	0%	-7.74%
2008	13.60%	13.90%	13.71%	20%	+6.29%
2012	7.80%	10%	8.97%	0%	-8.97%

Source: Calculated from results at Elections ACT: https://www.elections.act.gov.au/elections_and_voting/past_act_legislative_assembly_elections (accessed 22 May 2013).

The average under-representation of seat shares was thus 3.88%. The only occasions in which it won seats were in 1995 (Ginninderra) and 2008 (one in each).

The Greens were unlucky in that their vote was lower in the electorates where it needs to be higher because of the higher quota of 16.67%. Its highest support was in Molonglo where it could afford to be a percentage point or two lower. As will be seen, the 2016 change to a 5x5 system has reduced but not completely removed this disadvantage. There is one aspect of the 2012 election in which the Greens were extremely unlucky not to win one more seat. The result in Ginninderra illustrates a particular quirk of the Hare-Clark system that does not materialise in an STV system with a ticket voting option, and perhaps explains why a proliferation of minor parties does not occur in a Hare-Clark system.

In Ginninderra, Labor received 2.4 quotas, Liberal received 2.0 quotas and Greens 0.6 of a quota. The best performing micro party, the Australian Motorist Party, received 0.4 quotas. On this basis, it might be expected that the Greens would win the fifth seat. However, two factors conspired to hurt the Greens' leading candidate and sitting member, Meredith Hunter, in the distribution of preferences.

At the point where Hunter became the only remaining Greens candidate, she had 6,457 votes, well short of the quota of 11,013 votes, but a higher tally than all but one (Mary Porter) of the Labor candidates still in the count. Porter's eventual election left only a 45 vote surplus to pass on, so it was not until the exclusion of the fourth-placed Labor candidate, Glen Macrea, that the two remaining Labor candidates overtook Hunter. Of Macrea's 5,238 votes initially distributed, the two Labor candidates, Chris Bourke and Yvette Berry, received 2,223 and 2,050 votes respectively. Only 381 votes leaked to Hunter, who at this point had 7,662 votes, trailing both Bourke on 8,642 votes and Berry on 8,126 votes.

By this time, two Liberals had been elected and the only other candidate still in the count was a candidate from the Motorist Party, Chic Henry, with 6,669 votes. Of the 6,299 votes distributed first, only 614 went to Hunter, with Bourke receiving 824 votes and Berry 1,025. Of the 363 that had come to Henry from the last elected Liberal, 36 went to Hunter, 45 to Bourke and 34 to Berry, with 247 exhausting and one vote lost by fraction. Hunter was thus defeated as she had fewer votes than the two remaining Labor candidates.

Hunter's preferences, though immaterial to the final result, were now distributed, of which 5,289 showed a preference for one of the two remaining Labor candidates, while 2,933 did not show any preference. By contrast, in Brindabella, when the second-placed Labor candidate Mick Gentleman was elected, he had a surplus of 1,928 votes, with the only remaining candidates

being third placed Liberal candidate Andrew Wall on 8,742 votes and highest placed Greens candidate Amanda Bresnan on 6,957 votes. Bresnan would have needed well over 90% of Gentleman's preferences to win, and in the end she received just 804 (or just over 41%) of them, with 151 going to Wall and 973 exhausting. Wall won the fifth seat by 8,893 votes to Bresnan's 7,761.

It is notable that far more Greens voters were willing to give a later preference to Labor candidates than Labor voters were willing to give preferences to Greens candidates. Such a phenomenon has attracted little attention from either politicians or commentators, probably because, until the 2013 Senate election, it was almost unheard of for a Labor candidate's preferences to be distributed while a Greens candidate was still in the contest. This situation has become more common (even in single-member districts), so it is a fruitful source of future investigation for political scientists, especially in jurisdictions where the marking of preferences beyond one's first choice party are optional. This is especially so in cases where the order in which Labor or Greens are eliminated might make a material difference as to who is elected.⁵⁴

The other definite pattern from the ACT is that minor and micro parties do not do well out of the Hare-Clark system, although they had initial success under the d'Hondt system (the possible reasons for this will be explored in the conclusion to this chapter). While Independent candidates did have some initial success, they have had no success since 1998, in spite of the fact that one sitting MP unsuccessfully seeking re-election as an Independent (in 2001)

⁵⁴ A case where such order of exclusion could have made a difference was in the seat of Melbourne Ports at the 2016 House of Representatives election. Sitting Labor MP Michael Danby defeated Liberal candidate Owen Guest after a heavy flow of Greens preferences to Labor. However, Danby had led the Greens candidate by just 800 votes at the latter's point of exclusion. Because Danby had put Liberal ahead of Greens on his how to vote card, it is likely that Guest would have won the seat if Danby had finished behind the Greens.

was former Liberal Chief Minister Trevor Kaine.⁵⁵ Possible reasons for the failure of Kaine and other Independents will be discussed further in Chapter 7.

2016: Labor Holds Government (and vote) Under New Arrangements

The election held on 15 October 2016 saw the return of the Labor government for its fifth term, this time under the leadership of Andrew Barr.⁵⁶ The vote and seat shares for the major parties were as follows:

Table 5.8 Vote and Seat Shares for the Main Parties: ACT Election, 2016

Party	Vote Share	Seats	Seat Share	+/- Rep
Labor	38.4%	12	48%	+9.6%
Liberal	36.7%	11	44%	+7.3%
Greens	10.3%	2	8%	-2.3%
Others	14.7%	0	0%	-14.7%

Source: Elections ACT: https://www.elections.act.gov.au/elections_and_voting/past_act_legislative_assembly_elections/2016-election (accessed 21 February 2017).

A comparison with Table 5.5 shows that while all three large parties lost voter support in 2016, Labor lost the least, and enjoyed a gain in seat percentage (as did the Greens) while the Liberal Party lost ground. The overall picture obscures a distinct regional pattern. Both northern electorates (Ginninderra and Yerrabi) each gave Labor three seats and the Liberals two. The two central electorates (Kurrajong and Murrumbidgee) each returned two Labor, two Liberal and one Greens, while the southern electorate of Brindabella returned three Liberal and two Labor. There were also some distinct regional variations in swing size and direction, which appear to be influenced as much

⁵⁵ Kaine won a seat in Brindabella as a Liberal 1995 and 1998, but after resigning from the Liberal Party in 1999 he could not hold his seat in 2001 under the banner of Kaine Independent Group. Both he and his running mate (and wife) Sandie Brooke polled a much lower vote in 2001 (a combined vote of 1.12%) than in 1998 (13.29%).

⁵⁶ Labor had won the 2001, 2004 and 2008 elections under the leadership of Jon Stanhope, and the 2012 election under Katy Gallagher.

by candidate factors⁵⁷ as the main local issue: the Labor government's proposal to build a tram line from the Canberra CBD to the northern suburb of Gungahlin. There are some differences in patterns of partisan advantage between the old and new systems, which are discussed in the conclusion which follows.

Conclusion from the Australian Capital Territory

Elections in the Australian Capital Territory provide further evidence to suggest that five-member districts produce a systemic bias against the Greens in comparison to the situation in seven-member districts, although the Greens seem less disadvantaged by the 5x5 arrangements used in 2016.⁵⁸ The results also provide justification for the claim of Mackerras that the ACT electoral system should be regarded as semi-proportional rather than proportional.⁵⁹

The most striking difference between the ACT and Tasmania is how rarely the ACT has produced majority government (just once in six elections under the Hare-Clark system) while the six Tasmanian elections across the same period have produced majority governments on four occasions. Jim Chalmers had noted in an article on the 2001 election that majority governments appeared to be elusive, and although he was temporarily proved wrong in 2004, later elections have reverted to the hung parliament pattern.⁶⁰

⁵⁷ The changes in Labor's vote ranged from +6% in Yerrabi (which includes Gungahlin) to -5.6% in Murrumbidgee, where it had no sitting members standing. The change in the Liberal vote ranged from +2.5% in Murrumbidgee, the electorate of its leader Jeremy Hansen, to -5.9% in Brindabella where its former ACT leader and now Senator, Zed Seselja, had stood in 2012. The Greens' vote rose by 1.5% in Kurrajong, the electorate of its leader Shane Rattenberry, but fell 2% in Yerrabi.

⁵⁸ The main reason for this appears to be the creation of Murrumbidgee, which spread some strong pockets of Greens support between two electorates. Antony Green's calculations of 2012 results adjusted to the new boundaries suggested the Greens were in a favourable position to win the two seats they actually won. See '2016 ACT Election Preview' on Antony Green's election blog (www.abc.net.au/news/elections).

⁵⁹ Malcolm Mackerras, "A system that works well for us," *Canberra Times*, 31 October 2012, 17.

⁶⁰ Jim Chalmers, "The Australian Capital Territory Election of 20 October 2001," *Australian Journal of Political Science* 37, no. 1 (2002) 165-68.

The reason for the difference is somewhat obvious, although it is perhaps so obvious that some politicians and journalists are inclined to overlook it: ACT voters have never given a party over 50% of the primary vote (the highest so far was Labor's 46.8% in 2004, when it won a majority). By contrast, Tasmanian voters have on two occasions given a party over 50% of their vote (Labor in 2002 and Liberal in 2014), and a majority government was formed each time. On two other occasions (1998 and 2006), majority Labor governments were formed with vote shares of 44.8% and 49.5% respectively. The 1998 figure does suggest that Labor's majority had a manufactured quality about it, but the vote is still significantly higher than those polled by the highest polling ACT party governing in minority.⁶¹ In other words, the disparity in the outcome can be explained, to a large degree, by the different characteristics of the political demography in Tasmania and in the ACT.

The last state to be examined here in terms of the primary vote, Victoria, differs from the other two in that its proportional representation system only operates for elections to the upper house, so the issue of government viability does not arise. Where Victoria also differs is that while voters have the same option of voting for as few or as many candidates beyond the number to be elected within the region, they also retain the option of voting for a party or group ticket above the line. District magnitude remains significant but, in 2014 at least, ballot paper numbering options appear to have had a greater impact.

Victoria: Combination System Produces Varying Results

Like Western Australia, Victoria's Legislative Council was elected (until 2001) via a system of single member provinces combining the voters of multiple neighbouring Assembly districts. Levels of rural vote weighting were never as

⁶¹ The highest vote shares polled by such parties were Labor in 2001 (41.7%), and Liberal in 1995 (40.5%). In each case the said party formed a coalition government after the election. Surely no party receiving such a vote would claim to deserve to govern in majority in a system claiming to be proportional!

high as in WA, but Victorian Legislative Council elections were similarly dominated by the conservative parties for the vast bulk of the twentieth century. Even during the 1979-1999 period (1999 marked the first competitive Legislative Council election after 27 years of Liberal Party dominance) a systemic bias in favour of the Liberal and National Parties was evident.

In spite of the seven Assembly elections during the same period producing an even spread of results, the concurrent Legislative Council elections saw Labor under-represented by an average of 6.88%, while the Liberal and National Parties were over-represented by an average of 13.39% during the same period.⁶²

This pattern was to alter dramatically at the 2002 election, where the Bracks Labor government was returned in a landslide. Unlike John Cain (Labor Premier, 1982-1990), however, Steve Bracks was able to win a comfortable Legislative Council majority for his party. A 47.49% vote share for Labor yielded 77.27% of the seats, while the Liberal and National Parties' combined vote of 38.88% won just 22.72% of the seats. The Greens vote of 10.87% won no seats, but a strong flow of its preferences to Labor enabled the latter to gain enough seats to enable the Bracks Government to introduce the proportional representation system under which the Greens were to have some success.

The new system (used for elections since 2006) allowed for the election of a Legislative Council of 40 members, with those members being chosen from eight regions of five members each, elected under a single transferable vote system. The methods of voting lay somewhere between the Tasmanian and Western Australian methods. Voters could choose to number at least five

⁶² For an analysis of possible reasons for such a bias, see Nick Economou and Brian Costar, "Electoral Enquiry or Political Debate? Analysis, Commentary and the Controversy of Victoria's Legislative Council Electoral Process," in *Electoral Research - The Core and the Boundaries*, ed. Jane Peace (Adelaide: South Australian State Electoral Office, 2000) 1-16.

candidates in order of preference below the line (with further preferences optional) or to vote for a single party/group above the line. In theory, the easier below the line voting option should have seen more voters choosing this method than in the Senate. As will be seen, the number of people utilising the below the line option has been disappointingly low for any observer who hoped for more independent thinking from voters.

The four Legislative Assembly elections held concurrently with the PR Legislative Council elections have produced three comfortable Labor wins (2006, 2014 and a landslide in 2018) and one very narrow Liberal-National win (2010). As the table below shows, Liberal-National have generally held their own in terms of winning Council seats, although 2018 was something of an exception.

Table 5.9 Vote and Seat Shares for the Main Parties: Victorian Legislative Council Elections, 2006-18

Year	% ALP Vote	% ALP Seats	% +/- Rep	% L/N Vote	% L/N Seats	% +/- Rep	% GRN Vote	% GRN Seats	% +/- Rep	% Other Vote	% Other Seats	% +/- Rep
2006	41.4	47.5	+6.0	39.0	42.5	+3.5	10.6	7.5	-3.1	9.0	2.5	-6.5
2010	36.4	40.0	+3.6	43.1	52.5	+9.4	12.0	7.5	-4.5	8.5	0.0	-8.5
2014	33.5	35.0	+1.5	36.1	40.0	+3.8	10.7	12.5	+1.8	19.7	12.5	-7.2
2018	39.2	45.0	+5.8	29.4	27.5	-1.9	9.2	2.5	-6.8	22.1	25.0	+2.9
Ave.	37.6	41.9	+4.3	36.9	40.6	+5.7	10.6	7.5	-3.1	12.7	10.0	+2.7

Source: Victorian Electoral Commission: <https://www.vec.vic.gov.au/Results/results-state.html> (accessed 17 January 2019)

Labor clearly gained some advantage from the system, with the level tending to rise as its vote increases. The same pattern is evident for Liberal-National. The Greens, on the other hand, (still) tend to be significantly disadvantaged: although 2014 was an obvious exception, the pattern evident in 2010-14 re-emerged in 2018, but to a greater extent than before.

The amorphous category of 'Others', though under-represented overall, went from having next to no success in 2006 (one seat) and 2010 to a modicum of success (five seats) in 2014, and was actually over-represented in 2018, winning ten seats overall. The improved performance of 'Others' was assisted by the work of preference harvesters. No doubt emboldened by their success at federal level in 2013, by 2014 they had a better idea of how to use the ticket voting option to control the flow of micro party supporters' preferences, although the less onerous requirements for casting a valid below the line vote ought to (and, at least in 2014, did) dilute their influence to some extent.

Antony Green had some idea of the limits of this diluting factor. On ABC TV's 2014 election night coverage, when asked by compere Ian Henderson if there was any chance of the new Labor government having a Council majority, he quickly said 'no', gave an estimate of the final numbers and launched an attack on the ticket voting aspect of the system. He expressed the hope that politicians might eventually have the will to abolish that part of the system.⁶³

The election of five micro party MLCs in 2014 and ten in 2018 (only two of whom were sitting members), suggests that Green has legitimate grounds for his complaint. None of the successful group tickets could garner even a quarter of a quota in 2014, while only four of the 2018 group (three of them from Derryn Hinch's Justice Party) reached this figure.⁶⁴

The fact that four micro groups elected MLCs despite polling less than one tenth of a quota in that region raises major questions about the legitimacy of the system: did voters really intend to elect these candidates? The less onerous requirements for casting a valid below the line vote ought to have made the results more a genuine choice of voters, although one particular 2018 contest casts doubt on this proposition.

⁶³ Antony Green, ABC Election Night coverage, 29 November 2014.

⁶⁴ See Appendices 3 and 4 for a list of the successful micro parties and their quota shares in the respective regions.

The 2014 results, however, suggest that not only could neither of the three largest parties claim to be hard done by, but also that there was at least one case of where the less onerous requirements for casting a below the line vote might well have stopped micro parties from winning even more seats.

The 2014 Contest in South Eastern Metropolitan

In the 2014 Legislative Council election for South East Metropolitan, Labor won 2.40 quotas and two seats, Liberal 2.11 quotas and two seats, and Greens 0.38 quotas and one seat. Even if Labor supporters felt unlucky at missing out on the third seat, they would have accepted the legitimacy of the result if they accepted the logic of preferential voting. What they and other observers who had not studied Antony Green's calculator might not have realised is that preference leakages may have facilitated the Greens' win and deprived micro parties of another potential success.

Green's calculation suggests that had all votes been cast above the line, the Sex Party (which received 0.18 quotas) would have won the last seat at the expense of the Greens. Green's explanation for such a result not actually happening was that the Sex Party fell short, "due to the leakage of preferences away from the party ticket because of voters making up their own mind on preferences by voting below the line."⁶⁵ It is worth looking at the preference flows in some detail to attempt to determine how much the intricacies of the Victorian voting system might have contributed to such a result.

Only two micro parties, Voluntary Euthanasia (0.03 quotas) and Animal Justice (0.11 quotas), gave the Sex Party their second preference, while the Liberal Party (2.11 quotas) preferences went there as well after initially being

⁶⁵ ABC 2014 Victorian Election results: www.abc.net.au/news/vic-election-2014/results/legislative-council (accessed 17 January 2019).

directed to Family First. Had these three batches been delivered to the Sex Party in full, it would have enabled its leading candidate, Martin Leahy, to overtake Labor's third placed candidate, and the latter's preferences favoured Leahy over the Greens' leading candidate Nina Springle.

As it happened, only 2,020 (87.3%) of Voluntary Euthanasia's 2,315 votes went to Leahy, while 30 votes leaked to Labor, 42 went to the Greens and 16 were exhausted, thus ensuring such votes never reached Leahy. Similarly, when Animal Justice preferences were distributed, 7,246 (94.43%) of its initial votes went to Leahy, but 58 leaked to Labor, 162 to Greens and 94 were exhausted. The flow of Liberal preferences to the Sex Party via Family First was much higher at 99.20%, suggesting that the handing out of Liberal how to vote cards at most polling booths produced a more disciplined preference flow.

The consequences of these leakages and exhaustions was that Leahy, instead of being 948 votes ahead of Labor's number three candidate after the distribution of the Liberal batch, as Green's calculator had predicted, was actually 334 votes behind. Hence Leahy was now excluded, and with his ticket preferences flowing to the Greens, and with the batches from Animal Justice and Voluntary Euthanasia also directed that way (the Liberal batch having favoured Labor), Springle won comfortably on Labor preferences. Her final opponent was Daniel Nalliah of the Rise Up Australia Party, a Christian-based xenophobic group that had finished eleventh out of fifteen groups on primary vote, but had benefitted from the cascading preferences of other micro parties of the right.

The argument here is that without the less onerous requirements for casting a valid below the line vote, it is likely there would have been more above the line votes, and this may well have enabled the Sex Party to win another seat. It is acknowledged, however, that this factor did not stop micro parties winning

seats in five other regions, and in each case the successful micro parties bridged a bigger gap over a competing major party than the 0.22 quotas that the Sex Party failed to bridge in South East Metropolitan. The biggest gap bridged was 0.48 in Western Victoria, where Vote 1 Local Jobs overtook the Greens, but Liberal-National was the unlucky group on three other occasions.

The 2018 Results

Even bigger gaps were bridged in 2018, with the highest being 0.73 quotas in Southern Metropolitan, one of four occasions the Greens were overtaken by a micro party. The three next highest margins overcome all worked to the disadvantage of Liberal-National, the smallest of these being 0.63 in Western Victoria.

The highest partial quota that failed to win a party/group an extra seat was Liberal-National's 1.87 quotas in Northern Victoria. Liberal-National were also hurt in Western Victoria (1.80 quotas) and South Eastern Metropolitan (1.74 quotas), while the Greens were hurt in Southern Metropolitan (0.81 quotas and no seats).

This loss by the Greens appears to have occurred because of a deliberate strategy by all small parties to direct preferences to Sustainable Australia, but the result in Western Victoria stands out because the Liberal-National's failure to win a second seat was entirely due to the behaviour of small parties of the right. Without exception, they preferenced the leading candidate of the centrist Derryn Hinch's Justice Party, Stuart Grimley, ahead of Liberal number two candidate Joshua Morris.

The last of these preference distributions enabled Grimley to win despite his party receiving just 0.27 quotas. The later success of the left wing Animal Justice Party (0.17 quotas) occurred because the preferences from small left-wing parties (and Labor) had put its leading candidate, Andy Meddick, ahead

of the leading Greens candidate, and Greens' preferences enabled Meddick to defeat Morris by 1,600 votes.

The key to Meddick's success was not the logically absurd decision of the majority of right-wing parties to favour him over Morris, because the number of preferences available for transfer after Grimley's election was too small to matter. Instead it was the decision of Labor to prefer Animal Justice over the Greens that made the crucial difference. Had the Labor ticket favoured the Greens, the latter would have won a seat because the Greens' 0.45 quotas, together with Labor's 0.29 quota remainder, that of Animal Justice and the Victorian Socialists' 0.16 quotas would take the Greens past a full quota very comfortably. A similar want of Labor preferences cost the Greens a seat in Southern Metropolitan.

The results in Northern Victoria and South Eastern Metropolitan, although painful for National and Liberal voters in the regions concerned, were less unreasonable because in each case the extra seat that might have been won by Liberal-National went to a fellow party of the right, the Liberal Democratic Party (LDP). In the former region, the Nationals were hurt by small parties of the right preferring Derryn Hinch's Justice Party, while in the latter it was Greens preferences that secured the last seat for the LDP, not unreasonably since the majority of Greens voters would probably, if left to their own devices, have directed their preferences this way.

Conclusion from Victoria

Even allowing for the absurdity of the Western Victoria result in particular, the evidence appears to suggest that the Legislative Council voting system is much more systemically weighted against the Greens than against Liberal-National. When it is realised that if one of the 'absurd' 2018 results had gone Liberal-National's way, they would actually have been over-represented, it is clear that Liberal-National have much more scope for seat gains with a slightly

improved vote than the Greens do. This tallies with the advantages the system provided them in 2010, 2014 and, to a lesser extent, 2006.

The comparison of Victorian Greens results with those in Tasmania and the ACT suggests, in addition to the effects of district magnitude of 5 per se, an additional systemic bias against the Greens caused at least in part by the preference harvesting the Victorian system still allows. As with Tasmania and the ACT, Labor can be confident that five-member divisions provide some advantages, but also that preferences harvesting has, so far at least, caused them little or no pain in Victoria.

It is not surprising that smaller parties have a better record in Victoria than either Tasmania or the ACT. What is surprising is that smaller parties have also done better in Victoria than in Western Australia, in spite of the more onerous requirements for casting a valid below the line vote in the latter system, which is somewhat surprising.

It may well be disappointing for those observers wishing to see greater voter independence that even with less onerous requirements for casting a below the line vote, so few Victorian voters (6.1%) voted below the line in 2014. The 2018 evidence suggests that more voters are exercising this option, no doubt as a result of the awareness of an easy option for doing so existing at federal level.⁶⁶

⁶⁶ ABC Radio election analyst Paul Strangio estimated the below the line percentage to be a little over 10% statewide. Micro party and Greens voters appear to have exercised the option to a greater extent, while major party voters have tended to vote above the line at a higher percentage.

Chapter 6

Proportional Representation and Minor Parties: Some Deviating Cases

The analysis in previous chapters established that there were three specific features of proportional representation systems in Australia that assist minor and micro parties when present, and tend to hurt them when absent. They are: (a) higher district magnitudes, (b) ticket voting options and (c) more onerous requirements for casting a valid vote below the line. Results from Victoria, especially in 2014, tend to suggest that (a) and (b) are more important factors than (c), though it should be noted that the best micro party result (the 2013 Senate election) occurred under a combination of (b) and (c), even when (a) was absent.

It is also clear, however, that *any* type of proportional or semi-proportional system produced a better result for minor parties (both in terms of their numbers and their results) than the majoritarian system that preceded it, as well as the overall level of proportionality. Therefore Duverger's proposition that proportional systems tend to lead to multi-party polities is not overturned.¹ It is also noted that even the 2013 Senate result, while over-representing certain micro parties, did not overturn Rae's similar proposition that any electoral system will produce higher levels of over-representation for larger parties than for smaller ones.²

It does not follow, however, that all minor parties have done better under proportional systems than under plurality/majoritarian ones. Five Australian parties differ from general patterns to some extent. In the case of the Communist Party and Katter's Australian Party, they have achieved success

¹ Duverger, *Political Parties*.

² Rae, *The Political Consequences of Electoral Laws*.

only in plurality or majoritarian systems. The Democratic Labour Party and the One Nation, while winning some seats under both conditions, would have been disappointed with their success rate in proportional systems, while the Australian Democrats found that not all houses with proportional representation produced positive outcomes, although they did much better overall than in single member jurisdictions.

The first party examined in this chapter, the Communist Party, had over 20,000 members at the peak of its public acceptability in the mid-1940s,³ and was considered sufficiently dangerous by Prime Minister Robert Menzies that he twice sponsored legislation to have it banned.⁴

However, the complete failure of the Communist Party at Senate elections from 1949 onwards not only reveals that a party considered dangerous by conservative politicians of the day posed little or no threat, it also reveals much about the limited extent to which minor parties are actually assisted by an electoral system that theoretically aids them.

The Communist Party: Much Ado About Nothing

The Communist Party of Australia was formed in the 1920s shortly after the Russian Revolution, and first fielded candidates at a national election at the height of the Great Depression in 1931, mostly in urban working class or industrial/mining areas. It took a similar approach in later elections for the House of Representatives. At the peak of its support in 1943, Communist

³ Stuart Macintyre, *The Reds* (St Leonards: Allen & Unwin, 1998), 406.

⁴ The Communist Party Dissolution Bill 1950 caused particular alarm among some Labor politicians, who feared that their party could be declared 'communist' because of the presence of bank nationalisation and free education policies in its platform, policies also advocated by Marx's *The Communist Manifesto*. In the circumstances of the time, this could have led to a one-party state. For an account of these debates, see Clyde R. Cameron and Daniel Connell, *The Confessions of Clyde Cameron 1913-1990* (Crows Nest, NSW: ABC Enterprises, 1990). Labor's deputy leader Herbert 'Doc' Evatt challenged the validity of the legislation in the High Court, on the grounds that it overturned the normal legal protocol of the presumption of innocence and was a gross infringement of the right to free speech. All judges except Chief Justice Latham found in Evatt's Favour, ruling that the legislation overstepped the government's powers during peacetime.

Party candidates received an average vote of 8.31% in the sixteen seats in contested.⁵ After World War II, the party continued to stand candidates in selected House electorates, and also stood candidates in nearly every state in Senate elections after the adoption of proportional representation in 1949. The party dramatically scaled back its electoral activities for both houses in the late 1960s, before splitting into Marxist-Leninist and Trotskyite factions in the early 1980s and disbanding altogether after the fall of the Berlin Wall in 1989.

At state level, the party would occasionally contest single-member electorates of a similar type to those contested at federal level, but only once stood candidates in proportional representation elections held prior to World War II in either New South Wales or Tasmania.⁶ The only instance of a Communist candidate being elected to parliament was Fred Paterson in the Queensland Legislative Assembly seat of Bowen in both 1944 and 1947. Paterson's double success, as well as his more numerous failures, gives some insight as to the unique circumstances under which a Communist could succeed, and also gives us an idea as to why the Communist Party failed to prosper when a proportional representation system was used in the Senate.

Proportional Representation and the Red 'Menace'

Results at the 1949 election were disappointing for the party, and their vote did not improve much at future elections. The national vote shares received by the Communist Party at Senate elections held in the Menzies era were as follows:

⁵ Communist Party results during the period have been obtained from Hughes and Graham, *Voting for the Australian House of Representatives, 1901-1964*. See Appendix 5.

⁶ That was in the 1925 NSW election where they polled less than 1% of the vote in three inner-city electorates. See Colin A. Hughes and B. D. Graham, *Voting for the New South Wales Legislative Assembly 1890-1964* (Canberra: Dept. of Political Science, Research School of Social Sciences, Australian National University, 1975), 199-209.

Table 6.1 Communist Party Vote Share: Senate Elections, 1949-64

State	AUS (total)	NSW	VIC	QLD	SA	WA	TAS
1949	2.09%	2.11%	3.05%	3.61%	2.91%	1.62%	0.73%
1951	1.70%	3.59%	4.48%	6.33%	5.90%	1.05%	0.83%
1953	3.53%	1.47%	3.48%	1.14%	0.78%	3.35%	0.54%
1955	1.73%	1.39%	1.12%	4.15%	0.94%	0.71%	0.92%
1958	0.69%	0.36%	1.18%	1.01%	2.87%	1.06%	0.64%
1961	1.81%	0.92%	0.92%	2.12%	0.69%	0.93%	0.84%
1964	0.54%	0.41%	0.26%	-	-	0.65%	0.54%

Source: Colin A. Hughes, and B. D. Graham. *A Handbook of Australian Government and Politics*. Vol. 1 (Canberra: Australian National University Press, 1968).

With seven senators being elected in every state, the quota required was a fairly modest 12.5%. It is clear that its highest 1949 vote got it nowhere near this figure. The lowest quota for election at any of the above elections was 9.09% in 1951 but, as the above table shows, the party fell well short of this in every state.

The Communist Party did not fail because of lack of publicity, with an unsuccessful attempt to ban it via referendum in 1951,⁷ and with Prime Minister Menzies, according to stalwart Labor MP Fred Daly, 'as usual, campaigning on the fear of communism'⁸ at the 1953 election.⁸ By the time of the 1955 election, the debate had moved on from the threat of communism and to the unfitness of the Labor Party to govern because of its internal disunity.⁹ Yet the Communist Party received its highest Senate vote for the

⁷ The referendum was held in September 1951 and was narrowly lost, with 50.56% opposed and 49.44% in favour.

⁸ Daly, *From Curtin to Hawke*, 119.

⁹ The Labor Party had split over issues relating mostly to communism, resulting in the formation of the Democratic Labor Party. The remaining elements of the Labor Party

period, as well as its highest vote in any individual Senate contest. Why was this so?

The most likely answer also accounts for why the 1949-55 Communist Party performance, bad as it looks by any standard, is in fact even poorer than it looks at first sight: because nearly every significant increase (or decrease) seems to be heavily influenced by the donkey vote.

In NSW the Communist Party vote rose 1.89% in 1951 after drawing Column A on the ballot paper, having drawn Column D in 1949. Conversely in Victoria, the party drew Column A in 1949 but Column B in 1951, which saw their vote drop by 1.91%. It also dropped in the other four states where the party did not draw Column A on either occasion. The Communist vote rose in Victoria in 1953 after it again drew Column A. Only in 1961 did the Victorian Communist vote again rise above 2%, where it had again drawn Column A.

The drawing of Column A would also seem to be the main reason for significant rises in the Communist vote in 1955 for both Queensland and Western Australia, and in 1958 in South Australia, and the corresponding fall at the following Senate election.¹⁰ The only time the Communist vote rose markedly without donkey vote assistance was the 0.82% gain in South Australia in 1953. In New South Wales the Communist Party remarkably drew column A at all Senate elections between 1951 and 1959, but its vote fell markedly when it did not have this advantage in 1961.

Further evidence that much of the Communist vote was the outcome of a donkey vote is provided by some of the preference distributions during the

remained deeply divided, and Menzies campaigned on the theme (later to be made famous by Bob Hawke): 'If you can't govern yourselves, you can't govern the country.'

¹⁰ Hughes and Graham, *A Handbook of Australian Government and Politics*, 1. The fact that Communist preferences flowed strongly to the second-placed Liberal-Country tickets in both NSW and WA is indicative of a high proportion of donkey votes.

period. For example, in NSW in 1951, where Communist and Labor had drawn Columns A and B respectively, the leading Communist candidate was the last to be excluded from the count and his preferences went 93.5% to Labor and only 6.5% to Independent Jack Lang. However in 1955, when the Communists had again drawn Column A and Liberal-Country had drawn Column B, their third placed candidate received 73.2% of Communist preferences and the third Labor candidate only 26.3%.¹¹

A similar pattern was to show up in the 1955 and 1961 Senate contests in Victoria. In 1955, when the Communist Party drew Column D, the leading Communist candidate, Ralph Gibson, saw 8,973 of his 14,206 votes (63.16%) go to Labor (as might reasonably have been expected on ideological grounds) and only 2,915 votes (20.5%) going to the Liberal Party and 1,878 votes (13.1%) to the top DLP candidate Frank McManus, who was eventually elected. However, in 1961, when the Communist Party drew Column A and Liberal-Country drew Column B, 34,817 (74.1%) of Communist preferences went to the third Liberal candidate, 8,998 (19.2%) to the third Labor candidate and 3,163 (6.3%) to Senator McManus. Ironically this had the effect of putting the Liberal candidate ahead of the Labor candidate, and with Labor preferences going to the Liberal, Senator McManus was defeated.

In the House of Representatives seats contested by the Communist Party, it did not do as well as it had before and during World War II, with its average vote per electorate contested never rising above 5% and very rarely achieving a vote of more than 10% in individual electorates.¹² Even the Australian involvement in the Vietnam War and the controversial conscription policy

¹¹ These preference distributions from Senate contests can be found in Commonwealth Parliamentary Handbooks from the 1950s and 1960s.

¹² For a summary of average and highest votes for Communist candidates in the House of Representatives at this time, see Appendix 5.

introduced by the Holt Government, dubbed the 'lottery of death' by its critics,¹³ failed to lift the average Communist vote above 4% in 1966.

Paterson's Unique Success

Fred Paterson stood twelve times in Queensland and federal elections between 1926 and 1950, ten times as a Communist Party candidate. His highest vote was 47.34% in the state seat of Bowen in 1941.¹⁴ With the exception of one colleague in 1944,¹⁵ Paterson's vote share was over 10% higher than that of any other Communist candidates running in the same election,¹⁶ which suggests he had personal appeal beyond his party label.

The fact that Paterson's highest vote was a losing one, and that his victories were based on somewhat lower shares, reveals a lot about the conditions that facilitated his success. In 1941 Paterson lost a two-way contest with a Labor candidate. In 1944 and 1947 he faced both Labor Party and Country Party (CP) candidates.¹⁷ In 1944, his vote share was 44.51%, compared to 39.34% for Labor and 16.15% for the CP. In 1947 Paterson's vote fell to 39.34%, but Labor's vote fell even further to 30.52%, while the CP vote rose to 30.13%.¹⁸

Most crucially, the use of a first-past-the-post system in 1944 and 1947 ensured Paterson's success. Had a compulsory preferential voting system

¹³ Under the policy, young men who were too young to vote were forced to register for possible service in Vietnam under threat of indefinite imprisonment if they did not, and birthdates were drawn out of a barrel to determine whether they were or were not conscripted. It did not stop Holt winning the 1966 election in a landslide.

¹⁴ See Appendix 6 for a complete list of Paterson's party labels and vote shares.

¹⁵ V.J. Sullivan received 42.75% of the vote in (state) Herbert in a straight contest with Labor. See Colin A. Hughes and B. D. Graham, *Voting for the Queensland Legislative Assembly, 1890-1964* (Canberra: Dept. of Political Science, Research School of Social Sciences, Australian National University, 1974).

¹⁶ A typical example was the 1943 election for the House of Representatives, where Paterson received 34.2% and the next highest vote share was 11.35% in Newcastle (NSW). See Hughes and Graham, *Voting for the Australian House of Representatives, 1901-1964*.

¹⁷ Results from Queensland elections from this period can be found in Hughes and Graham, *Voting for the Queensland Legislative Assembly, 1890-1964*.

¹⁸ For detailed analysis, see Ross Fitzgerald and Harold Thornton, *Labor in Queensland* (Brisbane: University of Queensland Press, 1989), 164. The authors suggest he was the victim of more traditional gerrymandering.

been in use (as it was, and still is, at federal level), it is almost certain that CP preferences would have gone to the Labor candidate at a high enough rate to enable the latter to win on each occasion. At the 1943 federal election, where Paterson stood in Herbert (which overlapped with the State seat of Bowen), over 86% of CP preferences flowed to Labor. A similar flow in Bowen in 1944 would have seen Labor win with around 53.3% of the two-candidate preferred vote, and the figure would have risen to over 58% in 1947.¹⁹

What would have happened if the optional preferential voting system actually used in Queensland between 1904 and 1941 had been retained for later elections is far less certain. It is a reasonable surmise that one of two things would have happened. The Country Party had a choice to either abstain from the contests (as it had in 1941), making a Labor win likely, or it could put up a vigorous campaign, as it clearly did in 1947, with many volunteers handing out how to vote cards suggesting voters preference Labor ahead of Paterson. Under the second scenario, it is likely, in 1947 at least, that enough CP voters follow this advice to enable Labor to win narrowly.

It is highly unlikely that the Queensland Labor Government considered this matter when introducing first-past-the-post, and Daly's comments suggest that Communist Party welfare played no part in the considerations of the Chifley Government when it introduced proportional representation. It is worth noting, however, that there is at least one overseas example where a Communist Party was semi-intentionally blocked by an electoral system. This chapter now turns to compare the effectiveness of these systems with the Australian one.

The Fate of Communist Parties in Europe After World War II

Only in two countries in Western Europe, and only for very brief periods, did a communist party form part of a governing coalition during the Cold War era. In France, the Communist Party formed a coalition with the party led by

¹⁹ Hughes and Graham, *Voting for the Australian House of Representatives, 1901-1964*.

President Charles de Gaulle after the 1947 election. In Finland the Finnish People's Democratic League, as the Communists were known, formed a coalition with the Social Democrats and the Agrarian League after the 1946 election, and was to be part of left-centre coalitions on three later occasions. With one exception, this success was based on a vote of over 20%. Clearly a party with such a level of public support will have an impact on electoral politics under any conditions. The Italian Communist Party also maintained a vote of over 20% during this era, but it remained impotent in national government formation terms because other parliamentary parties refused to deal with it.²⁰

In five Western European countries (Austria, Denmark, Norway, Sweden and West Germany) communist parties had much lower vote shares, so electoral arrangements could be and sometimes were used to emasculate them. West Germany, with its use of a Mixed Member Proportional system, is the most notable of these.

One of the key features of (now united) Germany's MMP system is a 5% threshold barring a party from list representation unless it has won a minimum of 5% of the party list vote or won at least three electorate seats. This clause may have been introduced to prevent the re-emergence of the Nazi Party (and Hunt saw this as the major motivation behind the clause),²¹ but it turned out to be a very effective way to exclude the Communist Party. Except for the 1949 election, when it won 5.7% of the vote and 15 of the 402 seats (3.73%), the Party won no seats until German re-unification in 1991.

²⁰ Even on the occasions when the Communists received a vote of 30% or slightly more, the Christian Democrats nearly always had a larger vote and seat share and were able to form coalitions with other parties. See Gorvin, *Elections Since 1945*, 177-84. The Communists were not to form part of a governing coalition until, rebadged as the Party of the Democratic Left, it became part of the so-called Olive Tree coalition in the 1990s.

²¹ Hunt, *Why MMP Must Go*, 129.

The only other European country to use a system with Communist-foiling features is Norway, where for most of the 1990s a D'Hondt formula was used to allocate parliamentary seats to parties. Gallagher has noted the greater reductive effect that D'Hondt has on the success of small parties in comparison to the Sainte Laguë method in use in Sweden and Denmark. Gorvin's figures suggest that d'Hondt hurt the Norwegian Communist Party's representation until its disappearance at the 1961 election, although Gorvin noted the party was a spent force by this time.

By contrast, the Swedish Communist Party, with similar vote shares to its Scandinavian neighbour during the 1950s, usually received commensurate seat shares²² The party survived into the 1980s and still survives to this day as the Left Party. The Danish Communist Party also survived into the 1980s.

The Australian Comparison

Even if the limiting of Communist Party influence played no part in the thinking of the sponsors of Senate proportional representation, it is fair to say that the system did the job very well, even in comparison with the West German system, where such thinking played at least an indirect role.

The Australian Senate system did not, and still does not, have any component of a formal threshold, but the quota required for winning a seat (16.7% in a normal half-Senate election and 9.1% in a double dissolution election) proved an even bigger barrier to Communist Party success. The Communist Party could theoretically have won seats had it been able to garner preferences from other small parties, but it is clear from the results of the period that this did not happen. In most cases their vote shares were too small to matter.

²² It should be noted that in Denmark, where the Sainte Lague formula was used, the Communist Party, while not lasting as long, gained reasonable seat shares in comparison to its vote share, especially during the 1945-57 period. See Gorvin, *Elections Since 1945*, 83.

Fred Paterson's victories and failures suggest that the preferential voting system in single-member electorates was also an effective system for keeping the Communist Party out of parliament. Paterson was unable to win either a federal or state seat where either a compulsory or optional preferential voting system was used. As will be seen when One Nation's results are analysed, any party that has acquired pariah status, as the Communist Party had, will be severely disadvantaged in a preferential voting system, and will be near fatal if preference allocation is compulsory.

Issues relating to communism doubtlessly played a major role in keeping Labor out of office for 23 years, and in prompting the emergence of the Democratic Labor Party, the next minor party to be discussed here. The Communist Party itself, however, was rendered electorally impotent by a combination of the voting system and its low level of voter support. These factors were evidently overlooked by conservative politicians of the 1950s and were still being overlooked by like-minded commentator Gerard Henderson forty years later.²³ It is argued here that much of the public concern expressed about communism was very much a case of 'much ado about nothing.'

The Democratic Labor Party: A Mixed Set of Results

The Democratic Labor Party was formed in 1955 after seven Victorian federal Labor MPs who had agitated for the removal of Herbert 'Doc' Evatt as Labor leader split from the party to form what was originally called the Australian Labor Party (Anti-Communist).²⁴ They were joined by Senator George Cole

²³ Gerard Henderson, *Menzies' Child: The Liberal Party of Australia, 1944-1994* (Sydney: Allen & Unwin, 1994), 108-09. Henderson defended the ferocity of the anti-communist campaign (or more specifically the need for a ban on the Communist Party) by arguing that while senior Communist spokesmen such as Eric Aarons, although mild-mannered in appearance, posed a threat to Australia because they would have attempted to introduce Soviet-style communist policies had they managed to achieve power. Whatever the accuracy of this claim, the results of the 1949 and 1951 elections should have been evidence enough that such an achievement would be impossible.

²⁴ The most comprehensive examination of the DLP's ideology and political behaviour is provided by John Warhurst. "The Communist 'Bogey': Communism as an Election Issue in

from Tasmania. All seven Victorians lost their seats at the 1955 election, with Stan Keon in Yarra the only one who came close to survival.²⁵ They were never to win a House of Representatives seat, but their preferences flowed overwhelmingly against Labor, and were vital in keeping Labor out of office in both 1961 and 1969.²⁶

They had more success in the Senate. Frank McManus won a seat in Victoria in 1955, and the DLP had at least one sitting senator until the 1974 double dissolution election, reaching a high point of five Senators after the 1970 election. After losing all its seats in 1974, they did not return to the Senate until after the 2010 election, when John Madigan won a seat representing Victoria.

While the federal results suggest the DLP was much more suited by the Senate's PR system than by the House's single-member preferential system, the state pattern is quite different. The DLP never won a seat in the Tasmanian House of Assembly, the only state house using PR during the DLPs federal heyday. In more recent state elections using a PR system, the DLP's only successes have been in Victoria: one each at the Legislative Council elections of 2006 and 2014. On the other hand, it had some success at a series of Queensland Legislative Assembly elections (the first few of these under the name of Queensland Labor Party), and had one unique success each in the lower houses of Victoria (1955) and New South Wales (1973).

Australian Federal Politics 1949-1964", Doctoral Thesis (The Flinders University of South Australia, 1977).

²⁵ Keon lost by 791 votes to Jim Cairns, later to become deputy Prime Minister. See Hughes and Graham, *Voting for the Australian House of Representatives, 1901-1964*, 347.

²⁶ The most comprehensive analysis of how DLP preferences helped the Liberal-Country Coalition retain power is provided by Malcolm Mackerras, "Preferential Voting and the 'Donkey Vote'," *Politics* 5, no. 1 (1970), 69-76.

Even allowing for the greater preponderance of single-member systems during the DLP's strong period, the number of individual successes under those conditions (21) compared with PR-elected victories (11) seems lopsided given the federal pattern. The NSW case is easily explained: as Dean Jaensch has noted, the Liberal Health Minister, Arnold Jago, forgot to nominate in his very safe Liberal seat. He does not mention QLP/DLP success in Queensland or ask why the DLP failed to profit from the Hare-Clark system in Tasmania. An analysis of QLP/DLP candidates in Queensland gives some clues as to why results were better there than in the apparently more favourable conditions in Tasmania, and equally (un)favourable conditions in Victoria.

The QLP was undoubtedly assisted at the 1957 Queensland election by the status of its leader, Vince Gair, as incumbent Premier. Eleven of the 24 QLP candidates who had been elected as Labor members in 1956 retained their seats. The fact that only four of them were re-elected in 1960 confirms this. A comparison of the seats held in 1957, and those where QLP members lost, shows a clear demographic pattern.

There were 15 members elected under the ALP banner in 1956 who stood as QLP candidates in 1957 in provincial or rural seats. Of these, nine were re-elected and six were defeated. By contrast, the nine defectors who stood in urban seats had just two successes, one of them by the incumbent Premier.²⁷ The success of rural QLP candidates may be because the socially conservative views of the QLP would have greater appeal for country voters, but it might also be the case that country MPs carry more of a personal vote with them than city MPs.²⁸ Such a theory is supported by the fact that after

²⁷ Hughes and Graham, *Voting for the Queensland Legislative Assembly, 1890-1964*, 241-58.

²⁸ The argument that provincial and rural MPs' work can make a positive difference but that similar work by capital city MPs generally will not is made by Rodney Cavalier, "An Insider on the Outside: A Considered View on Labor Was Always Going to Lose the 1996 Election," in *The Politics of Retribution: The 1996 Australian Federal Election*, ed. Clive Bean et al. (St Leonards, NSW: Allen & Unwin, 1996), 23-33. More recently, analysis on the effects of

Gair lost his incumbent premier status, he also lost his seat at the 1960 election, along with his lone metropolitan colleague. By contrast, four of the seven country QLP members held their seats, although two became Independents shortly after the election and another was defeated in 1963. Only Les Diplock survived for three more elections, the last of these (1969) under the DLP banner, before retiring in 1972.

By contrast, only one of the seven Victorian federal DLP members, Ballarat MHR Robert Joshua, represented a provincial or rural area,²⁹ and none of the Labor MPs elected in the 1952 state election who stood as DLP candidates at the 1955 Victorian election had represented a provincial or rural area.³⁰ The evidence from these two elections is that, in the metropolitan area, commitment to a major political party appears to be more important than local member standing. Legislative Council results from this period confirm the pattern.³¹ This is also an important consideration for the next chapter, where the success rate of Independent candidates is discussed.

Townsley noted the very poor results achieved by the DLP in Tasmanian state elections, and suggested as a reason that the smiling face of the local Communist leader, Max Bound, was not the likely source of an anti-Communist scare campaign.³² Another possible explanation, and more plausible, is that the DLP was always likely to receive more votes at a federal rather than a state level, especially when it is realized that the issues the DLP placed the major emphasis on (foreign affairs, defence and, to a lesser extent

incumbency has been carried out by Simon Jackman, "Incumbency Advantage" in *Mortgage Nation: The 2004 Australian Election*, ed. Marian Simms and John Warhurst (Perth: API Network in association with Curtin University of Technology, 2005), 335-47.

²⁹ Hughes and Graham, *Voting for the Australian House of Representatives, 1901-1964*.

³⁰ Colin A. Hughes and B. D. Graham, *Voting for the Victorian Legislative Assembly, 1890-1964* (Canberra: Dept. of Political Science, Research School of Social Sciences, Australian National University, 1975), 341-57. E.L. Morrissey had won the urban/rural fringe seat of Mernda for Labor in 1952, but lost as a DLP candidate in the entirely urban seat of Reservoir in 1955. The only DLP success was in the inner metropolitan seat of Richmond.

³¹ Colin A. Hughes and Don Aitkin, *Voting for the Australian State Upper Houses 1890-1984* (Canberra: Australian National University, 1986), 66-68 & 73-76.

³² Townsley, *The Government of Tasmania*.

industrial relations) were principally federal issues. However, as the table below shows, there is a much larger gap in the levels of DLP support in Tasmania at state and federal levels than in either Victoria or Queensland, and to a lesser degree, New South Wales.

Table 6.2 Average DLP Vote Share at State and Federal Levels During Era of National DLP strength, 1955- May 1974

State	House of Representatives	Senate	State Lower House
Victoria	11.89%	14.46%	13.48%
Queensland	7.48%	11.74%	9.42%
Tasmania	5.83%	8.62%	3.24%
NSW	4.94%	5.34%	2.72%

Source: Hughes, *A Handbook of Australian Government and Politics*, Vols 1 and 2.

These figures suggest that, to some extent, the Victorian state vote was only minimally affected by Rae's distal effect, while the Tasmanian House of Assembly vote was hardly moved by the allegedly favourable proximal effect of proportional representation. The figures provided by Warhurst suggest a possible reason why.³³

Tasmania was (and still is) notable for its low percentage of Catholic voters. Although McManus strenuously denied that the DLP was a Catholic party, Jaensch argues that it was definitely a party of (and for) Catholics.³⁴ It seems likely, therefore, that Tasmanian DLP voters were much more likely to vote on specific local issues rather than ideology as, especially in Victoria, voting DLP was much more a tribal thing.³⁵

³³ Warhurst, "The Communist 'Bogey'", 431.

³⁴ Dean Jaensch, *Power Politics: Australia's Party System*, 3rd ed. (St Leonards, NSW: Allen & Unwin, 1994).

³⁵ The main reason why DLP voting in Victoria was so tribal was that Melbourne's Catholic Archbishop Daniel Mannix, and some influential country town parish priests (most notably those in Ballarat and Bendigo) publicly condemned the ALP for not being sufficiently anti-communist, and urged their followers to vote DLP. Urgings in other states were either far less vocal or were delivered by less influential clerics. Catholic Archbishops in both SA and WA remained publicly neutral during this period.

A quirk in the Hare-Clark system hurt the DLP in 1959, the year of its highest vote (5.39%) in a Tasmanian election.³⁶ In its best electorate (Franklin) it appeared that, on party votes alone, the DLP could have won a seat, as its vote of 7.68% represented 0.62 quotas, compared to Labor's 3.70 quotas and Liberal's 3.50 quotas.³⁷ Under a ticket voting system of proportional representation, it is likely that the fourth-placed Liberal candidate would have been excluded before the leading DLP candidate, ensuring that candidate's success on the former's preferences. But after the election of the two leading Liberals, Jackson and Miller, the remaining Liberals had 3,384 and 3,015 votes respectively, keeping them ahead of leading DLP candidate Virgil Morgan on 2,498 votes. The quota was 4,014, so had a ticket voting option been in place, it is likely that the third Liberal would already have reached the quota, but the fourth Liberal would be behind Morgan. As it happened, Morgan's preferences flowed heavily enough to both Liberals to ensure their election over the fourth-placed Labor candidate.³⁸

The DLP enjoyed a brief revival in Victoria's Legislative Council in 2006, and also had single wins in the 2010 Victorian Senate contest and the 2014 Legislative Council election. As we saw in the previous three chapters, smaller parties of the (mostly) right had worked out how to manipulate a ticket-based PR system to enable themselves to win seats. The Senate and Tasmanian systems in use immediately after World War II provided no such advantage for the DLP in spite of its much larger vote share. The DLP also suffered because it was regarded with such hostility by Labor that the major party chose to direct its preferences instead to Liberal/Country. By the 2000s, Labor's

³⁶ Hughes and Graham, *A Handbook of Australian Government and Politics*, 1, 609.

³⁷ Hughes and Graham, *Voting for the South Australian, Western Australian and Tasmanian Lower Houses, 1890-1964*, 545.

³⁸ At the end of the count, the fourth-placed Liberal led the fourth-placed Labor candidate by 605 votes. Preferences counts have been obtained from the Tasmanian Electoral Commission website (www.electoral.tas.gov.au).

attitude had mellowed so much that DLP candidates were occasionally preferred over the Greens.

The Australian Democrats and PR: A Perfect Match?

While the Australian Democrats were formed under the leadership of former Liberal Minister Don Chipp in 1977, Warhurst sees their inspiration as coming from two other sources.³⁹ One was the Australia Party, which had been briefly led by Tasmanian Independent Senator Reg Turnbull at the 1969 federal election, but otherwise had no electoral success. The other was the Liberal Reform Movement, a group of 'small l' liberals from within and outside the Liberal Party who, under the label of Liberal Movement, had some electoral success in South Australia but not elsewhere.

The first person to be elected under the Australian Democrats label was Robin Millhouse, who had originally been elected to the South Australian House of Assembly in 1965 as a Liberal and Country League, but had resigned from that party in 1974 to join the Liberal Movement. He was re-elected as member for Mitcham in 1975, but when most members of the Liberal Movement chose to re-join the Liberal Party in 1976, Millhouse refused and opted to join the Democrats upon their formation. He retained his seat at the 1977 and 1979 elections before resigning his seat to take a position as a Supreme Court judge.

In winning a single-member seat as a Democrat, Millhouse is very much the exception to the rule. No other Democrat has ever won a federal, state or territory single-member district at a general election. Heather Southcott held Millhouse's seat at a 1981 by-election, but lost it to a Liberal at the 1982 general election at the same time the state was voting out the Tonkin Liberal Government.

³⁹ John Warhurst, *Keeping the Bastards Honest: The Australian Democrats' First Twenty Years* (St Leonards, NSW: Allen & Unwin, 1997), 23.

Don Chipp led the Australian Democrats at the 1977 federal election under the catchy slogan of 'Keep the Bastards Honest', but the first senator to sit as an Australian Democrat was Janine Haines, who had been chosen by the South Australian Parliament to fill the casual vacancy left by the decision of Liberal Movement leader Steele Hall to rejoin the Liberal Party and contest a House of Representatives seat. Haines did not stand in the 1977 general election,⁴⁰ but Chipp was elected as a Senator for Victoria while Colin Mason won a Senate seat in New South Wales. The Democrats' nationwide House of Representatives vote of 9.38% did not win them a single seat in that chamber,⁴¹ while their Senate vote of 11.13% won them two seats.⁴² With 5.88% of the Senators elected at this election, the party was still under-represented.

The Democrats' vote declined in 1980, to 6.57% in the House and 9.25% in the Senate, but their Senate representation improved as three extra seats were won in Victoria, Queensland and also South Australia, where the result enabled the return of Haines after a three-year interregnum. This time, the Democrats were only slightly under-represented with 8.85% of the elected Senators.

The party was to maintain a healthy representation in the Senate for the next 21 years, with their highest share of the vote being 12.6% in 1990 and a low point of 5.3%. Acrimonious disputes over policy and leadership contributed to the terminal decline of the party after 2001, resulting in the Senate vote

⁴⁰ By the time of Haines' accession to the Senate, the Democrats had already preselected their Senate candidates. Their number one candidate in SA, Ian Gilfillan, narrowly lost the last seat to be decided to the third placed Liberal Baden Teague.

⁴¹ The highest vote achieved by a Democrat candidate was 18.64% in Bonython (SA), closely followed by 18.36% in Chipp's former seat of Hotham (Vic).

⁴² Their highest vote in any state in the Senate contest was 16.2% in Victoria, and the lowest 5.86% in Tasmania. See Malcolm Mackerras, *Elections 1980* (Sydney: Angus & Robertson, 1980), 236.

slumping to 2.09% in 2004 and 1.29% in 2007. It won no seats at either election.

The total failure of the Democrats to win seats in the House of Representatives, compared with its reasonable results in the Senate, are certainly indicative of the ability of a proportional representation system to assist a minor party. Results in single member electoral systems in the states indicate the same thing. Yet results obtained in multi-member systems in the states and territories do not present a completely rosy picture either. South Australia stands out as a beacon of success for the Democrats: they won a seat in every Legislative Council election from 1979 to 2002 inclusive (and two in 1997) and their vote share never fell below 5% in that time. In the other states the party's results were patchy at best. After the adoption of proportional representation for the Legislative Council in Western Australia, The Democrats received an average vote of 3.56%, ranging from 6.58% in 1996 (the only election at which it won seats) to 0.93% in 2005 after the federal party implosion. In New South Wales it won Legislative Council seats only sporadically after the introduction of proportional representation in 1978.⁴³ Tasmania and the Australian Capital Territory turned out to be barren ground for the Democrats in spite of the use of Hare-Clark: only twice (1982 in Tasmania, 2001 in the ACT) did the Democrats win a seat at a general election. The 1982 victory for Norm Sanders in Tasmania followed his original success in a 1980 by-election.⁴⁴

It is argued here that it was not just proportional representation that helped the Democrats achieve Senate success, but also because the image that the

⁴³ Hughes, *A Handbook of Australian Government and Politics 1985-1999*, 4, 288-311. The Democrats won just one seat in every Legislative Council election covered by this (the 4th) edition, but it failed to win a seat at two of the three elections under PR covered by the 3rd edition, and won no seats after 1999.

⁴⁴ The Court of Disputed Returns ordered this by-election after irregularities in declarations of campaign expenditure of several successful candidates were discovered. Casual vacancies in the House of Assembly are filled by countback, not a by-election.

party tried to create for it, and the role it assumed once elected, were ideally suited to the circumstances. In 1977 the Fraser Government held a record majority and opinion polls suggested it would be comfortably re-elected, so it can be argued that a call to 'keep the bastards honest had some resonance. The same circumstances did not exist in New South Wales in 1978 or at most Western Australian elections referred to here. 1996 was in fact the only election where the atmosphere of the time was similar to the federal atmosphere in 1977.

In later New South Wales elections the Democrats always had to compete with Fred Nile's Call to Australia Party (later the Christian Democrats) for the role of the third force. While it is the case that the Democrats and Nile did not compete over the same ideological ground (in fact Chipp and Nile had little in common), it is argued that the two groups competed for the votes of those who wanted to place 'a pox on the major party houses.' Because a Labor Government was in power more often than not, Nile, with his ultra-conservative views, would have appeared a more likely candidate for voters who wanted to keep them under control, rather than the more liberal Democrats. The issues Nile chose to emphasise (opposition to homosexuality and support for censorship) were specifically state issues, while the Democrats' interests ranged more widely across the spheres of government.

The lack of success in Tasmania and the ACT can also be partly explained by the presence of a strong rival (the Greens) that, unlike Nile, shared similar ideological ground. Yet Tasmania in particular is also relevant as illustrating the paradox of proportional representation, especially when used for a lower house. The DLP were similarly unsuccessful, which is possibly explained by the fact that the Labor governments of the 1950s and 1960s were socially conservative and constrained by an upper house dominated by conservative Independents. For the Democrats, their principal message was nullified by the former factor: the conservative Legislative Councillors would have been seen

as the best people to keep the Labor government honest, but also because under the Hare-Clark system, large majorities are non-existent. The fear of giving a party too big a majority simply does not arise.

Analysis of previous chapters suggests that, as a general rule, differences in district magnitudes made little difference to Democrats' representation, although it could be argued that the high district magnitude in New South Wales (and therefore the lower quota) was the main reason why the Democrats survived in that state. It does appear, however, that only in the Senate, and to a lesser extent South Australia, can proportional representation and the Democrats be said to have been a perfect match.

One Nation: Not Much Help from PR - Until 2016

Even more so than the Democrats, One Nation came to be identified with the persona of one person. Pauline Hanson, who had originally been endorsed as the Liberal candidate in what was thought to be the safe Labor seat of Oxley for the 1996 federal election, was disendorsed after making allegedly racist remarks to a local newspaper.⁴⁵ In the absence of an official Liberal candidate, she won the seat as an Independent with a swing of nearly 20%. A few months after election, she made a controversial maiden speech in which she targeted Asian people for particular condemnation. Although many condemned the speech, it received lavish praise in other quarters, and the support Hanson received from the public and in the media convinced her to set up a party structure.⁴⁶

Unlike the Democrats, One Nation has had two chronologically separated periods of electoral success. The party first stood candidates in most seats at the 1998 Queensland election, receiving 22.68% of the vote and winning 11 of

⁴⁵ For an account of how these issues affected the 1996 campaign, see Pamela Williams, *The Victory: The Inside Story of the Takeover of Australia* (Sydney: Allen & Unwin, 1997).

⁴⁶ The nature of this party structure was to land Hanson in legal difficulty. She was found guilty of electoral fraud and served a short prison sentence, although the conviction was later quashed after an appeal

the 89 seats.⁴⁷ It did not fare nearly as well in that year's federal election, winning just one Senate seat (in Queensland) while Hanson lost to the Liberal Party in the House of Representatives seat of Blair.

One Nation successes were rare and sporadic for the next 17 years: one seat at the 1999 New South Wales Legislative Council election, three seats each at the 2001 Western Australian Legislative Council and Queensland Legislative Assembly elections, and single successes for Rosa Lee Long in the Queensland elections of 2004 and 2006.

One Nation's pre-2016 performance thus resembled the DLP's performance forty years earlier: more successes in single-member electorates (16) than in PR-elected houses (five), but to an even greater extent. Why was this so? A look at One Nation's Senate vote between 1998 and 2004 gives some clues, but does not tell the full story.

Table 6.3 One Nation Vote by State / Territory, 1998-2004

Year	Aus	NSW	Vic	QLD	WA	SA	TAS	ACT	NT
1998	9.0%	9.6%	4.1%	14.8%	10.4%	9.7%	3.8%	4.9%	9.3%
2001	5.5%	5.6%	2.4%	10.0%	7.0%	4.6%	3.3%	2.3%	4.7%
2004	1.7%	1.7%	0.7%	3.1%	2.4%	1.1%	0.0%	0.0%	0.0%

Sources: 1998 and 2001 results: Australian Electoral Commission, *Electoral Pocket Book*, (AEC, Canberra, 2002), 2004 results: Australian Electoral Commission, *Electoral Pocket Book*, (AEC, Canberra, 2005).

One Nation lost much of its 1998 vote in 2001, in spite of choosing two higher profile candidates, Hanson herself in Queensland and former Labor MP for Kalgoorlie Graeme Campbell in WA. It is possible that John Howard's strong stand against unauthorized boat arrivals had the effect of bringing some One Nation voters back to the Liberal-National fold. Then-WA One Nation MLC

⁴⁷ Hughes, *A Handbook of Australian Government and Politics 1985-1999*, 4, 329.

Frank Hough attributes Liberal gains to ‘the filching of One Nation policies,’⁴⁸ although the opinion poll evidence is unconvincing in this respect. One Nation’s 2004 vote was hurt by Hanson’s decision to stand in competition to incumbent Queensland One Nation Senator Len Harris. Neither was successful.

One Nation’s 2004 vote was never going to be enough to win a seat anywhere in the days before organised preference deals became widespread. However, its 2001 vote shares in Queensland and Western Australia and its 1998 vote in NSW and WA represented reasonable proportions of quotas, and therefore theoretically gave their lead candidates a chance. Before analysing the reasons why they were not successful, it is worth noting two Pauline Hanson efforts in majoritarian contests that give some clues as to why One Nation performed much better in the 2016 Senate contests than in earlier ones.

In the Queensland and federal elections of 1998, Labor had taken the strong stand to advocate that their voters place One Nation candidates last, partly out of principle, partly because the party hierarchy recognized the threat One Nation posed in certain outer metropolitan and country seats, and partly because any decision to favour One Nation candidates in preference allocations would alienate their ethnic voter base. Consequently, Hanson was unable to hold her chosen House of Representatives seat of Blair, in spite of her 35.97%, primary vote being over 4% above the combined Liberal-National vote. By the time all candidates except those of One Nation, Liberal and Labor had been eliminated, Hanson’s lead over eventual Liberal winner Cameron Thompson had increased to 7.19% but a strong 73.76% flow of Labor preferences to Liberal saw Thompson win with a two-candidate preferred vote of 53.4%.

⁴⁸ Frank Hough, "Pauline Hanson's One Nation," in *2001: the Centenary Election*, ed. John Warhurst and Marian Simms (Brisbane: University of Queensland Press, 2002), 151-54.

At the 2015 Queensland election, however, Hanson came within 110 votes of winning Lockyer from sitting LNP member Ian Rickuss, even though she had polled just 26.7%, compared with 33.7% for Rickuss. While Hanson had received significant assistance from the Katter's Australian Party candidate (a flow of 60.8% of KAP voters indicating a further preference had narrowed the Rickuss lead to 4.01%), it was the changed behaviour of Labor voters that rendered Antony Green's election night prediction of a comfortable Rickuss win erroneous.⁴⁹

After 1998, Labor generally urged its voters to 'just vote 1' aware that other parties were hurt more by vote exhaustion and that One Nation posed a diminishing threat. Consequently Labor felt no need to advocate a vote for Rickuss over Hanson. Without such recommendation, 58.5% of Labor voters indicating a further preference favoured Hanson, while some other votes moved into the exhausted column. Rickuss was thus elected with a two candidate preferred vote of 50.22%.

We cannot say with certainty what would have happened had Hanson's 1998 tilt been held under optional preferential voting, beyond suggesting the result would have been much closer. The results in contiguous state seats of Baranbah and Lockyer at the state election earlier that year suggests the possibility of two different results.⁵⁰

It is far easier to predict the result of the 2015 Lockyer contest under compulsory preferential voting. Labor would have directed its preferences to the LNP (as it did in 2017 after the restoration of compulsory preferences) for

⁴⁹ Antony Green on ABC TV coverage of Queensland election, 31 January 2015.

⁵⁰ See Appendix 7 for results in Blair under hypothetical optional preferential voting at the 1998 federal election and see Appendix 8 for Distribution of Labor preferences in Barambah and Lockyer at the 1998 Queensland Election. Thompson wins narrowly on a Lockyer-style preference distribution, while Hanson wins narrowly on a Barambah-style flow..

fear of promoting an ethnic voter backlash if it favoured Hanson, and the higher flow of preferences to Rickuss would have ensured Hanson came nowhere near winning the seat. As it was, her near defeat no doubt boosted her morale for the 2016 Senate contest. As will be seen, this election illustrates a deviation from the normal pattern in that One Nation, unlike other minor parties, was advantaged rather than disadvantaged, by a voting system that gave voters more options in the way they distributed their preferences.

Voters were given the opportunity to exhaust their votes that they had never had in any previous Senate election. Political parties also had the freedom to suggest to voters that they could vote for as many, or as few, additional parties as they wished. Under these conditions, this thesis argues it makes logical sense that One Nation flourished. The lower quota applying at the 2016 Senate double dissolution election also helped them.

The 2016 Senate Election: Back Comes One Nation

Malcolm Turnbull's decision to call a double dissolution election would no doubt have given Hanson hope that she could win a Senate seat in Queensland because of the subsequent lower quota (7.69% of the statewide vote as compared to 14.29% in a normal half-Senate election) and the anecdotal evidence of a mid-campaign marginal seat Newspoll would have further encouraged her. Her success at the election was not unexpected. What did surprise many observers is that One Nation received a nationwide Senate vote of 4.29%, up 3.76% on 2013 figures, and that vote netted the party 5.26% of total seats. The other successful Senate candidates were Brian Burston (New South Wales), Rod Culleton (Western Australia) and most surprisingly of all Malcolm Roberts, Hanson's number two in Queensland. What has changed since 1998, when One Nation's vote share was somewhat higher, but its seat share considerably lower?

Clearly the lower quota has helped the party. Hanson herself was over a quota, but under normal circumstances (a half Senate election) she would have held just 0.64 quotas. This might have been enough for her to win a seat, although the evidence from the 1998-2001 election was that it would not have been. We can say for certain that Roberts would not have won a seat under the higher quota as he would have been eliminated before he had a chance to receive surplus votes from Hanson or preferences from other parties. The higher quota might also have been fatal for Burston's and Culleton's chances: their quota tallies become 0.26 and 0.28 respectively, a figure that even under 2016 conditions proved not to be enough.⁵¹

It is argued here, however, that the changes to Senate preference allocation rules that have helped One Nation most of all. Under the 1984-2013 system, voters were forced to vote for all candidates, either directly below the line or effectively with a number '1' ticket vote above the line and, as mentioned in previous chapters, voters had a strong incentive to choose the latter method. Consequently, political parties had a much greater level of control over how their voters allocated their preferences. The new system diluted the impact of One Nation's pariah status and, as will be seen, enabled Roberts to get elected.

Under the new voting system, the approach of all parties with enough people and resources to hand out how to vote cards was to suggest to voters that they only indicate preferences for as many above-the-line boxes as they saw as necessary and desirable. For the Liberal Party, this meant six in all states, for Labor, it usually meant just two (themselves and the Greens). The Greens suggested six in most states: usually themselves, other smaller parties of the left, and then Labor. The small parties of the right generally did not have enough volunteers to hand out how to vote cards, but one that did (Family

⁵¹ It was not enough in 2016 in either South Australia or Tasmania, where quota shares of 0.38 and 0.33 respectively failed to win One Nation candidates a seat, although, as seen in Chapter 4, the Tasmanian lead candidate came very close to winning.

First in South Australia) suggested placing a '5' in the One Nation above the line box.

An indication of how well One Nation was placed to win Senate seats in three states is provided by the table below.

Table 6.4 Total Quotas Held by Highest Polling Parties / Groups where One Nation Won Senate Seats, 2016

State	Lib/Nat	Labor	Green	One Nation	Next Highest
NSW	4.67	4.07	0.96	0.53	0.39 (LDP)
QLD	4.59	3.43	0.90	1.19	0.37 (LDP)
WA	5.00	3.67	1.37	0.52	0.33 (NAT)

Source: Australian Electoral Commission: <https://results.aec.gov.au/20499/Website/SenateStateResultsMenu-20499.htm> (accessed 14 November 2018).

It so happened that the parties with the highest remainders won the last four seats. This pattern matches those of the other states and territories where, of the eight seats won by groups on the basis of partial quotas, only one (Family First in South Australia) came at the expense of a group with a higher remainder.

One factor helping One Nation in 2016 that was absent in 1998 was that it received generous preference shares from other parties running on xenophobic or Islamophobic platforms. The Australian Liberty Alliance (ALA) was particularly helpful in this regard: One Nation received 35% of their preferences in Queensland and 36% in New South Wales. But it was not just preferences from like-minded parties of the right helping them.

In Queensland, Roberts received the highest share of any continuing candidate from the centrist Derryn Hinch's Justice Party candidate and these preferences put him ahead of incumbent Senator Glen Lazarus for the first time. In New South Wales ALA preferences also helped Burston, and he

received a higher share of preferences (9.96%) from the leftist Animal Justice Party (AJP) than any other candidate. This apparently low figure can be explained by the fact that 51.8% of the AJP vote exhausted, which is unsurprising when it is noted that the only remaining candidates were from the centrist Nick Xenophon Team (who received the second highest share of 7.14%) and six other parties to the right of centre.

The way the new system changed the behaviour of larger parties and their voters also helped One Nation. In 1998, both major parties placed One Nation below the other major party in all states (Liberal-National much more reluctantly than Labor) for fear of fuelling an ethnic voter backlash. The only place where the Liberal-National's decision might have made a material difference was in New South Wales, where Labor's number 3 candidate Michael Forshaw defeated One Nation's David Oldfield on a heavy (99.44%) flow of preferences from the surplus of from newly elected Democrat Aden Ridgeway, heavily augmented by votes delivered via Liberal, National and the Greens.⁵²

Had 2016 rules applied then, it is highly likely that Liberal-National would have made no recommendation between One Nation and Labor,⁵³ making it possible that Oldfield could have withstood the likely strong flow of Democrat and Greens preferences to Labor.

The 2001 Queensland Senate contest, while less likely to have produced a different result under 2016 rules because Hanson unsuccessfully competed

⁵² Australian Electoral Commission, "Election 98: National Results," (Canberra: Commonwealth of Australia, 1998), 56.

⁵³ This was what happened in the 2016 Queensland Senate contest. When the fifth placed, and last remaining, LNP candidate Barry O'Sullivan was elected, only Family First (whom the LNP how to vote card had suggested placing second), One Nation and Labor candidates remained in the count. 44% of LNP preferences followed the card with 14% drifting to One Nation, 11% to Labor and the rest exhausting. One Nation now did slightly better from the now excluded FFP candidate, but the portion of the Labor portion put its number four candidate, Chris Ketter, over the quota while Malcolm Roberts, still short of a quota, won election ads the last remaining candidate.

for the last available seat with the Democrats' Andrew Bartlett, would certainly have been much closer. All of Labor, Greens and Liberal would have recommended a preference for Democrat over One Nation, the first two for ideological reasons, and the Liberals because the Democrats had helped to pass the Howard Government's signature Goods and Services Tax legislation and also because they did not wish to offend a party with some useful preferences to deliver in House of Representatives contests. It is more likely than not that the combined remainder 0.46 quotas would have gone to Bartlett in sufficient numbers to enable him to bridge the gap on Hanson, whose party had an initial primary vote lead of 0.70 quotas to the Democrats' 0.47 quotas. However, the 2016 results in Western Australia (to be analysed below), and also in South Australia,⁵⁴ show that preference flows between larger parties of the left are much weaker when voters have to consciously indicate their preferences even if recommended to do so by a how to vote card. The very least that can be said about the 2001 contest is that Hanson would have had a fighting chance of defeating Bartlett if the 2016 rules had been in use then.

Western Australia is probably the state that best illustrates the contrast between the 1998-2001 and 2016 circumstances and how the change in the behaviour of a large party (Labor) possibly altered the result. In 1998 it was a large batch of 54,441 surplus votes (amounting to around 0.35 of a quota) from newly elected Democrat Brian Grieg, but heavily augmented by preferences delivered from Labor and the Greens, that ensured the victory of Liberal number three Sue Knowles over One Nation's John Fischer. Knowles received a massive 98.49% of Grieg's surplus.

In both 1998 and 2016 a Labor candidate was the third last to be eliminated. Under the system prevailing before 2016, a very high (87.62% of preferences) went to the only remaining party of the left, the Democrats. The system was

⁵⁴ When the preferences of re-elected Greens' Senator Sarah Hanson-Young were distributed,

not decisive in ensuring Greig's win: it is highly likely that under the 2016 system enough Labor voters would have given Greig their preferences to win comfortably, especially if, as would have been almost certain, they had been advised to do so by a how to vote card. Both party and voter behaviour might well have been radically different in relation to the Liberal Party. Labor might well have given no recommendation of preferences between Liberal and One Nation, and even if they had, it is quite likely that many Labor voters would have ignored such advice.

Evidence for such a scenario is provided by what happened in 2016. While Labor's how to vote card recommended a second preference for the Greens and no other preferences, only 60.62% of Labor voters followed this advice. 14.27% went to National, 10.39% went to One Nation and the remaining 14.72% exhausted. One Nation's share of total Labor preferences was slightly lower than in 1998, but it left Culleton only 309 votes short of a quota and well ahead of the now eliminated National candidate Ken Muir. Muir's voters then indicated a further preference split roughly evenly between Culleton and number two Greens candidate, Senator Rachel Siewert.

Results in the 2018 Queensland election showed how much One Nation was hurt by compulsory preferences. The return to the arrangement that last applied in a Queensland election in 1989 saw One Nation win just one of the 93 seats in spite of an overall vote of 13%. Labor returned to its 1998 policy of preferencing One Nation below Liberal-National, and most of its supporters followed its advice.

Overall assessment of One Nation

The major instructive point about the success or otherwise of One Nation is to illustrate the importance of the preferential component of Australia's proportional representation system. The party's results run contrary to the general pattern for minor and (especially) micro party success: it thrives when

voters have more control over how they cast their preferences. Systems of compulsory preferences have hurt the party when it suffered from general pariah status, but the impact of this is considerably diluted once preference allocation is left to the voters. This remains so even allowing for the fact that left of centre parties exchange preferences with each other. There will be far less discipline when having to choose between a range of right of centre parties.

Katter's Australian Party: Strictly a Single-member District Phenomenon

Bob Katter's Australian Party was founded by a man whose family have been active in Queensland and federal politics for over sixty years under a range of party labels. Robert Carl 'Bob' Katter had been a parliamentarian for nearly forty years when he formed his party in 2012. His father, Robert Cummin 'Bob' Katter Senior was a federal Country/National Party MP between 1966 and 1990, and his son Robbie Katter was one of two MPs to be elected to Queensland's Legislative Assembly in 2012.

Even if the Party thought that two seats (2.25% of total seats) a poor return on a statewide vote of 11% in the 2012 Queensland election, they would have had high hopes of achieving success at federal level, with Bob Katter running in Kennedy stronghold (which he had held for 20 years) and a high-profile country singer (James Blundell) as its lead Senate candidate in Queensland.⁵⁵ Those hopes did not materialise, as Katter retained Kennedy with a much reduced majority and the Senate ticket polled just 3.35%.

In the two most recent Queensland elections, the party has contested only a small number of seats it thought it could win, and consequently the party received better value, retaining the same two seats in 2015 and adding a third

⁵⁵ A poll published in Crikey on 20 February 2013 put KAP support in the Queensland Senate contest at 7%, a figure commentator William Bowe felt was lower than the actual support level.

in 2018. Bob Katter retained Kennedy comfortably in 2016, but his party again polled poorly in the Senate.

This is a scaled down version of a regionally concentrated party being able to win a disproportionate share of seats in a single-member system. However, there is one element of the party's failure in the 2013 Senate contest that related as much to election timing as to the voting system. Had KAP polled as well in the Senate contest as it had in the 2012 Queensland election, it is highly likely that it would have won the sixth seat. In the end, Katter was overwhelmed by the greater publicity generation of Clive Palmer and the high profile of the Palmer United Party's lead candidate, former rugby league great Glen Lazarus.

A Short Note on New Zealand Under MMP

Just as the generally high quotas under Australia's single transferable vote system have restricted the number of parliamentary parties, the requirement under New Zealand's Mixed Member Proportional system that a party either win at least one electorate seat or reach a nationwide 5% vote threshold to win parliamentary seats has a similar effect. In theory, the latter task would appear the easier one, especially as the use of first past the post to decide electorate seats ought to disadvantage minor parties because they cannot receive preferences from the lower polling major party as happens in Australia. Yet as the table below shows, more minor parties owe their parliamentary status to electorate level success.

Only one party (Greens) has never had to rely on its ability to win an electorate seat, and only one other has had to rely on that method less often than its ability to reach the 5% threshold. And it is fair to say that only one of the other five (the Maori Party) has succeeded because of its ability to win seats in a regionally concentrated area (namely the Maori seats). Is there a particular pattern that explains the electorate level success of the other four?

Table 6.5 Frequency and Method by which Minor Parties Won Seats in the 8 New Zealand Elections under MMP, 1996-2017

Party	Electorate Seat win	5% National Vote	Both	Neither
NZ First	1	4	2	1
Alliance/Anderton	3	0	2	0
ACT	5	2	1	0
United Futures	6	0	1	0
Greens	0	6	1	0
MANA	1	0	0	3
Maori Party	3	0	0	1

Source: Elections New Zealand: www.electionresults.govt.nz (accessed 14 November 2018)

Only the Maori Party fits the most common pattern for smaller parties that do well in single-member system: the ability to win a concentrated level of support in a handful of seats. In the Maori Party's case, these were the seats reserved for voters identifying as Maori. They got next to no support in general electorates.

Especially in the case of United and the Anderton Coalition, both parties might possibly have owed their success to a perception that local voters saw leaders Peter Dunne and Jim Anderton as quasi Independents, and the reduced list vote for the parties within their electorates suggest this.⁵⁶ But this cannot be said of ACT: while since 2005 they have relied on their ability to win Epsom for their parliamentary existence, they have won the seat with three different candidates, namely Rodney Hide (2005-08), John Banks (2011) and David Seymour (2014-17).

⁵⁶ A typical example of this was at the 2005 election, where Dunne polled 57.11% of the electorate vote in Ohariu, but United Futures received just 5.54% of the Party list vote within the electorate. See Appendices 6.6 and 6.7 for full figures.

The most likely reason for the much higher electorate vote for the three parties is the effect that the 5% threshold had on voter behaviour. Voters who wished to vote for either of these three parties at electorate level did so in the knowledge that even if their candidate lost, their party list vote (provided it was cast for a party that did reach the threshold) would still help elect a list candidate. By contrast, a voter for one of these parties could not be so confident about their party list vote, for if the party did not reach the threshold, there was a real risk both their votes would, to use Mackerras' phrase, end up in the rubbish bin.

Overall Conclusion

The results obtained by the parties analysed in this chapter that deviate, to one degree or another, from the common patterns for minor parties under proportional and non-proportional electoral systems in the two antipodean nations could be seen as exceptions that demonstrate the accuracy of existing conventional wisdom. They also indicate that party systems are influenced by factors other than voting rules. Perhaps the most important factor, however, is the multi-option nature of the systems used: preferential voting, bicameralism or a combination of both in Australia and the two-vote aspect of the New Zealand system.

It makes sense that preferential voting, whether used in single-member or multi-member systems, will dilute the impact of Rae's distal effect: voters can experiment with a vote for a small party, knowing that if that party fails to win a seat, they can cast a second preference for a larger party that has good chance of success and thus deprive a more disliked large party of a seat. A politically savvy New Zealander can similarly experiment with one of their votes in the knowledge that the other one will probably help elect somebody they like.

Chapter 7

Does Proportional Representation Favour Independents?

In the last chapter we saw that while smaller parties had generally done better under proportional representation systems than in single-member ones, the picture is more mixed than conventional wisdom might suggest. The fate of Independent candidates under Australian conditions shows an even more mixed picture, and the question of whether proportional representation (more specifically, the single transferable vote form of it) favours Independent candidates is much more in dispute.

Wilfrid Townsley has made the claim that Independents have succeeded in Tasmania under the Hare-Clark system while minor parties had, to that point, failed.¹ Campbell Sharman has claimed that Independents have the chance to be elected to the Senate whereas, in the case of a House of Representatives election, their only chance for election is if they had reasonably recent membership of a major political party.²

A more recent work by Brian Costar and Jennifer Curtin has made a contrary claim, arguing that the Senate voting system has not favoured the election of Independents, and that Tasmanian cases offer most of the exceptions to the general rule.³ A cross-national analysis made by Dawn Brancati has argued that, contrary to the views of many of her American academic colleagues,⁴ majority and plurality systems are of more help to Independent candidates because they can emphasise the individual over the party.⁵ However, she does make a clear distinction between single transferable vote methods of

¹ Townsley, *The Government of Tasmania*, 157.

² Sharman, "The Representation of Small Parties and Independents".

³ Costar and Curtin, *Rebels With a Cause: Independents in Australian Politics*, 51.

⁴ See, for example, Paul Abramson et al., "Third Party and Independent Candidates in American Politics: Wallace, Anderson and Perot," *Political Science Quarterly* 110, no. 3 (1995) 349-67.

⁵ Brancati, "Winning Alone: The Electoral Fate of Independents Worldwide".

proportional representation, which give Independent candidates some chance, and list systems, which severely limit the chances of Independent candidates.

This chapter will analyse the success rates of Independent candidates in Australian jurisdictions, with the main emphasis placed on comparisons between houses using proportional representation to elect their members, and the corresponding house in the same jurisdiction using a single member preferential voting system. It will be seen that Independent candidates have a poor record in state houses elected by proportional representation, and this thesis will argue that the use of a ticket voting option in most of those houses (thus turning the system into one more closely resembling a closed list system rather than an STV one) is a major reason for this outcome. It will also be argued that the absence of a ticket voting option in the Senate for much of the time it used a PR system is one reason why federal parliament presents a slightly deviating case. This chapter also acknowledges the other factors at work in single-member jurisdictions that make Independent success more likely than in PR-elected houses.

One difficulty (acknowledged by Brancati)⁶ for anyone wishing to undertake a cross-national study of any type of voter behaviour under a Single Transferable Vote system is the small number of countries that use it. Ireland and Malta are the only two countries currently using STV in their lower houses, and Estonia also used STV for its first post-independence election in 1990, before reverting to a list system for subsequent elections. Some comparison will later be made of these countries, as well as some preferential/STV elections in some Canadian provinces.

⁶ Ibid.

It will also be argued that Sharman's suggestion of a link between Independent success and previous membership of a political party applies just as strongly to those elected under STV systems as single-member ones.

A Problem of Definition

It is a much more complicated matter than to simply say that an Independent is somebody who had the Independent label against his or her name on the ballot paper, and represented themselves to the electorate as such. Leaving aside for a moment the fact that it was not until the 1970s that party labels began to appear on ballot papers (and this factor will later be suggested as one that helped Independent candidates in the past), there remains a question about whether certain candidates should be regarded as Independents even if they claimed to be so either in campaign advertising or on the ballot paper.

Terry Newman recognized this problem when he questioned the inclusion of Tasmanian Green Independents elected in 1989 on a list of elected Independents because they gained party status two years later, and he also questioned the inclusion of major party defectors who were re-elected as Independents on such a list.⁷

A more difficult problem arises in two particular circumstances. The first is when a person originally elected as an Independent forms a party or group to contest future elections, as Brian Harradine did for Senate elections after 1983, and as Nick Xenophon and Bob Katter did for elections for both houses after 2010. The problem becomes more acute if such a candidate wins under a party label and is the only person elected, thus becoming a parliamentary party of one, as both Harradine and Katter became.

⁷ Newman, *Hare-Clark in Tasmania*, 239.

The general approach taken in this thesis is to regard all such members as Independents unless they have at some time had multiple members elected. Thus Nick Xenophon and his colleagues cease to be Independents after the 2016 Senate election, while Katter stays as a party member because his son Robbie Katter and colleague Shane Knuth sit in the Queensland Legislative Assembly. Derryn Hinch is classified as an Independent because his Justice Party label was only a flag of convenience for the 2016 federal election.

There are some exceptions to this general rule, such as Senator David Leyonhjelm of the Liberal Democrats because, although he is the only member of his party in any Australian parliament, he represents a party with an identifiable platform that is not based around his personality.

As the Senate is the upper house with the longest continuous use of proportional representation, it is the best place to start as a point of comparison between PR and non-PR elected chambers in the same jurisdiction, and also between the different results obtained by party defectors and those who started their parliamentary careers as Independents.

Independents in the Senate

On the basis of the definition of an Independent as defined above, there have been eight such candidates elected to the Senate since the introduction of proportional representation in 1949. They are listed, in chronological order, in the table 7. 1 (below).

Xenophon had been a member of the Liberal Party in his days as a university law student, but this was not widely known at the time his election to South Australia's Legislative Council, and therefore played no part in his original or later success.

Table 7.1 Senators Elected as Independents, 1949-2016

Name	State	Years Elected	Former Party
Reg Turnbull	Tasmania	1961-1974	ALP (expelled)
Michael Townley	Tasmania	1970-1987	LIB (resigned)
Sid Negus	WA	1970-1974	None
Brian Harradine	Tasmania	1975-2004	ALP (expelled)
Jo Vallentine	WA	1987-1990	NDP (resigned)
Nick Xenophon	SA	2007-2017	None
Jacqui Lambie	Tasmania	2013-2017	PUP (resigned)
Derryn Hinch	Victoria	2016-	None

Sources: *Parliamentary Handbook of the Commonwealth of Australia* and Australian Electoral Commission: <https://results.aec.gov.au/> (accessed 21 February 2017).

Both Vallentine and Lambie were sitting senators at the time of their resignations, while Turnbull had been a sitting Independent in the Tasmanian House of Assembly after previously having served in a Labor government in that state. Harradine and Townley, while not incumbents at the time of their initial election, had received much favourable publicity just prior to their election. Harradine, Australia's longest-serving Independent Senator, had initially received national publicity after being denied membership the ALP 1968 National Executive.⁸ Townley was better known as a member of a prominent Liberal family than for any controversial action on his part.⁹

It is fair to say that many more terms have been served by senators that owed their election, either wholly or partly, to their prior membership of a political party than those who did not. As will be seen below, the pattern is similar for the House of Representatives.

⁸ Federal Labor leader Gough Whitlam had put his leadership on the line over Harradine's status because he wanted Harradine's vote on the issue of state aid for church schools. He was narrowly re-elected. See Daly, *From Curtin to Hawke*, 181.

⁹ Townley was the son of former Tasmanian Liberal leader Neil Townley, and nephew of Menzies Government minister Athol Townley.

Independents in the House of Representatives

During the period under discussion (1949-2016) there have been thirteen members elected to the House of Representatives as Independents. They are listed in chronological order in Table 7.2 (below). At first glance, the total of eight elected Independent senators appears to be a better result than the thirteen elected representatives, since the Senate has roughly half the size of

Table 7.2: Independent Members Elected to the House of Representatives, 1949-2016

Name	Seat/State	Years as IND MP	Former Party
Ted Mack	North Sydney (NSW)	1990-1996	None
Phil Cleary	Wills (VIC)	1992-1996	None
Peter Andren	Calare (NSW)	1996-2007	None
Graeme Campbell	Kalgoorlie (WA)	1996-1998	ALP (disendorsed)
Paul Filing	Moore (WA)	1996-1998	LIB (disendorsed)
Pauline Hanson	Oxley (QLD)	1996-1998	LIB (disendorsed)
Alan Rocher	Curtin (WA)	1996-1998	LIB (disendorsed)
Bob Katter	Kennedy (QLD)	2001-2013	NAT (resigned)
Tony Windsor	New England (NSW)	2001-2013	NAT (resigned)
Rob Oakeshott	Lyne (NSW)	1998-2013	NAT (resigned)
Andrew Wilkie	Denison (TAS)	2010-	GRN (resigned)
Cathy McGowan¹⁰	Indi (VIC)	2013-	None

Sources: *Parliamentary Handbook of the Commonwealth of Australia* and Australian Electoral Commission: <https://results.aec.gov.au/> (accessed 21 February 2017).

the House. However, any fair comparison must include the number of total terms won by Independent members rather than the mere number of

¹⁰ For an account of how McGowan defeated controversial Liberal frontbencher Sophie Mirabella in 2013, see Jennifer Curtin and Brian J. Costar, "The Contest for Rural Representation: The celebrated contest over Indi and the fate of the Independents " in *Abbott's Gambit: The 2013 Australian Federal Election*, ed. Carol Johnson and John Wanna (Canberra: Australian National University Press, 2015), 275-92.

Independents, since the factors that enable their initial election may not be the same factors that make for a substantial parliamentary career as an Independent.

While nine member representatives (69.2% of the total) relied on prior party membership to a greater or lesser degree, they comprise 18 of 28 terms served by Independents, a somewhat lower 64.2%. A similar analysis of Senate Independents shows a somewhat different picture: of the 14 terms served by Senate Independents, ten of them (71.4%) were assisted by prior party membership.

The most striking illustration of the pattern in the House is provided by Andren, who after being elected without prior party membership, was able to secure three more terms before his death from cancer just before the 2007 election.¹¹ By contrast, the other four elected as Independents in 1996 were defeated at the 1998 election.

The House Independent for whom the importance of prior party membership is most doubtful is Wilkie. It is the case that he received some favourable publicity for his creditable performance as a Greens candidate in 2004 against then Prime Minister John Howard in the NSW seat of Bennelong.¹² He also ran as the Greens' number two candidate at the 2007 Tasmanian Senate contest. He later resigned from the Greens and ran unsuccessfully in the 2010 Tasmanian state election as an Independent. However, he did not resign in a blaze of publicity or claim that he was hard done by in a preselection contest. It is possible that Wilkie owed his initial election as much to the publicity he

¹¹ For an account of Andren's background and the issues at the heart of his initial success in 1996, see Malcolm Mackerras, "Statistical Analysis of the Results," in *The Politics of Retribution: The 1996 Australian Federal Election*, ed. Clive Bean et al. (Sydney: Allen & Unwin, 1997), 207-27. The Andren-specific analysis appears on 224-25.

¹² Wilkie polled 16.4% of the primary vote in Bennelong, an increase of 12.4% on the Greens 2001 vote. For an account of Wilkie's campaign for the seat and his public service activities, see Elaine Thompson, "New South Wales," in *Mortgage Nation: The 2004 Australian Election*, ed. Marian Simms and John Warhurst (Perth: API Network, 2005), 177.

had received as a defence whistleblower in 2003-4 as he did to prior membership of the Greens.¹³

If Wilkie was excluded then the percentage of Independent terms that depended on prior party membership is substantially lowered, as Wilkie has now been elected three times. With or without Wilkie, the evidence presented so far is that it is, if anything, slightly easier for an Independent to be elected to a single-member House without prior party membership than it is to be elected to the multi-member Senate in the same circumstances. These results suggest it is hard to justify Sharman's claim that prior party membership is specifically important for the success of House of Representatives Independents.¹⁴

The circumstances of Wilkie's unsuccessful attempt to win a seat in Denison (co-existent with the federal electorate) at the 2010 Tasmanian election,¹⁵ and a comparison with the circumstances later that year, forms the next part of the analysis. The fact that Wilkie succeeded in a single-member contest but failed in a multi-member one in exactly the same geographical area, it is argued, tells us something about the relative favourability of certain electoral systems towards Independent candidates.

Andrew Wilkie and a Tale of Two Elections

Wilkie's case is the one that best illustrates why it is so much easier for an Independent candidate to win in a single-member district than a multi-member one, even if the latter is a candidate-based system such as Hare-Clark. Wilkie had polled 21.26% of the primary vote in the federal seat of Denison in 2010,

¹³ As a research officer in the Defence Signals Directorate, Wilkie had written a report suggesting that, contrary to then Prime Minister John Howard's public statements, it was probable not that then Iraq president Saddam Hussain did not possess the weapons of mass destruction that were had used to justify Australia's involvement in the Iraq war.

¹⁴ Sharman, "The Representation of Small Parties and Independents".

¹⁵ Tasmanian Electoral Commission, *Report on Parliamentary Elections 2007 to 2010*. Wilkie polled 8.4% of the vote in this election.

well behind Labor's new candidate, Jonathan Jackson (the sitting Labor member, Duncan Kerr, had retired) and just behind the Liberal candidate on 22.65%. However, a heavy flow of Greens preferences had put him ahead of the Liberal Party at the point of final distribution, and Liberal preferences had put him ahead of Labor with 51.21% of the two candidates preferred vote.¹⁶ In the contiguous state seat at the election earlier that year, Wilkie had polled just 8.44%, compared to Labor's 36.30%, Liberals' 29.79% and the Greens' 24.89%.¹⁷ This suggests that when Wilkie's vote improved at federal level, he took 7.14% from Liberal, 5.91% from Greens, but only 0.51% from Labor.

Compared with the previous federal election, there is evidence of some tactical voting in Denison. The Liberal primary vote declined by 7.34% in Denison compared with a fall of 4.62% in the state as a whole. The Greens' vote rose 0.40% compared to a rise of 3.32% across the state, while Labor lost 12.37% in Denison compared to a rise of 1.17% across the state. Clearly Labor suffered a retirement slump here, while it was enjoying a sophomore surge (the phenomenon by which newly elected MPs tend to do better than the rest of their party at their first election as an incumbent) in two other seats.

There also seems little doubt that many Liberals, and some Greens, made a tactical decision to vote for Wilkie in the belief that their own candidate could not win. In the state election the situation was different. With the quota required for election being 16.7%, supporters of the non-preferred party know their party can and will win some seats. Consequently, if all other things are equal, their vote rises and the Independent vote correspondingly falls.

Wilkie's previous membership of the Greens and his anti-war stance no doubt helped him win the Greens preferences he needed to win the seat. Like

¹⁶ These results have been obtained from the Australian Electoral Commission website: <https://results.aec.gov.au/15508/Website/HouseDivisionFirstPrefs-15508-194.htm> (accessed 2 April 2016).

¹⁷ These results have been obtained from Tasmanian Electoral Commission, *Report on Parliamentary Elections 2007 to 2010*.

Benson, he had finished third on primary vote, but preferences from the fourth placed candidate had put him ahead of the Liberal Party, and a strong flow of those preferences had enabled him to win

Preferences were clearly important for enabling Wilkie's initial success, as they were, at one time or another, for five of the other twelve elected Independents.¹⁸ Rules relating to preference allocation have also played an important role in the success rates of Independent candidates at state and territory level in Australia. These jurisdictions form the next part of this chapter.

Independents in the States since the Adoption of PR

Of the five Australian states now using proportional representation to elect one of its houses, four of them hold their PR elections on the same day as the election for their single-member (lower) house. The one exception to this pattern is Tasmania where elections for the single-member Legislative Council are always held on a different day from those for the PR-elected House of Assembly. The former house provides the starkest illustration of how Independents can do better in a non-PR house, although this is probably not the most important factor that that has made the Council an Independent fiefdom for its entire history.¹⁹

Of the states using proportional representation to elect their legislative Council, New South Wales and South Australia (eleven PR elections each)

¹⁸ The other six who had won as Independents in spite of trailing somebody else on primary vote were Benson, Mack (1993), Cleary (1993) Rocher and McGowan (2013). The other seven elected had led on primary vote in every election at which they were successful.

¹⁹ The holding of Assembly Council elections on different days, together with the fact that less than half of the latter chamber's member are elected at any one time means the major focus for voters is on candidate quality rather than the state of the government. Another factor (mentioned by Newman) is that a large number of ex-Liberal Party members who have successfully stood as Independents. Labor-oriented candidates generally represent themselves to the voters as such, so, while Labor generally has more official MLCs than the Liberal Party, it tends to stand candidates only in the seats it has a realistic chance of winning. See Newman, *Representation of the Tasmanian People*, 170.

provide the most fertile ground for comparison, especially as the numbers of successful Independents in each state run into double figures.²⁰ Western Australia, with eight PR elections for its Legislative Council, also provides reasonable comparative evidence.²¹ Victoria is the least meaningful, because it has only had four PR elections for its Legislative Council, and the combined tally of Independents elected in both houses during that time stands at five.²²

As the table below shows, Independents have a poor success record in the PR-elected upper houses as compared with the respective majoritarian lower houses.

Table 7.3 Average Rate of Independent Success in State Parliaments Since the Introduction of Proportional Representation for that State’s Legislative Council

State	Lower House	Upper House
South Australia	4.05%	3.03%
New South Wales	3.84%	1.49%
Western Australia	2.19%	0.36%
Victoria	1.25%	0.63%

Sources: calculations derived from Colin A. Hughes, *A Handbook of Australian Government and Politics*, Vols 3 and 4 and SA, NSW, WA and Victorian state electoral commission websites.

Note that South Australia’s first use of PR for its Legislative Council was 1975, while for the respective years in other states were 1978 in New South Wales, 1989 for Western Australia and 2006 for Victoria.

²⁰ Since the introduction of proportional representation for the NSW Legislative Council, 20 Independent candidates have been elected to the Legislative Assembly, compared to three in the Legislative Council. In South Australia the numbers are twelve and three respectively.

²¹ In those eight elections, there have been six candidates that won seats as Independents, compared to only one in the Legislative Council.

²² The four successful Independents in the Legislative Assembly were Craig Ingram (Gippsland East 2006), Suzanna Sheed (Shepparton 2014-18), Russell Northe (Morwell 2018 after winning that seat three times as a Nationals candidate), and Ali Cupper (Mildura 2018). The sole successful Legislative Council Independent was James Purcell, who won a seat in Western Victoria in 2016 under the banner of Vote 1 Local Jobs. It is argued that this label is a flag of convenience, even if it is the name of an officially registered political party.

A clue as to the reasons for such a poor record for Independents in PR-elected Legislative Councils is provided by the results in three jurisdictions that have used a PR system to elect a house of government. Tasmania's House of Assembly has had an average rate of Independent election of 2.34% since the adoption of Hare-Clark, while New South Wales, during its brief period of proportional representation in the 1920s, had an election rate of 4.07% of total parliamentary membership. The ACT Legislative Assembly in its short existence has also had a good success rate for Independents (4.14%), although no Independent has been elected since 1998, a pattern in line with Tasmanian results.

It can thus be noted that only the South Australian Legislative Council produced a higher rate of Independent success than any of the three jurisdictions just mentioned. This case (caused largely by the incredible level of support garnered by Nick Xenophon) should not be allowed to obscure the general pattern, which is that, all other things being equal, ticket voting disadvantages independents.

Ticket Voting Harms Independents

The jurisdictions mentioned in Table 7.3 have one thing in common: since they adopted proportional representation for their Legislative Councils, voters have had, almost without exception, the option of voting for a party ticket rather than having to number individual candidates.²³ By comparison, Tasmania, the Australian Capital Territory, the New South Wales Legislative Assembly between 1920 and 1925, and the overseas examples of Ireland, Malta, Canada and Estonia, voters never had such an option.

²³ The exceptions are New South Wales between 1978 and 1984 and South Australia in 1982.

The above pattern is consistent with the results of Brancati's analysis suggesting that Independents do better in candidate-centred electoral systems than party-centred ones.²⁴ The pattern is even more noticeable when it is realised that in New South Wales, during its 1920s PR flirtation, and in Tasmania, until the 1941 election, party affiliations of candidates were not listed on the ballot paper, and all candidates were listed in alphabetical order rather than being grouped with other members of the same party.²⁵ It makes logical sense that in a situation where voters might struggle, more of them would, either by accident or design, vote for an Independent candidate in sufficient numbers to get them elected.

This was indeed the case in Tasmania: in pre-1941 elections, Independent members comprised an average of 3.61% of House of Assembly membership, compared with 2.57% in the 1941-72 period, where candidates of a particular (unnamed) party were grouped together, and 0.95% for post-1974 elections, when party labels appeared on the ballot paper.²⁶

It should also be noted that the Independent success rate in the Senate was slightly higher in the years before 1984, when candidates were grouped by party, but party labels were not listed and ticket voting was not allowed (1.39%), than in the 1984-2013 period, when the average rate of Independent membership was 1.28%. As will be seen, a comparison with Ireland, where party affiliations of candidates are listed, but candidates are ordered alphabetically rather than by party group, suggests the absence of grouping plays a more important role than the presence or absence of party labels. Ireland has a much higher rate of Independent success than any Australian jurisdiction.

²⁴ Brancati, "Winning Alone: The Electoral Fate of Independents Worldwide".

²⁵ Hogan et al., *The People's Choice*, 1.

²⁶ Newman, *Hare-Clark in Tasmania*, 101.

This chapter now returns to the question of why Independents have failed so spectacularly in jurisdictions employing a ticket vote or party box in comparison to their lower house counterparts. Table 7.4 (below) lists the more notable former party-affiliated members who failed in their attempts to win re-election to a PR-elected house. In contrast to this long list of failures, there are only two ex-party MLCs who enjoyed success as independents: Jim Cameron (NSW LC and also former Liberal MLA), elected as an independent 1984 and Reg Davies (WA LC (North Metropolitan Region) originally elected as Liberal MLC 1989 and elected as an independent in 1993,. By contrast, quite a few of the Independents elected at the corresponding Assembly elections had originally been elected, or had unsuccessfully sought endorsement, as party representatives. Ten of the 12 South Australian lower house MPs elected as Independents owe their original election to prior party membership,²⁷ as did five of the six Western Australian Independent MLAs,²⁸ but, curiously, only three of the 20 New South Wales MLAs elected since the introduction of proportional representation in the Legislative Council.²⁹

²⁷ The exceptions are Geoff Brock (Frome, 2009 by-election, 2010, 2014 and 2018) and Don Pegler (Mount Gambier, 2010). Of the other ten, seven would have been assisted by a sympathy vote acquired through a lost preselection contest.

²⁸ Only two of these five (Liz Constable and Larry Graham) became Independents because of a lost preselection.

²⁹ They were the (subsequently) well-known Tony Windsor (MP for Tamworth) and Rob Oakeshott (MP for Pt Macquarie) and Bruce Duncan (ex-National, Lismore, 1984). It should be noted that Independent success in NSW is not just a modern phenomenon: the last occasion that there was not at least one Independent elected to the Legislative Assembly was 1935. See Hughes and Graham, *A Handbook of Australian Government and Politics*, 1: 350-60. Later editions of Hughes confirm this.

Table 7.4 Sitting Members Who Failed to Win Re-election to PR-Elected Houses After Success as Party Candidates or in Single-Member Electorates

Name	Former Party	District/Region	Year(s) Elected	Year Defeated
Norman Foster	ALP (expelled)	SA Leg. Co.	1975	1982
Norm Peterson	ALP (resigned)	SA Leg. Co.	1979 (Ind MHA)	1993
Franca Arena	ALP (expelled)	NSW Leg. Co.		1999
Mark Nevill	ALP (resigned)	WA Mining & Pastoral	1983-96	2001
Tom Helm	ALP (resigned)	WA Mining & Pastoral	1986-96	2001
Trevor Crothers	ALP (resigned)	SA Leg. Co.	1985-93	2002
Peter Lewis	LIB (resigned)	SA Leg. Co.	1979- 2002 (MHA)	2006
Terry Cameron	ALP (resigned)	SA Leg. Co.	1997	2006
Max Trenorden	NAT (disendorsed)	WA Agricultural	2008	2013

Sources: South Australian results derived from Dean Jaensch, *History of South Australian Elections, 1857-2006*, 2 vols. (Rose Park, SA: State Electoral Office, 2007). NSW result derived from Colin A. Hughes, *A Handbook of Australian Government and Politics, Vol. 4*. Western Australian results derived from Western Australian Electoral Commission, *2001 Western Australian State General Election; Results and Statistics*. (Perth, 2001).

This chapter now returns to the examination of a case where a former party-elected MLC failed to retain his seat as an Independent. Max Trenorden was elected as a National MLC for Agricultural Region in 2008 after having served as the MLA for Avon over the previous 22 years, and having led the National Party between 2001 and 2005. He was disendorsed by the Nationals for the 2013 election, and he failed to hold his seat as an Independent. His 2013 fate provides a telling illustration of why Independent candidates struggle to win

seats in STV systems in general and ticket voting STV jurisdictions in particular.

The Reasons for Trenorden's Failure

At first glance, Trenorden's respectable 5.26% vote share appeared to have a reasonable chance of winning the sixth and last seat. The quota figures for Agricultural were: Liberal 2.37, National 2.27, Labor 1.23, Trenorden 0.37, Greens 0.27 and Shooters & Fishers 0.23. The first five seats were straightforward, but the sixth seat winner was a surprise with the lowest polling of these groups, the Shooters & Fishers, eventually winning. They had received preferences from most micro parties, most notably Family First and Australian Christians. As a result of the latter two, the leading Shooters & Fishers candidate, Rick Mazza, was already ahead of Trenorden and all other remaining candidates from the main parties. Mazza's good fortune continued when he received good preference flows from the major parties that crossed traditional alliances.³⁰

Two aspects of the system that hurt Trenorden would not have been present in either a single-member preferential system like the WA Assembly system, or a STV system without tickets such as Tasmania. As Chapter Four of this thesis showed, Agricultural always has been Labor's weakest WA region, and its 2013 vote of 17.57% was the lowest on record. Yet Labor supporters within the region still had a strong incentive to vote for the party knowing it would almost certainly win one seat, and with no reason to prefer Trenorden instead.

Under a similar scenario in a single-member district, Labor supporters might have been tempted to vote for Trenorden in the knowledge that their own candidate could not win. The same principle is true of some others, most notably Terry Cameron because, unlike Trenorden he was unable to cultivate

Labor preferences were directed to Mazza ahead of leading Greens candidate Andrew Huntley, while both Liberal and National placed Mazza ahead of the candidates of their coalition partner. All three parties (and the Greens) placed Mazza ahead of Trenorden.

a sympathy vote as a result of a lost preselection.³¹ In the only case of an elected party MLC in WA winning re-election as an Independent (Reg Davies), there is little evidence to suggest he enticed supporters of his former party to vote for him. Davies appears to have received his support at Labor's expense.

None of the above is intended to propose that Trenorden would have won a seat under a different system, but simply to say that the WA system of 2013 gave him the least possible chance. It is also clear that Trenorden was hurt, as much as Mazza was helped, by the ticket voting system. To cast a valid vote, the only options available to voters were to indicate preferences for all candidates below a line or to cast a single vote in a group box above the line. Such rules create a strong incentive to choose the latter, and thus ensures a disciplined preference flow.

Under a Tasmanian system, voters not only have the chance to exhaust their votes if they so desire, but any suggestion to voters as to how they should mark their preferences must be done away from the polling booth because of a ban on such cards at the booths. This not only ensures a less disciplined preference flow; it makes uncertain the idea that preferences flow with any strength at all.

The fact that WA Legislative Council elections are held concurrently with Assembly elections also hurts Independents in a way not realised by most commentators. After 2013 results were announced, but before full preference distributions were available, it was evident that Mazza could not have finished ahead of Trenorden unless Labor preferences had favoured the former. When asked why such a decision had been made, deputy Labor leader Roger Cook said that Labor preferences were directed to Mazza in exchange for Shooters

³¹ Cameron resigned from the Labor Party in 1998 to pre-empt his certain expulsion after he had crossed the floor to vote for the Olsen Government's legislation to privatise the Electricity Trust, in spite of Olsen's pre-election denial that he intended to do so. Cameron polled a derisory 0.2% of the statewide vote when he ran for re-election in 2006.

& Fishers' preferences being directed to Labor ahead of both Liberal and National in the lower house seat of Pilbara.³²

Given that preference decisions were made in this region that defied traditional party alliances, it seems likely that Shooters & Fishers received favourable treatment on other preference tickets because of their ability to suggest preferences to voters in lower house seats. Because Trenorden was running in one upper house seat only, he had no preferences to offer in other places, and was therefore much less likely to receive favourable treatment on Agricultural Region preference tickets.

The overall history of Western Australian elections provides no evidence to suggest that Independents naturally do worse in upper houses. No Independents were elected to either chamber in the eight simultaneous Assembly/Council elections held between 1965 and 1986. Between 1914 and 1962, when Assembly and Council elections were almost always held on different days,³³ the rate of Independent success was slightly higher for the Council (5.51%) than for the Assembly (2.94%). The figures for the early period should be regarded with some caution: as Black has acknowledged, defining an Independent was difficult in those days.³⁴

South Australia shows a different pattern, but the evidence from the 1910-73 period is that a single member system helps Independents more than a block vote system does rather than suggesting the importance of chamber type. Between 1910 and 1933, when both houses used a block vote, the average rate of Independent success was 3.66% for the Assembly and 3.06% for the

³² Roger Cook MLA, telephone conversation with author, April 2013. At this stage it was not known that Labor preferences had favoured Mazza over the Greens as well, although other parties' preference tickers almost certainly rendered this decision immaterial.

³³ On only one occasion (1956) did Assembly and Council elections fall on the same day. No Independents were elected to either house that year.

³⁴ See estimates of numbers in Black, *The House on the Hill*, 535-38. Black provides a brief rundown on p. 125 for Assembly Independents and p. 134 for those in the Council.

Council. Between 1936 and 1973, after the adoption of a single member system for the Assembly, the average rate of Independent election was a very high 8.80% for the former, while for the Council it was just 1.67%. Over the entire period of the use of a block vote method for the Council, the average rate of Independent success was 2.73%.³⁵ The poor result for Independents under the block vote is consistent with results in the Senate during the use of such a method between 1901 and 1946, although to a much greater extent for the latter chamber.³⁶

For the record, the Victorian results suggest that Independents have done better in the Assembly than in the Council by similar margins for the periods both before and after the introduction of proportional representation for the latter chamber.³⁷

Having established that clear patterns exist in Australia for Independent success or failure, this chapter now turns to overseas examples of the use of single transferable vote systems to establish if any similar or deviating patterns exist. The number of countries that have used or are using such a system is quite small, but it will be argued that those jurisdictions show patterns that closely resemble those existing in Australia.

³⁵ South Australian percentages have been calculated from statistics provided by Dean Jaensch, South Australia State Electoral Office and History Trust of South Australia, *History of South Australian Elections, 1857-2006*, 2 vols. (Rose Park, SA.: State Electoral Office, 2007).

³⁶ The average rate of Independent success in Senate elections held between 1901 and 1946 was 0.56%. For analysis of results in the Senate under block vote methods, see Wright, *Mirror of the Nation's Mind*. The relevant chapter is 'No Safety in Numbers.' The average rate of Independent success in House elections over the same period was 2.53%. See Hughes and Graham, *A Handbook of Australian Government and Politics*, 1, 285-379.

³⁷ During the 1911-2002 period, Victorian Legislative Councillors were chosen at alternate elections in single-member provinces, with each province made up of three or more neighbouring Assembly districts. During these years, the average rates of Independent success were 2.15% for the Assembly and 0.92% for the Council.

Independents in STV Systems Overseas: Canada, Ireland, Malta and Estonia

Of these four, Ireland and Malta have the longest continuous use of an STV system, having used such a method since gaining independence from the United Kingdom. Estonia used STV for just one election (in 1990) before reverting to a list system. While Canada has never used proportional representation at the national level, two Canadian provinces (Alberta and Manitoba) used a combination of proportional and preferential voting for some time in the mid-twentieth century.

The record of Independent candidates in Ireland is starkly different from that in Malta. In the five Irish elections covered by Adam Carr's Election Archive, Independents have comprised an average 9.09% of parliamentary members.³⁸ It is not completely clear whether they did quite as well in the earlier period, although figures provided by Farrell for the 1951-92 period suggests that Independents did reasonably well in those elections too.³⁹ By contrast, no Independent member has been elected to the Maltese parliament since 1950.

In his chapter on Malta, Wolfgang Hirczy claims that "an independent candidacy is a virtual invitation to defeat" but unfortunately does not suggest any reasons why this is so, other than a suggestion that Maltese voters prefer a two-party system.⁴⁰ Part of the reason, and also for the different picture in Ireland, might rest in the differing ballot paper structure as illustrated by Farrell.⁴¹ In Ireland, candidates are placed in alphabetical order rather than being grouped by party: consequently, it is harder for a voter to vote solely for candidates of his/her preferred party, thus making it more likely that voters will, either by accident or design, vote for an Independent candidate. In Malta,

³⁸ Adam Carr, "Psephos," <http://psephos.adam-carr.net>.

³⁹ Farrell, *Electoral Systems*, 141.

⁴⁰ Hirczy and Lane, "Malta: STV in a Two-Party System," 196-97.

⁴¹ Farrell, *Electoral Systems*, 128-29.

on the other hand, candidates of the same party are grouped together on the ballot paper, and they are also identified by colours and symbols.⁴² This difference does not provide the whole answer, since the barren run for Independents started before the grouping of candidates by party began in 1976.

With regard to Estonia, it has not been possible to establish the layout of the the ballot paper in either the 1990 STV election or the list systems used in future elections, but a trend in Independent success, or lack of it, certainly is evident. In 1990, unaffiliated candidates comprised 7.62% of elected members.⁴³ In the first list election of 1992, not one Independent member was elected.⁴⁴ This pattern has been repeated in elections covered by Carr.⁴⁵

Preferential Voting and PR Both Help Independents: The Story of Two Canadian Provinces

Before studying the aforementioned provinces in detail, it is worth noting that Independent candidates have a poor record in Canadian House of Commons elections as well as in the seven Canadian provinces that have used nothing but a first past the post system. Since 1935, the starting point of Frank Fiegert's study,⁴⁶ Independents comprised an average of 0.83% of Commons members, compared to 0.92% of the Australian House of Representatives since the adoption of preferential voting for the 1919 election. In the seven solely FPP provinces, rates of Independent membership range from 0% in three maritime provinces to 1.34% in Quebec.⁴⁷ The latter percentage is,

⁴² Ibid., 129. Malta Labour Party candidates are identified by a socialist rose, and Nationalist candidates by a Maltese falcon.

⁴³ Pettai, *Elections in Estonia 1990-1992*, 27.

⁴⁴ Ibid., 28.

⁴⁵ Carr, "Psephos".

⁴⁶ Frank Fiegert, *Canada Votes 1935-1988* (Durham & London: Duke University Press, 1989). Results of recent national and provincial elections have been obtained from official election websites and the author has compiled tables combining earlier and later results.

⁴⁷ Ibid., 202-03. At the time of Fiegert's work, the percentage stood at 1.91%, but poor results in recent elections have lowered this figure.

however, lower than any recorded for any Australian state or territory lower house.

The two provinces to use a combination of preferential voting and proportional representation, Alberta and Manitoba, provide clear evidence that Independents did better under that system than a first past the post one. The overall average rates of Independent success in elections held under the hybrid system were 11.91% in Manitoba and 8.73% in Alberta, while the respective figures for elections held after 1955, when both provinces reverted to a first past the post system, were 0.88% for Manitoba and 0.81% for Alberta.

The work of Harry Phillips on these two provinces provides conflicting evidence on which aspect of the hybrid system helped Independents the most.⁴⁸ In Manitoba, Independents did better in the single-member preferential seats (an average of 12.79% of PV-elected seats between 1936 and 1953) than in the multi-member seats (an average of 8.62% over the same period). In Alberta, the reverse pattern occurred: Independents represented an average of 16.18% of PR-elected members between 1935 and 1955, compared to an average of 6.97% in PV elected seats.

These figures suggest, on balance, that the proportional aspect of these systems was more helpful to Independents than the preferential ones. This is reinforced by the experience of British Columbia, which used single-member preferential voting for two elections in 1951 and 1953. With no proportional component, Independent comprised an average of 2.08% of elected members.⁴⁹

⁴⁸ Harry Phillips, "Challenges to the Voting System in Canada 1874-1974," Doctoral Thesis (University of Western Ontario, 1976).

⁴⁹ In all other British Columbia elections, held under a first past the post system, the average rate of Independent membership was 0.70%. See Fiegert, *Canada Votes 1935-1988*.

It should be noted, however, that both Manitoba and Alberta had a feature in the proportional aspect of their system that seems to assist Independents: candidates were listed on the ballot paper in alphabetical order, with no party labels listed. It could, of course, be completely coincidental that Independent candidates did well at the time these provinces used preferential voting, but as the analysis of this chapter shows, and Brancati's reasoning also suggests, there are logical reasons why such a pattern should exist. In the Canadian context the only other factors that loom large as sources of independent assistance are the geographical size or remoteness of a particular province or territory. This factor also applies in Australia to some extent.⁵⁰

Conclusion

The evidence from federal and state elections in Australia suggests the existence of a distinct pattern in the types of PR systems where Independent candidates have relatively high levels of success. Systems with a ticket voting option make it harder for Independents to be elected. Only the South Australian Legislative Council (due to Nick Xenophon) provides conflicting evidence.

The results in Australia (and also Ireland and Canada) would appear to back up Brancati's theory that Independents do better in the more candidate-centred systems, regardless of whether they are single-member preferential or multi-member proportional. It is clear, too, that preferential voting, in either a single-member or multi-member system, helps Independents. Preferential voting in single member electorates can be regarded as a Single Transferable Vote system with a district magnitude of one, so it is perhaps not altogether

⁵⁰ The Yukon Territory, with no history of proportional representation and a very large land area, has an average Independent success rate of 3.57%, the highest in the nation. Only Saskatchewan, at a very low 0.37%, runs contrary to the pattern of large area provinces producing larger numbers of Independents. The Northern Territory, with a land mass and population sparsity similar to the Yukon, has an average Independent success rate of 6.51%, the highest rate for any Australian jurisdiction.

surprising that, in some ways, it produces similar results to those in multi-member STV.

Evidence that single-member preferential voting is a better system for Independents than single-member plurality is provided by the poor success rate for Independents in lower house elections in both the United Kingdom and the USA.⁵¹ There are two logical reasons why this is so. The distal reason, referred to by Brancati,⁵² is that under preferential voting voters can be assured that a vote for an unsuccessful Independent candidate will not be wasted, because they can cast a second preference for their preferred party.⁵³ The factor assisting Independents at the proximal level is that Independent candidates cannot receive preferences from less popular larger parties in a first past the post system, while in a preferential system a high-polling Independent will almost always receive preference assistance from such parties, and this will sometimes enable them to defeat the highest polling major party candidate.

The Senate appears to show the only instance of Independents doing better in the proportional representation house as compared to the single member house of the same jurisdiction. Having said that, it should not be a surprise that one deviating case should appear to present a more mixed picture. Independent candidates can have support that is geographically concentrated (such as Tony Windsor) or scattered (such as Nick Xenophon).

⁵¹ In British elections held since 1922 (the first general election held after the adoption of preferential voting in the Australian House of Representatives), Independents comprised an average of just 0.48% of Commons members. For results prior to 1992, see F.W.S. Craig, *British Electoral Facts 1832-1987* (Dartmouth: Parliamentary Research Service, 1989), 24-49. Results of recent elections have been added to the table by the author. In the US House of Representatives for elections held since 1932 (the earliest election for which data is available) Independents comprised an average of 0.32% of the total membership. See Gorvin, *Elections Since 1945*, 378-86. These results run from 1946 to 1988. Results prior to 1946 and since 1998 have been added by the author. Figures for earlier elections were supplied by Malcolm Mackerras.

⁵² Brancati, "Winning Alone: The Electoral Fate of Independents Worldwide".

⁵³ Ibid.

It might be thought the main reason why a PR system, especially one based on the Single Transferable Vote method, ought to make it easier for an Independent to be elected is the same reason that applies to a minor party: that it is much easier to gain a quota in a multi-member seat (most commonly, in Australia, 12.5%, 14.3% or 16.7%) in a multi-member electorate than it is to gain 50% plus one vote in a single-member electorate. There are cases where this is true: it is inconceivable that Negus or Xenophon could have hoped to be initially elected in a single-member district (but only after they had established their credibility with voters at earlier elections). However, there are counterbalancing factors that make the situation harder for Independent candidates.

A single-member system is much more likely to generate the conditions under which Independents can be elected. Because it is the usual practice for major parties to select just one candidate per seat, there is always a chance that some other candidate or member of the same party will think they deserve the preselection more, and contest the seat as an Independent (often unofficially aligned to a major party). This can happen regardless of whether the Independent was a sitting MP ousted at preselection (as in the case of Paul Filling), or a candidate unsuccessfully seeking preselection for a vacant seat (such as Liz Constable or Rory McEwen). The Independent candidate will be likely to win if he or she can convince enough voters they were hard done by, and will nearly always be assisted by the other major party directing its preferences to the Independent or, as happens more often at by-elections, not contesting the seat at all, leaving the Independent with a relatively free run.⁵⁴ Politically astute supporters of the other major party can assist in this process by voting for the Independent in the knowledge that their own party cannot win.

⁵⁴ Liz Constable was assisted in the 1991 Floreat by-election by the Labor Party not standing a candidate.

As well as the technical factors mentioned earlier there is another reason why Independents emerge far less often in STV systems with ticket voting. To have been pre-selected in a winnable position in the first place, they have usually been good players of machine politics.⁵⁵ Consequently they are unlikely to fall out with their party machine over policy and even less likely to lose a preselection.

In a non-ticket STV jurisdiction like Tasmania, a party will choose more candidates than it can hope to elect, and rivals within the same party battle it out in the electorate while still remaining within the party, so lost preselections hardly ever occur. A member can, of course, resign from their party over a major policy issue, with former Labor premier Doug Lowe a high profile example,⁵⁶ but it is a much less common occurrence nowadays.

In summary, the patterns as to which conditions assist or hinder the electoral prospects of Independent candidates are clear, if somewhat nuanced. Ticket voting systems have been shown to be particularly unhelpful to Independent candidates, but systems without a ticket vote option, such as the ACT, provide opportunities for independent candidates that are found in candidate-centre systems. There is also a pattern that, where voters are not required to mark a full list of preferences, Independent candidates flourish, which is perhaps surprising in the case of single-member districts. In that respect, it would appear that one aspect of a proportional representation system that makes it

⁵⁵ Some of them play machine politics so well that they become senior factional powerbrokers within their parties. Examples of such politicians are former Labor Senators Graham Richardson and Mark Arbib (both NSW), former Liberal Senators Noel Crichton-Browne (WA) and Nick Minchin (SA) and current Liberal Senator Eric Abetz (Tas.).

⁵⁶ Lowe received 28.5% of the overall vote in Franklin, well over two quotas. However Mary Willey, who had resigned from the Labor Party on the same day, polled just 5% in Bass and lost her seat. See Colin A. Hughes and Don Aitkin, *Voting for the Australian State Lower Houses 1975-1984* (Canberra: Australian National University Press, 1987), 274-79. For Lowe's own account of the events that led to his resignation largely over the dams issue, see Doug Lowe, *The Price of Power: The Politics Behind the Tasmanian Dams Case* (Melbourne: Macmillan, 1984).

harder for minor and micro parties to win seats actually makes elections easier for Independent candidates.

The next chapter uses the same techniques to investigate the relative success rates for women in proportional and non-proportional systems in Australia over the last seventy years. In the middle to late period of the twentieth century, advocates for more women as members of parliament had argued that the proportional systems enabled women to be elected in higher numbers than the non-proportional systems. It will be argued that once the greater propensity for minor party candidates to be elected under PR systems is factored out, the differences are quite miniscule.

Chapter 8

Proportional Representation and Women – How Much Help?

The previous chapter investigated questions as to whether proportional representation systems per se helped or hindered Independent candidates, and to which types of PR systems were the most helpful to such candidates. This chapter uses similar techniques to answer similar questions in relation to the success or otherwise of female candidates under both proportional and non-proportional electoral systems.

Many twentieth century writers, both in Australia and overseas, saw a positive correlation between proportional representation and greater female representation. Figures provided in late 1977 by Malcolm Mackerras showed that more women had been elected to the Senate than the House of Representatives, although it should be noted that the main purpose of his article was to demonstrate that, contrary to the belief of observers with male chauvinist inclinations, women candidates were more likely to gain votes for a party rather than lose them votes.¹ Anne Summers noted a similar pattern six years later.² In a much more comprehensive study published nine years after Summers' work, former Democrat leader Janine Haines, with more case studies at her disposal than Mackerras, argued that a direct link existed between proportional representation and greater female representation, and

¹ Malcolm Mackerras, "Do Women Candidates Lose Votes?," *Australian Quarterly* 49, no. 3 (1977), 6-10. An example of such sexist thinking is provided by Hal Colebatch, "Getting at Gough Through Supertonk," in *Labor to Power: Australia's 1972 election*, ed. Henry Mayer (Sydney: Angus & Robertson on behalf of the Australasian Political Studies Association, 1973). On p. 143 Colebatch refers to Fremantle Liberal candidate Erica Lawton, a young primary school teacher, as 'the weakest Liberal candidate imaginable'. In 1969 the Liberal Party stood young lawyer and later to be High Court Chief Justice Robert French as its Fremantle candidate. The swing to Liberal in 1972 was nearly 2% above the state average and the second highest pro-Liberal swing in both the nation and the state. It is fair to argue that Colebatch was quite wrong in his assessment of Lawton, but she was never to be seen again as a candidate.

² Anne Summers, "Holding the Balance of Power? Women in Australian Electoral Politics," in *Australia at the Polls: The Australian National Elections of 1980 and 1983*, ed. Howard Penniman (Sydney: American Enterprise Institute, 1983), 124-39.

backed up her argument with supporting statistics.³ Haines did concede, however, that the better record for women in PR-elected houses might have been due to those houses (most notably the Senate) being regarded as less important.⁴

Among overseas scholars, there is some disagreement as to which systems of proportional representation assist women candidates, and by how much. In a 1981 paper Frank Castles found, in a cross-national study, that the success rate of election for women under Single Transferable Vote systems (using Ireland and Malta as the only examples), was not much higher than in single-member systems, and that list systems produced a much larger success rate than either.⁵ Figures provided by Bogdanor tend to support Castles' latter argument,⁶ although Bogdanor also claims that there is a definite link between proportional representation systems per se and higher female representation.⁷ Rob Salmond made the latter argument more cautiously, but also suggested the women seemed to fare slightly worse in semi-proportional STV systems.⁸

In 1986, Peter Hain took a contrary view: while acknowledging that available statistics backed up the claims that systems were more helpful to women than STV systems, he argued that the high rate of women elected in certain European (especially Scandinavian) parliaments are due to more important social factors rather than the use of list systems.⁹ In 1994, Zimmerman argued that STV systems were especially helpful to female candidates, but shortly after Hirczy claimed Zimmerman had made a fundamental error by omitting

³ Haines, *Suffrage to Sufferance*.

⁴ *Ibid.*

⁵ Francis G. Castles, "Female Legislative Representation and the Electoral System," *Politics* 1, no. 2 (1981) 21-27.

⁶ Bogdanor, *What is Proportional Representation?*.

⁷ *Ibid.*

⁸ Salmond, "Proportional Representation and Female Parliamentarians".

⁹ Hain, *Proportional Misrepresentation*, 69-70.

Malta from his analysis, and suggested its inclusion would alter the picture dramatically.¹⁰

The fact that such wide-ranging opinions are held by academic observers illustrates the difficulty they had in separating institutional and cultural factors. Australia provides an almost unique opportunity to separate the two sets of factors in two respects. With five Australian jurisdictions holding PR and non-PR elections on the same day (very few overseas countries do this), cultural factors can almost be completely controlled for. The second is that one Australian state (Tasmania) uses proportional representation for its house of government, thus providing a control mechanism on the impact of the perceived importance of the house, although the fact that House of Assembly elections are held on the different day from those of the Legislative Council means that it does not provide a completely satisfactory comparison. The fact that three state upper houses moved from a non-proportional system to a proportional one also enables us to compare women's 'before and after' success rates in comparison to the corresponding lower house.

The third and most important factor that makes Australia unique is that the majority of its PR houses use a ticket voting option, thus turning their STV systems into de facto closed list systems. The most recent changes to Senate voting laws have the potential to alter this, but evidence from the first election held under the new system is that only Tasmanian voters display enough independence to alter the system's basic nature.

Enid Lakeman attempted some comparative study of Australian conditions with the limited material she had at the time.¹¹ With a wider range of data now available, this chapter makes a comparative study of Australian jurisdictions and argues that once the ability of a proportional representation to assist

¹⁰ Hirczy, "STV and the representation of women".

¹¹ Lakeman, *Power to Elect*, 135.

certain minor parties to win seats is taken into account, there exists little difference between the systems as to their ability to assist women candidates.

As an aside, it is worth noting, as Hirczy has done, that Australia's strong feminist movement may have boosted female representation in a way that has not happened in Ireland and Malta where the feminist movement was arguably less effective.¹² It is certain that the use of affirmative action quotas in the Labor Party since the 1990s have boosted female representation, and that the existence of a fundraising body within the party, known as Emily's List, may have boosted female representation more than an list system of PR could ever hope to do.¹³

A Tale of Two Houses in Five Australian Jurisdictions

Australia's federal parliament and four of its mainland states combine a single-member lower house with a multi-member upper house elected by proportional representation. The table below shows the percentage of women elected to each house since the adoption of PR for the upper chamber.

Table 8.1 Percentage of Women Elected to Australian Jurisdictions Employing Proportional Representation to Elect Their Upper House

Jurisdiction	Lower House	Upper House	Difference
Federal (1949)	9.35%	19.33%	9.98%
South Australia (1975)	16.86%	23.48%	6.62%
New South Wales (1978)	9.12%	26.37%	16.25%
Western Australia (1989)	21.65%	29.50%	7.85%
Victoria (2006)	33.52%	37.50%	3.98%

Source: Calculations made by author based on official electoral commission returns.

¹² Hirczy, "STV and the representation of women".

¹³ The Emily of Emily's List stands for Early Money is Like Yeast, and the body attempts to raise campaign funds for Labor women candidates considered to have good parliamentary potential.

In three jurisdictions, women's success rates in the upper house exceeded those of the lower house by close to 10%, while two states had a considerably lower difference. As Haines had suggested, this might also be due to the Senate and Legislative Councils being regarded as the less important chamber. How can the potential impacts of the two factors be separated?

One way of doing so is to look at results in Tasmania, the only jurisdiction to combine the use of a PR-elected lower house with a single-member upper house. Because House of Assembly and Legislative Council elections have always been held on different days, and also because Council elections are periodic rather than general, comparisons of numbers between the two houses cannot be completely satisfactory. The method used in this thesis is to compare percentages in the Assembly in general election years with those in the Council upon the finalisation of Assembly results

Overall averages suggest that proportionality is of greater assistance to women than the level of importance of the chamber. In elections held between 1948 (the first year a woman was elected to either house) and 2018, women made up an average of 1.91% of Assembly members, compared to 11.47% for the Council. These averages disguise the fact that in the earlier part of this period, women had a better record in the Council. Three women had been elected to the Council (two of them still incumbents) by the time the first woman was elected to the Assembly in 1955, and this in spite of a combination of franchise and property laws that made it very difficult for women to be elected to the Council.¹⁴ Only after the 1979 Assembly election was there a higher percentage of women in the Assembly, although there

¹⁴ Only property owners and war veterans were allowed to stand for election, and women could only own property if it had been bequeathed to them by a male relative. The first woman elected to the Council, Margaret McIntyre, qualified for election as a result of her service as a nurse during World War II. She died later that year. Labor Legislative Councillors Lucy Grounds (1951) and Phyllis Benjamin (1952) were joined in the Assembly by Amelia 'Millie' Best and Mabel Miller (both Liberal) in 1955.

were two brief periods (1958-9 and 1962-4) when, due to the filling of casual vacancies, Assembly women outnumbered their Council counterparts.¹⁵

The more rapidly improving female fortunes in the Assembly after 1982 may have something to do with the recent success of Greens candidates in that chamber, a question that will be investigated later in conjunction with analysis of Greens/Democrat success in other PR-elected jurisdictions. In the meantime it is worth investigating whether the greater level of success for women in mainland upper houses is simply a recent phenomenon or one that was evident in the days of upper houses being elected by non-proportional methods.

The federal sphere is not useful in this regard, as there was only one woman elected to each chamber prior to the introduction of PR in 1949. New South Wales has also been omitted from the table below because of the indirect method used for the Legislative Council prior to 1978.

Table 8.2 Percentage of Women Elected to State Houses in Years Before Proportional Representation for the Legislative Council

Jurisdiction	Assembly	Council	Difference
Victoria	9.55%	11.89%	2.34%
South Australia	3.60%	6%	2.4%
Western Australia	3.04%	8.59%	5.55%

Source: Calculations made by author based on official electoral commission returns.

While women did less well in the Council than in the Assembly in all three jurisdictions, the differences are smaller than those in Table 8.1.

¹⁵ The women so elected were Best who replaced her deceased husband in late 1958 but was defeated in 1959, and Lynda Heaven (Labor) who replaced a resigning male colleague in 1962 but was defeated in 1964. In each case the said member combined with Miller to outnumber Benjamin, Grounds having been defeated in early 1958. See Newman, *Representation of the Tasmanian People*, 174-75.

The extent to which women's improved record in PR-elected houses is influenced by those houses' ability to facilitate the election of Democrat and Greens members can be measured by omitting those members from the overall tally and comparing the remaining numbers of women elected in the two types of house. The table below shows two distinctly different patterns.

Table 8.3 Women as a Percentage of Non-Democrat/Greens Members in Elections Since the Adoption of Proportional Representation

Jurisdiction	Non-PR House	PR House	Difference
Federal (1977)	15.52%	25.12%	+9.62%
New South Wales (1978)	8.83%	23.78%	+14.95%
South Australia (1979)	19.38%	22.50%	+3.12%
Tasmania (1982)	19.01%	21.36%	+2.35%
Western Australia (1989)	21.65%	27.06%	+5.41%
Victoria (2006)	33.43%	34.45%	+1.02%

Source: Calculations based on official electoral commission returns.

In both Victoria and Western Australia the difference is actually smaller for the PR period than for the non-PR period once the success of Democrat/Greens candidates under the former are factored out. In South Australia the difference is slightly larger for the PR-period, possibly due to the fact that more of (especially) the Democrats' leading figures were men. On the other hand women have continued to do better in the Senate and New South Wales upper house even after Democrat/Greens exclusion. And the difference grew bigger in Tasmania in favour of the PR-elected House of Assembly.

From this it might be surmised that PR-elected houses give women a slightly better chance than do single-member houses. However, as results from the first proportional representation election in Western Australia show, such female success can be as a result of purely random factors rather than systemic ones.

The Impact of the Move to Proportional Representation in Western Australia

As explained in Chapter Four, Western Australia's Legislative Council was elected via a single-member system until the 1989 election, with simultaneous half-Council/Assembly elections applying from 1965. As Table 8.2 showed, women had a better record in the Council at that time, but the pre-1983 figures showed an even starker pattern. Only one woman (Liberal June Craig, 1974-83) sat in the Assembly, while five sat in the Council during this period.¹⁶ It was the 1983 election (when the ALP's Brian Burke was elected premier) that resulted in the first influx of multiple women into the Assembly. However it was not until after the 1986 election (at which future Labor premier Carmen Lawrence was elected) that a higher percentage of women sat in the Assembly (10.52%) than in the Council (8.82%).¹⁷

The adoption of proportional representation for the Council at this election coincided with major boundary changes to for Assembly seats. These changes, along with the retirement of Burke and Deputy Premier Mal Bryce during the 1986-89 period, ensured that, especially on the Labor side, there was a larger than normal shuffling of sitting members between houses and regions. The overall impact of these moves and the election itself was that women comprised 15.79% of Assembly members after the election, compared to 14.71% of Council members.

On the surface, these percentages point against the idea that proportional representation assisted women, although Haines' figures suggest this was

¹⁶ Three of these (Ruby Hutchison, Lyla Elliott and Margaret McAleer) served in the Council for over ten years. For their career records, see David Black, *Legislative Council of Western Australia: Membership Register, Electoral Law and Statistics 1890-1989* (Perth: Western Australian Parliamentary History Project, 1989).

¹⁷ The last time this had occurred was the period between 1936 (when Florence Cardell-Oliver was first elected to the Assembly) and 1954 (when Ruby Hutchison was first elected to the Council).

very much the exception to the rule for Australia at the time.¹⁸ The enormity of the changes made do, however, beg the obvious, if hypothetical, question: How different would the result have been if the old Council voting system been maintained, and only minor tinkering been made to Assembly boundaries?

We can say for certain that two of the five women elected in 1989 (Beryl Jones and Margaret McAleer) would still have had their seats because they had been elected in 1986 and would not have faced the voters under the old system. Kay Hallahan (Labor), the other female incumbent, would almost certainly have stood for, and retained, the South-East Metropolitan seat she had won in 1983.¹⁹

Of the two new Council members, it is likely that Muriel Patterson (Liberal, South West Region) would have won a seat under the old system replacing retiring Liberal MLC Colin Bell in South West Province, but it is almost certain that Cheryl Davenport (Labor, South Metropolitan Region) would not have inherited the safe South Metropolitan Province seat left vacant by the retirement of Burke Government Minister Des Dans.

It is arguable that the seat might have been given to Labor rising star Carmen Lawrence, although it could also possibly have gone to a Labor MLA residing closer to the area in Bill Thomas or Norm Marlborough. Whatever might have happened in Labor's internal workings, it is fair to say that the move to proportional representation might, at best, have enabled the election of one more woman to the Legislative Council, but, as analysis of the particular case shows, gender had very little if anything to do with her success.

¹⁸ Haines, *Suffrage to Sufferance*, 143-45.

¹⁹ The overall swing against Labor was, on best estimates, a smidgin over 6%, and only one of the seats contained in the old province recorded a swing remotely close to the 9.5% margin Hallahan had enjoyed in 1983.

Cheryl Davenport's Unlikely Success

Davenport's selection at number three on Labor's South Metropolitan ticket hardly looked like a guarantee of success, and the final primary vote figures (in the era before Antony Green had invented a preference calculator) would have given her little confidence. Labor secured 43.42% (2.61 quotas), Liberal 41.84% (2.51 quotas), Grey Power 4.94% (0.30 quotas) and the Democrats 4.29% (0.26 quotas). The only other parties to stand were the Green-tinged Alternative Coalition (0.21 quotas) and National (0.13 quotas).²⁰

The exclusion of the National's lead candidate gave Liberal number three candidate Diane Airey a small lead over Davenport, and the subsequent exclusion of the leading Alternative Coalition candidate gave the Democrats' leading candidate, Peter Nettleton, a comfortable lead over Grey Power candidate, Neville Crilly. At this point, pre-election preference negotiations became crucial.

The Democrats knew that because of their historical weakness in Western Australia, they would require preference assistance from other minor parties. They proposed a direct preference swap with (and to), Grey Power, a newly arrived party claiming to represent older voters. When that party declined the offer and directed its preferences to the Liberal Party instead, the Democrats retaliated by placing Labor ahead of Grey Power in all its preference tickets.

Had Grey Power directed its preferences to the Democrats, their 7,061 ticket votes would have gone to Nettleton, putting him ahead of both Airey and Davenport (he had trailed the latter by just 5,192 votes at the previous count), leaving Davenport as the lowest polling candidate and ensuring a win to Nettleton on her preferences.

²⁰ Information relating to vote shares and preference distributions have been obtained from Black, *Legislative Council of Western Australia*, 387-88.

What actually happened, though, was that while Crilly's preferences gave Airey a large temporary lead over Davenport, the equally strong flow of Democrat preferences to Labor gave Davenport a win over Airey by 2,716 votes. Hence Davenport's success was eventually determined by the decision of a new minor party (Grey Power) as to which of two other parties it preferred, and not because of gender factors.

Davenport's gender was, however, immensely helpful to her in 1993, as the Labor Party had adopted an affirmative action quota (initially a requirement that women be preselected for 35% of winnable seats).²¹ She was therefore able to secure the second spot on the Labor ticket for the 1993 election, while Garry Kelly was placed in the difficult third spot, a position from which he was unable to hold his seat. No other male sitting member was relegated to an unwinnable seat, so it is a fair guess to say that Kelly would not have been so relegated if Davenport had not won a seat in 1989.

In spite of this clearly random event (Grey Power's preference decision) boosting the overall level of female representation in the Council, it was not until after the 2001 election that a larger percentage of women sat in that chamber than in the Assembly and the pattern persisted until the 2017 election.

Even allowing for the unusual nature of Davenport's win and its aftermath, Labor's adoption of affirmative action ought, in theory, to have reduced the difference in female representation in PR-elected and non-PR houses. Does the evidence from other states suggest such a pattern?

²¹ For an explanation of how the affirmative action process works, see Margaret Reynolds, *The Last Bastion: Labor Women Working Towards Equality in the Parliaments of Australia* (Sydney: Business & Professional Publishing, 1995), 159. See also Louise Chappell, *Gendering Government: Feminist Engagement with the State in Australia and Canada* (Vancouver: UBC Press, 2002), 51-83. This chapter compares, among other things, the rate of women's election in Australia with that of Canada and the USA.

The Impact of Affirmative Action in South-eastern Mainland States

Labor adopted an affirmative action policy four elections before Victoria adopted proportional representation for its Legislative Council, and it is interesting that for those four elections, the difference in female representation between the houses was even larger than it was in the four elections held since PR's adoption. The average rate of female representation between 1992 and 2006 in the Council was 26.14%, compared to 20.45% for the Assembly over the same period. This gap of 5.69% is significantly larger than 3.98% difference since PR adoption.

Both New South Wales and South Australia held many Legislative Council PR elections before Labor adopted an affirmative action policy, so overall percentages in those states are influenced by cultural factors still evident in the 1970s and 1980s that often frustrated women's parliamentary ambitions. Even for the post 1992 period, however, women have had an easier time winning seats in the Legislative Council (an average of 29.87% of elected members) than in the House of Assembly (26.75%). The differences in New South Wales are even larger: an average of 27.21% for the Council but only 15.85% for the Assembly. The difference is small in South Australia when Democrat and Greens MLCs are excluded, but in New South Wales the difference remains just above 10%.

The imbalance in favour of the Council in South Australia has reappeared in recent elections. Labor's landslide defeat in 1993 was, paradoxically, very helpful to their female candidates because there were far more vacant winnable seats at the 1997 election than usual. Consequently there was a higher percentage of women in the Assembly for the following three terms reaching a high of 8.90% in 2006. The slow decline in Labor support over the next three elections caused this pattern to reverse, notwithstanding the fact that only one woman was elected to the Council in 2014.

New South Wales stands out as the clear case of women doing far better in the Council, but even here there are clear signs of improvement. In 2011 the ALP suffered a defeat every bit as bad as that suffered in 1993 by Labor in South Australia, and there were similarly a larger than usual number of vacant winnable seats available at the next election. As a result, after the 2015 election, women won more seats in the Assembly (29.03%) than in the Council (23.81%) where in previous elections women's Assembly representation had always been at least 10% lower than that enjoyed by women in the Council.

Two more questions arise in relation to matters investigated in this chapter. One is whether there is any evidence to suggest that women do better (or worse) in jurisdictions where parties can rank order their candidates (such as South Australia), and those where candidates of the same party compete in the electorate (such as Tasmania.) Results obtained suggest a mixed pattern.

A comparison of results in jurisdictions over similar time frames suggests that women fared less well in Tasmania than each mainland upper house using a quasi list system of proportional representation.²² The difference between the Senate and Tasmania is even larger: women comprised an average 19.33% of elected senators since 1949, compared to 11.91% for Tasmania over the same period.

When Australian Capital Territory results since 1995 (the first election where Hare-Clark was used) are compared with the three mainland states then using PR, women fared better in the ACT. The difference ranged from 2.94% to 8.83%. The rate of female success in Victoria in the four elections since the adoption of proportional representation is also 3.44% lower than that of the

²² In each case the comparison with Tasmania begins at the election at which the particular state first used PR, and differences range from 2.39% to 5.06%.

ACT across its last four elections. The ACT average of 34.31% was, however, slightly lower than the 34.76% rate in the Senate over the same period.

These mixed results are not altogether surprising. It might be the case that STV systems without ticket voting, in making it slightly harder for Democrat and Greens candidates to win, have had a mildly reductive effect on female representation in some places, though not in the ACT: the average rate of female success under Hare-Clark is higher than for its first two elections under a (modified) d'Hondt system (29.41%).

The notion that women do better in systems where they do not have to lobby directly for voters not only sounds insulting: it would only make logical sense if there was evidence that, all other things being equal, women generally did less well than male candidates in such circumstances. Mackerras found little evidence to support that idea forty years ago, and in an era where female members are far more common, there is little evidence for it now.

The second (as yet) unanswered question is the extent to which women's chances of election in New Zealand have been improved by that country's move to a Mixed Member Proportional system for the 1996 election. It would be an over-simplification to say that because the percentage of women in parliament rose from 21.2% at the last plurality election in 1993 to 26.7% in 1996, the move to MMP assisted women. It would also be misleading to reflect on the even lower average across the history of plurality elections, since clearly the social factors that discouraged women's parliamentary participation would have been at work in New Zealand too, though to a lesser extent.²³

²³ The first election of a woman to New Zealand's parliament was in 1933, ten years before Australia replicated. See Haines, *Suffrage to Sufferance*, 73.

It is reasonable to compare New Zealand women's success rate with that of women in the Australian parliament. The influence of cultural factors is broadly similar and there are parallels in that certain minor parties are more likely to choose female candidates (in New Zealand's case the Alliance and the Greens).²⁴

In the eight elections held under MMP, women have on average have been elected to 33.23% of seats. This compares favourably with the Australian House of Representatives (23.81%), though slightly less favourably with the Senate (34.76%). When the success of parties less inclined to pre-select women is examined, the average becomes 31.34%, thus concurring, if at a somewhat weaker level, with trends in Australian jurisdictions.

Conclusion

It would seem evident from the above that the move to proportional representation gave an additional boost to women hoping to enter parliament a somewhat higher level of success than their traditional levels in upper houses, possibly due to the perceived lesser importance of those houses. The obvious ability of PR systems to assist minor parties more likely to select women for winnable seats (such as the Democrats and the Greens) appears to be the key reason, since in two jurisdictions (Western Australia and Victoria) that advantage reduces to pre-PR levels when such parties' MPs are factored out of the equation.

There is also evidence to suggest that the imbalance between PR and non-PR houses has narrowed since the Labor Party's adoption of affirmative action quotas, although not by enough to alter the overall picture. It remains to be seen in future years, in the event of the Liberal and National Parties, if

²⁴ All results from New Zealand elections after and including 1996 can be found at www.electionresults.govt.nz.

such an imbalance disappears altogether, beyond perhaps the likely higher success rate for Greens candidates in proportional representation systems.

Chapter 9

Conclusion

This thesis has examined the outcomes obtained in the seven jurisdictions currently using proportional representation to elect one of their houses, comparing results in terms of the proportionality and numbers of effective parties with each other, as well as with results obtained with the single-member jurisdiction within the same parliament and with the few available examples of other countries that elect (or at one stage did elect) their national or provincial parliaments via a single transferable vote method. Such parliaments have employed a wide range of district magnitudes and rules relating to ballot paper numbering to elect their proportional house, meaning that none of the seven jurisdictions elected via this method are completely alike, although all of them share at least one common feature with some other jurisdiction.

Within this wide range of conditions, and despite occasional exceptions, a number of conclusions can nevertheless be made about general patterns. They are:

1. District magnitude remains the decisive factor in determining overall proportionality, with conventional wisdom that the higher the magnitude, the more proportional the system, remaining generally valid, notwithstanding some deviations around the DM5-7 and 10-12 clusters. However, ballot paper numbering requirements are a more important factor in determining the number of effective parties that emerge, especially at the parliamentary level. In general the more control voters have over the distribution of their second and later preferences, the smaller the number of effective parties.

2. Five-member districts disadvantage the Greens in comparison to their results in six- or seven-member districts. Both Labor and Liberal tend to be over-represented under such conditions, although neither secures a significant advantage over the other.
3. Even-numbered district magnitudes in general, and six-member divisions in particular, provide an inbuilt advantage to the Liberal and National Parties, an advantage only slightly diminished by the preference harvesting behaviour of the minor and micro parties. While Labor was often disadvantaged in such circumstances in the past, the changes made to Senate voting rules appear to have removed this disadvantage, although we will need to see the results of the 2019 half-Senate election to be sure.
4. DM 7 is the point at which the Greens achieve relative parity with both the major parties in vote and seat share comparisons.
5. While proportional systems facilitate the existence of minor parties, certain circumstances (largely the existence of a ticket voting option) enable some of them to be over-represented.
6. Some significant deviating cases exist in Australia in relation to both patterns referred to above.
7. By contrast with minor parties, Independents generally do worse under proportional systems than under single-preferential ones, and they perform especially badly in STV systems employing a ticket vote. Nick Xenophon is the only significant exception to the rule.
8. There is a general pattern for women to be more successful in houses elected by proportional representation than the corresponding single

member house, although this pattern has diminished over time, at least in part due to the Labor Party's affirmative action policy. A key structural reason for the pattern is that proportional representation enhances the election prospects of minor parties (most notably the Greens and, in the past, the Democrats) that are more inclined to endorse women in winnable seats. When members of these parties are factored out, the imbalance is diminished further or disappears altogether.

A key question remains to be answered in relation to conclusion one. Two jurisdictions (the Senate and South Australia) have moved to give voters an easier option to choose their own preferences, and according to the argument, made it harder for smaller parties to be elected. Has this weakened the democratic legitimacy of the system because the power of the big party cartel has increased, as Economou has argued,²⁵ or increased its legitimacy by enabling voters to give only the preferences they wish and are aware they are giving, as Antony Green no doubt believes?²⁶

This thesis leans towards the latter view. If it were simply a case of the larger parties gaining more seats as a result of greater financial resources not possessed by smaller parties, there might be something unfair and undemocratic about a system that allows smaller party preferences to exhaust or drift back to a larger party. But more to the point, what the pre-2016 Senate and Western Australian systems and, to a lesser extent, the current Victorian system, allow is for minor and micro parties to achieve a highly disciplined preference flow without the need to supply election day labour to achieve such a result via the handing out of how to vote cards. It is evident from preference distributions in single member district elections held on the same day that even the larger parties, who usually staff polling booths with

²⁵ Nick Economou, "An Instance of Cartel Behaviour".

²⁶ Green, *Is it Time for a Fundamental Review of the Senate's Electoral System?*

volunteers handing out how to vote cards, do not achieve such a disciplined preference flow in practice. It seems unfair and undemocratic if a much smaller party unable to marshal this level of staffing can achieve this as a result of the quirks of the electoral system.

Results from the 2018 Victorian Legislative Council election show that preference whisperers can still make their presence felt in spite of less onerous requirements for casting a below the line vote. It appears likely that ten candidates outside the Labor, Liberal, National and Greens parties will be elected compared with five in 2014, and this in spite of what appears to be a higher percentage of voters casting a below the line vote.

On a positive note, the fact that such a phenomenon is happening suggests that more people are thinking and voting independently rather than just following the suggestions of their preferred political party. If this trend continues, then some good has emerged from the 'outrageous' 2013 Senate result. It augurs well for the future of Australian democracy.

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Appendix 1

Percentage of votes cast above and below the line, 2013 Senate Election

State/Territory	Above the line	Below the line
New South Wales	97.9	2.1
Victoria	97.3	2.7
Queensland	97.0	3.0
Western Australia	96.2	3.8
South Australia	93.5	5.4
Tasmania	89.7	10.3
Australian Capital Territory	80.1	19.9
Northern Territory	91.9	8.1
Australia	96.5	3.5

Source: Mackerras, Malcolm; Submission by Malcolm Mackerras to the Joint Standing Committee on Electoral Matters, 37.

Appendix 2

Percentage of votes cast above and below the line, 2016 Senate Election

State/Territory	Above the line	Below the line	Change in BTL Vote 2013-2016
New South Wales	94.6	5.4	+3.1
Victoria	94.7	5.3	+2.6
Queensland	93.9	6.1	+3.1
Western Australia	94.5	5.5	+1.7
South Australia	91.5	8.5	+3.1
Tasmania	71.9	28.1	+17.8
Australian Capital Territory	84.8	15.2	-4.7
Northern Territory	91.4	8.6	+0.5
Australia	93.5	6.5	+3.0

Source: Mackerras, Malcolm; Submission by Malcolm Mackerras to the Joint Standing Committee on Electoral Matters, 38.

Appendix 3

Quota shares of successful micro party candidates, 2014 Victorian Legislative Council Election

Region	Party/Group	Quotas	Primary Vote Rank
Eastern Victoria	Shooters & Fishers	0.15	6 th
Northern Metro	Sex Party	0.17	5 th
Northern Victoria	Shooters & Fishers	0.21	5 th
Western Metro	Democratic Labor	0.15	6 th
Western Victoria	Vote 1 Local Jobs	0.08	11th

Source: Victorian Electoral Commission website (<http://www.vec.vic.gov.au>)

Appendix 4

Quota shares for successful micro party candidates, 2018 Victorian Legislative Council Election

Region	Party/Group	Quotas	Party Vote Rank
Eastern Metro	Transport Matters	0.04	12 th
Eastern Victoria	SFF	0.30	4 th
Northern Metro	Reason	0.20	6 th
Northern Victoria	Liberal Democrat	0.23	6 th
Northern Victoria	DHJP	0.29	5 th
South East Metro	Liberal Democrat	0.04	10 th
Southern Metro	Sustainable Aus.	0.08	9 th
Western Metro	DHJP	0.41	4 th
Western Victoria	DHJP	0.27	4 th
Western Victoria	Animal Justice	0.17	6 th

Source: As for Appendix 5:1

Appendix 5

Average vote and highest vote share for Communist Party candidates, House of Representatives elections 1949-66

Election Year	Average Vote per seat	Highest Vote Share
1949	3.17%	9.58% (Hunter)
1951	4.39%	10.45% (West Sydney)
1954	3.35%	7.66% (Cook)
1955	4.70%	15.28% (Port Adelaide)
1958	3.26%	7.63% (East Sydney)
1961	2.91%	6.99% (Grayndler)
1963	3.11%	7.23% (Bonython)
1966	3.33%	8.33% (Melbourne Ports)

Source: Hughes, Colin A., and B. D. Graham. *Voting for the Australian House of Representatives, 1901-1964*. Canberra: Australian National University Press, 1974.

Appendix 6

Party affiliation and vote share for Fred Paterson, Queensland Legislative Assembly and House of Representatives elections 1926-50

Year	Parliament	Seat Name	Party Label	Primary Vote	2-Candidate Preferred Vote	Won / lost
1926	Qld LA	Port Curtis	Ind Labor	10.73%	NA	Lost
1929	Qld LA	Paddington	Communist	28.36%	NA	Lost
1932	Qld LA	Toowoomba	Communist	4.22%	NA	Lost
1935	Qld LA	Bowen	Communist	15.63%	NA	Lost
1937	Fed H of R	Herbert	Communist	21.17%	NA	Lost
1938	Qld LA	Bowen	Communist	29.33%	NA	Lost
1940	Fed H of R	Herbert	Independent	18.29%	NA	Lost
1941	Qld LA	Bowen	Communist	47.34%	47.34%	Lost
1943	Fed H of R	Herbert	Communist	34.2%	38.3%	Lost
1944	Qld LA	Bowen	Communist	44.51%	NA	Won
1947	Qld LA	Bowen	Communist	39.34%	NA	Won
1950	Qld LA	Whitsunday	Communist	12.7%	NA	Lost

Source: Hughes, Colin A., and B. D. Graham. *Voting for the Queensland Legislative Assembly, 1890-1964*. Canberra: Dept. of Political Science, Research School of Social Sciences, Australian National University, 1974.

Appendix 7

Distribution of Labor preferences in Barambah and Lockyer, 1998 Queensland Election

Seat Name	To NP	% to NP	To ONP	% to ONP	Exhausted	% Exhausted
Barambah	1,599	39.98	864	21.55	1,546	38.56
Lockyer	2 678	45.39	976	16.54	2,247	38.02

Source: Electoral Commission Queensland: Queensland Election 1998 (publication details later) pp. 52 & 136.

Appendix 8

Hypothetical results in Blair under optional preferential voting, 1998 federal election

Hypothetical result, 1: Barambah distribution

Stage	Hanson (ONP)	Thompson (LP)	Clarke (ALP)	Exhausted
Actual at 2nd last	26,525	21,665	19974	0
Clarke Excluded	+4,304	+7,986	Excluded	+7,684
Final Total	30,329 (50.57%)	29,651 (49.43%)		7,684

Hypothetical Result 2: Lockyer distribution

Stage	Hanson (ONP)	Thompson (LP)	Clarke (ALP)	Exhausted
Actual at 2 nd last	26,525	21,665	19,974	0
Clarke Excluded	+3303	+9066	Excluded	+7,605
Final Total	29,828 (49.09%)	30,731 (50.91%)		7,605

Source: Australian Electoral Commission: Election 98, Divisional Results Queensland, p. 10.