

# Electoral Law in the State of Western Australia: An Overview



Third edition

# **Electoral Law in the State of Western Australia: An Overview**

Harry C.J. Phillips

This book celebrates 100 years of the *Electoral Act 1907*

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# Foreword

A Minute from the Under Secretary for Law to the Chief Electoral Officer on 28 May 1952 stated ‘it would be much appreciated if you would prepare a short history of the growth and activities of your sub-department, including any historical data which you may consider would be of interest’. A quarter of a century later the Annual Report of the State Electoral Department for the year ended 30 June 1987, contained a reference which suggested that the Department had commenced research towards the compilation of a history of the *Electoral Act 1907*. At that juncture the State Electoral Department, with R.S. Shaw as the Chief Electoral Officer, was to be restructured as a statutory authority known as the Western Australian Electoral Commission, with Les Smith as the inaugural Electoral Commissioner. The commitment to a history of the *Electoral Act 1907* was not forgotten, rather other projects, at least temporarily, took priority. This publication gives focus to a comprehensive consolidation of the later substantially amended *Electoral Act 1907*, but its scope has been modified to encompass an abridged history of the electoral law in Western Australia.

The broad aim of this publication is to provide a concise historical overview of electoral law in Western Australia, from the time it became a State of the Commonwealth of Australia on 1 January 1901. From Federation thematic chapters have been formulated covering the franchise; electoral boundaries; the voting formulae in both the Legislative Assembly and Legislative Council; compulsory enrolment and voting; party registration and public funding; and the creation and activities of what is now known as the Western Australian Electoral Commission. While the publication recognises the Colonial legacy to the electoral law, I refer readers to a classic work covering the period from foundation to federation, authored by Isla Macphail.

This study is the third revision of the original 2008 publication. It was prepared following the 9 March 2013 State Election. From the beginning, until his departure, the Western Australian Electoral Commissioner, Warwick Gately, AM has been fully supportive of the historical overview project of Electoral Law in the State of Western Australia. From May 2013 the Acting Western Australian Electoral Commissioner, Chris Avent, has also been fully supportive. However, any views expressed in this monograph are to be attributed to myself as author.

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October 2013

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The assistance of the Parliament of Western Australia should be recorded with gratitude. In a broad sense this includes the Presiding Officers, the President of the Legislative Council Hon Barry House, and Speaker of the Legislative Assembly, Hon Michael Sutherland, the Clerk of the Legislative Council Malcolm Peacock and Clerk of the Legislative Assembly, Peter McHugh. Parliament has many professional staff who have a keen interest in electoral laws. Included in this group are Vanessa Beckingham, Isla Macphail, Kirsten Robinson and colleague Professor David Black who shares with me the honour of being a Parliamentary Fellow. Liz Kerr, Clerk Assistant in the Legislative Assembly, has as usual, provided extremely valuable 'academic' and editorial assistance and been very encouraging with excellent humour. For many years she has improved my expression. The help afforded by Talitha Engstroem, from the Legislative Assembly, has been most welcome. Moreover, the library staff, led by Judy Ballantyne, has again provided valuable assistance. Each of the staff at the Legislative Assembly Committee Office are supportive colleagues as are many Legislative Council officers, including Nigel Lake and Julia Lawrinson.

Once again, too, I convey my appreciation to my family who so strongly support my endeavours. Although it could include the wider net of my extended family it is important to mention wife, Jan, a highly educated person, who helps with the reading of the various texts. Daughters Michelle and Marina, and grandchildren Madeline, Charlotte, Harry and Poppy, are always in the picture.

October 2013

# Abbreviations

AD	Australian Democrats
AEC	Australian Electoral Commission
ALP	Australian Labor Party
Assembly	The Legislative Assembly of the Western Australian Parliament
AV	Alternative Vote (or preference vote)
COG	Commission on Government
Council	The Legislative Council of the Western Australian Parliament
CRU	Continuous Roll Update
DLP	Democratic Labor Party
JRA	Joint Roll Arrangement
LGAB	Local Government Advisory Board
MLA	Member of the Legislative Assembly
MLC	Member of the Legislative Council
MMP	Mixed Member Proportional Voting System (New Zealand)
PR	Proportional Representation Voting System
STV-PR	Single Transferable Vote version of the Proportional Representation Voting System
UK	United Kingdom
WALGA	Western Australian Local Government Association
WAEC	Western Australian Electoral Commission
‘WA Inc’ Royal Commission	Royal Commission into Commercial Activities of Government and Other Matters (1992)
WCTU	Women’s Christian Temperance Union



# 1

## The Colonial Legacy

When Western Australians celebrated the coming of Australia's federal system of government on 1 January 1901, it was recognised that although many of the constitutional practices of the colonial past would be retained, there would also be new arrangements for the future. To that juncture most of the electoral law provisions had been made under the umbrella of amendments to the Colony's constitutional documents. The Commonwealth Constitution had left jurisdiction of electoral law for the States as a residual power so the direction that Western Australia was going to adopt was unknown. As the Australian Colonies had already won themselves a reputation as 'pacemakers of the world'<sup>1</sup> for bold democratic experiments in the arena of electoral law, for Western Australia, with its geographic distance and its distinct political culture, the new century promised to be one of interesting change.

Any code of electoral law includes a number of essential components of almost equal importance. In colonial times, these components were enunciated in the constitutional documents together with some separate legislation and comprised:

- the qualifications and disqualifications of voters and the enrolment provisions;
- the method of voting;
- the division of the electorate into constituencies; and
- the judicial and administrative provisions for seeing that the law is observed.

This will be the basis of the framework for both a brief overview of Western Australia's colonial past, as well as a more detailed examination of the federal future under Western Australian Statehood.

### The Colonial Franchise

The battle for the franchise, or the right of citizens to vote, was one of the most keenly fought rights for much of the nineteenth and part of the twentieth century. In 1832 when the Legislative Council of Western Australia was first established the Great Reform Bill was passed in the

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<sup>1</sup> Marian Sawyer (2001), 'Pacemakers of the World', in Marian Sawyer (ed), *Elections: Full, Free and Fair*, Annandale: The Federation Press, pp. 1–27.

United Kingdom. This made the right to vote a matter of national law rather than local custom. Although of symbolic significance, the lowering of property qualifications still meant only some 5 per cent of adult males could vote. At this time the well known Chartists had begun rallying for manhood suffrage and five other principles: the secret vote, equal electoral districts, payment of members of parliament, removal of property qualifications for members and annual parliaments.

The Reform Bill of 1867 doubled the number of voters but fell far short of the Chartist demand of full male franchise until the UK Reform Bill of 1884, which gave most adult males the vote. And so it was in 1867, when elections were held for the first time in Western Australia, that qualified colonists voted for persons whom it was desired that Governor John Hampton should then nominate as members of the Legislative Council. These 'informal' elections were not governed by any fixed franchise or regulation by-law. In practice, most adult males (except ticket of leave and Aboriginal men) were permitted to vote, although in the district of Swan, by decision of the local committee, voting was restricted to landholders and 10 pound a year householders.

The beginnings of an elected Parliament in Western Australia were taken a step further by the next Governor, Frederick Aloysius Weld, who (after his experience in New Zealand) strongly supported the principle of representative government. In a dispatch from the Secretary of State in London in March 1870 the move from 'personal to representative government' was endorsed. An Ordinance passed in 1870 provided for a revamped 18 member Legislative Council of which 12 were to be elected, three were officials (the Colonial Secretary, the Surveyor General and the Attorney General) and three nominee non-officials. The franchise for the 12 elected members was based on the law for the Legislative Council in New South Wales and encompassed males with freehold property valued at 100 pounds and householders occupying premises at a rental value of 10 pounds per annum, as well as holders of depasturing licenses or leases at an annual value of 10 pounds and with at least three years still to run.

When responsible government arrived in 1890 a property franchise was retained for both electors and members, although it was marginally less restrictive than during the period of representative government.<sup>2</sup> Indeed, in the first Parliament in 1891, Marinus Canning the member for East Perth, said to be 'the most working class seat in the colony',<sup>3</sup> found no support when he introduced a private member's Bill for the liberalisation of the franchise. In the short run at least, retaining a similarly limited franchise to the representative government era provided a measure of stability in the context of a new bicameral parliament in a Colony beginning to experience

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<sup>2</sup> See *Constitution Act 1889*, S. 39.

<sup>3</sup> Brian De Garis (1983), 'Political Tutelage 1829–1870', in C.T. Stannage (ed), *A New History of Western Australia*, Nedlands: University of Western Australia Press, p. 340.

a sharp population increase and economic expansion based on the gold industry. In fact, when a move was made to extend the male franchise in 1892 it was defeated in the Legislative Council.

The early debates in the Legislative Assembly document Premier Sir John Forrest's efforts in 1893 to appear inclusive toward those people migrating to Western Australia from 'the east':

*...we desire to bring our institutions into accord with the institutions of other parts of Australia. We are nearly altogether dependent for the increase of our population and the development of our resources upon persons coming from the Eastern colonies to Western Australia; and we wish to make the new-comers feel that they come to a land to which they have been accustomed; that the laws are not dissimilar: and that the privileges which they exercised in the former place [such as the vote] they can also exercise here, and this Bill will allow them to do it.<sup>4</sup>*

Forrest was concerned that of some 60,000 persons in the Colony, only 10 per cent were eligible voters.<sup>5</sup> Forrest also understood that it was not realistic to 'expect men all in a moment to take a considerable interest in the affairs of the colony'<sup>6</sup> and declared his objective in the following terms:

*We wish to make them feel their responsibility to the Government and to Parliament. We do not wish the people to think that the Government and Parliament are restricted to a few, but we wish to make them understand that the Government and Parliament are exactly what the people make them. If the electors are actuated by high, honourable, and worthy motives, and by a patriotic desire to make the colony prosperous and the people happy, the Parliament and the Government then will be a reflection of the views of the people.<sup>7</sup>*

The male franchise was granted for elections to the Legislative Assembly, provided the person was qualified as a naturalised subject of Her Majesty, or a 'denizen of Western Australia', who was 'of full age [21 years] and not subject to any legal incapacity'. There was also an indirect property advantage under the plural voting provisions whereby a person who owned property in various districts could vote in each district. On two occasions Frederick Illingworth, who generally opposed the Forrest Ministerialists, had sought to abolish plural voting in the Legislative Assembly. The moves were not given much debating time and were easily defeated with one opponent saying 'surely if a man had property in one part of the colony where he employed a large amount of labour, that man should have some

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<sup>4</sup> Parliamentary Debates, Legislative Assembly Debates, 17 July 1893, p. 98.

<sup>5</sup> Parliamentary Debates, Legislative Assembly, 17 July 1893, p. 90.

<sup>6</sup> Parliamentary Debates, Legislative Assembly, 17 July 1893, p. 92.

<sup>7</sup> Parliamentary Debates, Legislative Assembly, 17 July 1893, p. 92.

say in the representation of that portion of the country'.<sup>8</sup> However, in 1899 George Leake, as Leader of the Opposition, thought it appropriate to make another attempt to abolish plural voting as 'the pernicious practice which had prevailed [for] far too long'.<sup>9</sup> Yet, following a long and bitter debate the motion was defeated.<sup>10</sup>

Given that one of the roles of the Legislative Council was to help maintain the rights of property, Leake's unsuccessful amendment did not seek to abolish plural voting in the Upper House. In the Legislative Council a property qualification was required from 1893, once that Chamber became an elected body. The franchise could be exercised in as many provinces that an elector satisfied the property qualifications which read as: the possession of freehold property worth at least one hundred pounds; or a householder occupying a dwelling of an annual value of twenty five pounds; holding a leasehold value of similar value, or holding a mining or pastoral lease with an annual rental of at least ten pounds. However, no elector possessing more than one qualification within one province could be registered more than once for that province. The new Council was to consist of 21 members with three representatives for each of the seven provinces. The provisions were still remarkably similar to the 1870 legislation. To be eligible to vote a man had to be at least 21 years of age, a British subject (if naturalised for at least one year) and must have resided in Western Australia for at least 12 months. Age specifications for legislators, differing from those of voters, were specified in the United States Constitution, but were not generally the pattern in the Australian Colonies. Interestingly to become an MLC a man had to be 30 years of age, had to have resided in the Colony for at least two years and to have been a natural born British subject or 'naturalised' for at least five years prior to election.

For Mackenzie, an electoral systems authority writing in the 1960s, 'every qualification entailed a disqualification'.<sup>11</sup> The *Constitution Act 1889* denied the vote to any man 'who has been attained or convicted of treason, felony, or any infamous offence in any part of her Majesty's dominions'. In Mackenzie's judgment these were almost universal disqualifications.<sup>12</sup> Significantly, in 1893, Western Australia followed the Colony of Queensland's 1872 decision to specifically exclude Aboriginal men from the franchise. The *Constitution Amendment Act 1893* provided that 'no aboriginal native of Australia, Asia or Africa shall be entitled to be registered, except in respect of a freehold qualification'. The exclusion of indigenous Australians from calculations of the population of the Colony represented a manifestation of historian Professor Geoffrey Bolton's claim

<sup>8</sup> Parliamentary Debates, Legislative Assembly, 12 September 1899, p. 1228.

<sup>9</sup> Parliamentary Debates, Legislative Assembly, 3 October 1899, p. 1522.

<sup>10</sup> Parliamentary Debates, Legislative Assembly, 3 October 1899, pp. 1547–1548.

<sup>11</sup> Mackenzie (1967), *Free Elections*, London: George Allen and Unwin, p. 23.

<sup>12</sup> Mackenzie (1967), *Free Elections*, p. 23.

that ‘no political advantage was to be gained from an interest in Aboriginal questions’.<sup>13</sup> An Aboriginal Protection Board had been established in 1886, which was retained by the *Constitution Act 1889* at British insistence, under the authority of the Governor, with a guarantee of revenue ‘in assisting generally to promote the preservation and well-being of Aborigines’. This initial denial of full self-government for Western Australia was much to the chagrin of Premier Sir John Forrest, who until his departure to federal politics in 1901 was the Minister responsible for Aboriginal matters. Forrest had suggested the abolition of the Board in 1892, which was not achieved until 1897,<sup>14</sup> and no moves were made to institute the vote for Aboriginal people. On the other hand another historian Neville Green has reminded us that while Forrest was judged to be an ally of the pastoralists and completely upheld their right to employ Aboriginal people, he was also reputed to be against any schemes to exclude them from white society.<sup>15</sup>

A further significant franchise exclusion for nearly all of the colonial period was the denial of voting rights for women. During the 1890s a series of motions seeking to grant the vote to women were debated in the Western Australian Parliament. These debates eventually led to Western Australia being the second colony, following South Australia in 1894, to grant women the franchise in 1899 in time for electoral participation in the new federation at both the Commonwealth and State tier of government. In fact women in Western Australia voted in the referendum which affirmed the State’s entry to the federation, and their first vote for parliamentary elections took place for both State and Federal elections held in 1901. The Federal election was conducted under the electoral provisions for Western Australia before separate Commonwealth electoral statutes were passed. However, as it was not until 1920 that legislation was promulgated to permit women to be members of the Western Australian Parliament.

## The Colonial Voting System

The manner in which those who had gained the franchise exercised their vote was given legislative footing during the colonial phase of representative government. At the first ‘official election’ in 1870 the open vote was adopted, which meant an elector’s vote was made public immediately upon it being cast. Open voting was given strong backing by

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<sup>13</sup> Geoffrey Bolton (1983), ‘Black and White after 1897’ in C.T. Stannage (ed), *A New History of Western Australia*, Nedlands: University of Western Australia Press, p. 125.

<sup>14</sup> See Neville Green (1983), ‘Aborigines and White Settlers in the Nineteenth Century’, in C.T. Stannage (ed), *A New History of Western Australia*, Nedlands: University of Western Australia Press, p. 109. The Board was disbanded and its function passed to an Aborigines Department formed under the *Aborigines Act* of 1898.

<sup>15</sup> Neville Green (1983), ‘Aborigines and White Settlers in the Nineteenth Century’, in C.T. Stannage (ed), *A New History of Western Australia*, Nedlands: University of Western Australia Press, p. 109.

John Stuart Mill in his influential work *Considerations on Representative Government*, published in 1861, giving intellectual and practical considerations to many voting systems matters. Mill argued that open voting forced electors to consider the public interest in the exercise of the franchise, whereas secret voting encouraged the exercise of the franchise on the basis of private interests. However, secret voting was introduced as early as 1854 in Victoria, with its adoption in the Australian Colonies earning it the label of ‘the Australian Ballot’. Secret voting was given legislative passage in the United Kingdom in 1874, some three years before it came before the Western Australian Legislative Council for adoption at the 1880 colonial elections, where a booth was provided for voters to strike out the names of those candidates for whom they did not wish to vote.

A key feature of the colonial voting system was the retention of the historic plurality voting formula commonly called ‘first-past-the-post’, whereby the candidate with the highest number of valid voters in a single member district was declared elected. In a double member constituency as was the case for the seats of Perth and Fremantle during the representative government phase, the two candidates with the highest number of votes were elected. In fact during the colonial period it was not uncommon for members to be elected unopposed. At early elections candidates were to nominate on the day of election and if there was more than one candidate there would be a poll with voting to close at 6.00 pm. Proxy voting (with authority notified in writing) was permitted. The numbers of unopposed candidates for colonial elections to the Legislative Assembly stood at 11 of the 30 seats in 1890; 15 of the 33 seats in 1894 and 26 of the 44 seats in 1897.

There is no evidence in parliamentary debates that any voting formula other than plurality was to be adopted in the colonial era. A straight forward contest between candidates who were often unopposed and who were usually known to the voters appeared to be satisfactory in nearly every circumstance. This was of course before the emergence of political parties, when there were some broad groupings from the mid 1890s known as Ministerialists led by Premier Sir John Forrest and Oppositionists who sought to oppose the dominance of the first Premier. In the few years before Sir John Forrest’s departure the political climate in the colony was characterized by the foundations of the future Labor Party, which was prepared to tackle some the fundamentals of the Colony’s electoral law, particularly the basis for the drawing of constituency boundaries.

## **Constituency Boundaries**

When the era of ‘representative government’ began in 1870, two members were each to be elected to represent Perth and Fremantle and one each to represent Swan, Geraldton, Greenough, Wellington, Vasse, Albany, York and Toodyay. The boundaries of the electoral districts were published in a

Schedule to the Ordinance, which provided for the establishment of the Legislative Council. The description of the boundaries contained references to rivers, coasts, mountains and roads, but did not mention any specific criteria such as region, community of interest or population. Broadly, the electoral districts were the inhabited regions of Western Australia and in a study of the period from 1870 to 1890 John McKenzie observed, ‘representation was on a regional basis, that is in proportion to economic strength, not in proportion to population’.<sup>16</sup>

Additions to the membership of the Legislative Council did not significantly alter the basis by which electoral boundaries were drawn. During the passage of the 1889 Constitution Bill the Legislative Council appointed a select committee to consider and report on the boundaries and electoral divisions proposed in the Bill. The committee did not refer to any criteria for the exercise, with the boundaries being defined like a surveyor’s brief mentioning degrees of latitude and longitude and landmarks such as rivers, oceans, roads and other colonial boundaries.

During the 1890s onset of the gold-rushes, demographic changes had to be addressed as the population jumped from 48,502 in 1890 to 136,816 in 1896. Then by 1900 the figure reached 179,967. In the 1896 redistribution the Legislative Assembly was enlarged to 44 and the Legislative Council to 24 members. Another redistribution only three years later resulted in the Assembly reaching 50 members with the Council rezoned into 10 provinces with 3 members each. In the Upper House, six year terms for members were to begin on 22 May, with biennial elections ensuring continuity of membership. However, as Premier Forrest told the Assembly in 1896:

*... the principal object of this Bill is to give increased representation to that part of the colony which only a short time ago, was altogether unoccupied and unutilized and considered to be unfruitful... We have not taken population as the basis of the different electorates, although we have been influenced, especially in the towns, by the number of the population in those towns... We have to consider, to a large extent the interests of the people as a whole, and are not able altogether to deal with the question of representation on the basis of population.*<sup>17</sup>

In general though, while the redistribution of 1896 did not create serious divisions, in his speech three years later to the *Constitution Amendment Act 1899* Forrest was forced to admit he was ‘sorry to say that the task of redistributing or rearranging these electorates has not been an agreeable one, so that I shall not be at all surprised if the plan I have adopted in this Bill does not find favour with everyone in this House’. Again the Premier said

<sup>16</sup> John McKenzie (1936), ‘Survey of Western Australian Politics in the Period of Representative Government, 1870–1890’, BA Honours Dissertation, University of Western Australia, p. 3.

<sup>17</sup> Parliamentary Debates, Legislative Assembly, 29 July 1896, pp. 180–181.

‘I am not admitting for a moment that population should be the basis of redistribution, because I do not consider it would be possible, under existing conditions in the colony to divide the country and do justice to each electorate on a population basis only’.<sup>18</sup>

In April 1899 the electoral platform of the Western Australian Trades Union and Labor Congress adopted as Clause A ‘the redistribution of seats on a population basis’.<sup>19</sup> In 1900, when the Commonwealth of Australia Bill for federation was being debated in the House of Commons, an Irish MP, William Bedford, commented upon the drawing of electoral boundaries in Western Australia as follows:

*... I would make it a condition upon the entry of this small colony into the Government Federation that she should, by a proper measure of representation, do away with an undoubted scandal which exists at the present time, and give full and fair representation such as other colonies do to the whole of the people within her borders.*<sup>20</sup>

Of course Western Australia was not denied entry to the Commonwealth. Nor did Bedford acknowledge that by most measures most other Australian colonies had considerable rural weighting. The constitutional founders for the new Commonwealth had little to say about how boundaries should be drawn and indicated no specific requirements for voter equity, except that Section 24 of the Australian Constitution allocated seats between the States in the House of Representatives on the basis of population. This was subject to the guarantee of a minimum of five seats for each State regardless of population. Given the first election for the Federal Parliament in 1901 was conducted under the electoral provisions of the various States, it was said by John Forrest that as ‘the Government have decided to divide the colony as nearly as possible on a population basis, and we have taken for our guide the number of electors who voted for the [federation] referendum... two members should be elected for the metropolitan area, two for the goldfields and one for the rest of the colony, making five altogether’.<sup>21</sup>

Of course, Sir John Forrest was unaware that the system he believed best represented Western Australians’ interests would be dismantled some 110 year later on the basis that Forrest’s ‘existing conditions’ had changed to the extent that population should be the main basis for determining an electorate in the Legislative Assembly.

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<sup>18</sup> Parliamentary Debates, Legislative Assembly 29 August 1899, p. 1036.

<sup>19</sup> Western Australian Trades’ Union and Labour Congress, Minutes of Proceedings, No.1–2, 1899–1900, p. 5.

<sup>20</sup> Cited in Geoffrey Gallop (1995), ‘The High Court and Electoral Reform in Western Australia’, in Mark Brogan and Harry Phillips (eds), *Past as Prologue: the Royal Commission into Commercial Activities of Government and Other Matters*, Perth: Edith Cowan University, p. 42.

<sup>21</sup> Parliamentary Debates, Legislative Assembly, 13 September 1900, p. 408.

## Administration of the Electoral Provisions

Sir John Forrest played a major role in the debates on drawing the electoral boundaries during the colonial era (and beyond). The *Electoral Act 1899* provided for a Returning Officer for each of the 10 Council provinces and 50 Assembly districts, with the officers being directly responsible to the Minister. Early Public Service lists indicate that as far back as 1897, electoral staff existed. The 1897 Statistical Register (Part XIII), known as the 'Blue Book', included an electoral section as part of the Colonial Secretary's Office in the Department of Colonial Treasurer. This list showed 52 Returning Officers and 39 Registrars. The same publication listed Mr Richard Picton Gore Daly as the Inspector of Parliamentary Rolls from 1897, at an annual salary of 250 pounds. The 1897 list also showed a former Under Secretary, Mr Octavius Burt, at an annual salary of 100 pounds, as 'Generally' Officer in Charge of Electoral Matters.<sup>22</sup> A major problem then (and sometimes now) for electoral officers was the poor enrolment numbers. Apart from establishing documentation for persons with standard disqualifications, due to such matters as imprisonment, it was necessary to establish if property qualifications were satisfied. Although manhood suffrage was introduced in 1893 property pre-requisites still prevailed for voting for the Legislative Council. Moreover, plural voting was permitted for the Assembly, making it necessary to establish the various districts where propertied men could cast multiple votes. Enrolment was voluntary and the time frame to verify the credentials was often very short.

The use of the first-past-the-post or plurality formula for both parliamentary and local government elections meant that counts were comparatively simple. Regulations had to ensure that secret voting could be guaranteed and although this so-called Australian Ballot had reduced bribery and corruption, laws to eliminate illegalities were technical and extensive. This legal framework was to be carried to Statehood and beyond, as were electoral provisions for such technical matters as voting hours. The *Electoral Act 1895* extended the hours of polling by two hours so that they would run in future from 10 am to 7 pm (instead of 9 am to 6 pm). Voter registration procedures were also expedited in accordance with a change to the constitutional documents which halved to six months the residency period in the colony before voter registration could be sought.

It was unsurprising that with Statehood the emergence of political parties induced changes to the electoral law of the State. Reference has already been made to the redistribution of seats on a population basis sought by the 1899 Trades Union and Labor Congress, but a host of other proposals were also included in that turn of the century platform including:

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<sup>22</sup> See Electoral Department, Library Board of Western Australia Document, I. Mahler, 22 June 1973.

- the adult suffrage;
- abolition of proxy and plural voting;
- elections to be held on the same day (which was to be a public holiday with all hotels to be closed);
- abolition of candidate deposits for elections;
- penalties for not exercising the franchise; and
- consideration by committee of a seamen's franchise.<sup>23</sup>

At the same time the establishment of a new Commonwealth Government, with its own electoral law, had to be integrated into the legal framework. Some of the difficulties were partly overcome for the first federal election conducted under Western Australian electoral provisions. Change though, was ahead in the State of Western Australia.

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<sup>23</sup> Western Australian Trades' Union and Labour Congress, Minutes of Proceedings, No. 1–2, 1899–1900, p. 5.

## 2

# The Franchise

Propertied men formed the basis of both electors and elected in the colonial period, and it would require numerous changes to electoral law over the following century to address a number of shortfalls with the franchise, including the abolition of plural voting, female and Aboriginal suffrage, the continuing issue of rural weighting and other technical amendments. Western Australia entered Statehood in 1901 without women having voted in a parliamentary election or having the legal right to be a Member of Parliament. Although few women had the recognised property qualifications to satisfy the requirement for voting in the Legislative Council in that era, it was not until the 1964 election that all limitations on women had been lifted. Only a few years earlier (1962) Aboriginal people were granted the franchise, but of course universal franchise has never meant that all citizens have the right to vote. While the minimum voting age had stood at 21 years of age, in 1970 Western Australia led the nation in lowering the age of majority to 18 years. Several alterations were made to the legally technical scale of disqualifications (such as terms of imprisonment) for voting and assuming a seat in Parliament, with the restrictions on clergymen standing for election abolished as late as 1975.

### **The Abolition of Plural Voting in 1904**

The *Electoral Act 1904* had phased out plural voting for the Legislative Assembly, although its abolition was resisted in the Legislative Council.<sup>24</sup> In fact plural voting remained in practice in the Upper House until 1964 with only one vote permitted for each elector entitled to a vote in each province, while at the turn of the previous century some voters were reportedly entitled to vote in 20 or 30 different Legislative Assembly electorates.<sup>25</sup> For instance Alexander Forrest, the Premier's influential brother and Mayor of Perth, was entitled by plural voting to vote in almost all of the forty four electorates for the 1899 Legislative Assembly election, a scenario supported by the colonial elite but condemned by the burgeoning goldfields and other liberals as undemocratic. A notable opponent of plural voting had been Frederick Illingworth who had twice moved unsuccessfully for its abolition in the Legislative Assembly during debate on the 1899

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<sup>24</sup> Parliamentary Debates, Legislative Assembly, 23 December 1903, p. 3138.

<sup>25</sup> Parliamentary Debates, Legislative Assembly, 28 November 1913, p. 3200.

Constitution Act Amendment Bill.<sup>26</sup> Sir John Forrest as Premier had opposed the move when he, somewhat parochially, told the Assembly it was ‘true, the trend of Australian legislation was towards ‘one man one vote, but why should we imitate everything done elsewhere’.<sup>27</sup>

The proposed abolition of plural voting was not resisted in the Legislative Assembly when Forrest’s successor, Premier Walter James, moved the clause in the Electoral Bill which confined an elector to one vote in the district in which he or she resided and was registered. In the event of changing residence to another district an elector was to be given three months grace before losing the entitlement to vote. Henry Daghlish, James’ successor as Premier, sought clarification in 1903 that the new clause only applied to residence and was not applicable for an office or shop and was limited to the Lower House, before the motion was passed on the voices.<sup>28</sup>

### **Women’s Rights to Vote and to Sit in Parliament<sup>29</sup>**

Although women did not vote in a State or Federal election until 1901, the parliamentary quest for the female franchise can be traced to 1893, the year in which women first obtained property rights in the colony. Joseph Cookworthy, the Member for Sussex and a conservative Forrest supporter, moved an amendment that women should be able to vote for the Legislative Council if they satisfied the property qualification.<sup>30</sup> Cookworthy reminded the Assembly that women had been able to vote in municipal elections and school boards for some twenty years and cited the support of statesmen such as Sir Henry Parkes, Lord Salisbury and Mr Balfour from England, when he said his view was based on sound reason and was not a matter of sentiment.<sup>31</sup> However, some of the comments in the parliament at the time indicate that women had some way to go before gaining equality in voting rights. For instance, Alexander Forrest claimed ‘that he did not believe in ladies mixing up in politics’ and went on to say ‘he thought the proper place of a women, whether she were a widow or a spinster, was to look after her

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<sup>26</sup> Parliamentary Debates, Legislative Assembly, 12 September 1899, p. 1226 and 13 September 1899, p. 1277.

<sup>27</sup> Parliamentary Debates, Legislative Assembly, 12 September 1899, p. 1227.

<sup>28</sup> Parliamentary Debates, Legislative Assembly, 1 September 1903, p. 728.

<sup>29</sup> For recent learned articles on the attainment of women’s suffrage in Western Australia and the right of women to sit in the Parliament see Isla Macphail, ‘Beyond the Ambivalence of Chartism’: The Attainment of Women’s Suffrage in Western Australia’, in David Black and Harry Phillips (2012), *Making a Difference-A Frontier of Firsts: Women in the Western Australian Parliament 1921–2012*, Perth: Parliament of Western Australia, pp. 1–31; and Michelle Choules, ‘The Right to Sit’ in David Black and Harry Phillips (2012), *Making a Difference-A Frontier of Firsts: Women in the Western Australian Parliament 1921–2012*, Perth: Parliament of Western Australia, pp. 32–46.

<sup>30</sup> See Judy Skene (1999), ‘Amending the Suffrage Story: Local Government in Western Australia, 1876–1999’, *Studies in Western Australian History*, Vol. 19, p.64.

<sup>31</sup> Parliamentary Debates, Legislative Assembly, 24 July 1893, p. 148.

home...<sup>32</sup> Cookworthy's amendment was ruled out of order with no division required, but in 1896 Cookworthy again moved to recognise female suffrage and on that occasion came within two votes of success.<sup>33</sup>

In 1897 a future premier Walter James (1902–1904), moved 'that in the opinion of this House the best interests in the colony require the extension of the Parliamentary franchise to women'. Debate was long, but when the question was eventually put the 11 *Ayes* were outnumbered by the 17 *Noes*, with the Forrest brothers in the latter category.<sup>34</sup> Frederick Illingworth, an opponent of the motion (and the Forrest Ministerialists), suggested a women's suffrage in a separate a women's House of Representatives, in which women could publicly express their views on social and other matters.<sup>35</sup> Illingworth though, remained concerned about women engaging in politics and not looking after the cooking.<sup>36</sup> Similarly, John Forrest thought that the result of the women's vote 'would be that women would give more attention to politics and political questions, and less attention to their social duties and the comforts of their homes'.<sup>37</sup> A notable exception to this view came from future premier George Leake (1901–1902), who was 'convinced that the granting of the franchise to women would have a steadying, a levelling and a humanizing influence upon our social and political system'.<sup>38</sup>

Outside of the Parliament the women's suffrage movement was given impetus by active members of the Women's Christian Temperance Union (WCTU) and the Karrakatta Club. Somewhat ironically, the Karrakatta Club could not officially declare allegiance to the campaign out of respect for their political husbands or relatives who opposed women's suffrage. The Premier's wife, Lady Margaret Forrest was a foundation member of the Club while Gwentyfred James, wife of Walter James, shared her husband's commitment to the cause.<sup>39</sup> Some members such as Edith Cowan, the first woman elected to the Legislative Assembly in 1921, also saw the right of women to sit in Parliament as a 'natural corollary' of the extension of the franchise to women. However, this amendment to the Constitution for women to be members of Parliament was not pursued, as some parliamentarians, despite believing that women should have the vote, 'drew the line' and would not support women sitting in Parliament.

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<sup>32</sup> Parliamentary Debates, Legislative Assembly, 24 July 1893, p. 149.

<sup>33</sup> Parliamentary Debates, Legislative Assembly, 12 August 1896, p. 364.

<sup>34</sup> Parliamentary Debates, Legislative Assembly, 1 December 1897, p. 768.

<sup>35</sup> Parliamentary Debates, Legislative Assembly, 1 December 1897, p. 750.

<sup>36</sup> Parliamentary Debates, Legislative Assembly, 1 December 1897, p. 756.

<sup>37</sup> Parliamentary Debates, Legislative Assembly, 1 December 1897, p. 761.

<sup>38</sup> Parliamentary Debates, Legislative Assembly, 1 December 1897, p. 752.

<sup>39</sup> See Betty Carter (2000), 'Votes for Women-Supply or Demand', in D. Black and H. Phillips (2000), *Making a Difference: Women in the Western Australian Parliament 1921–1999*, Perth: Parliament of Western Australia, p. 37.

Success for the WCTU, the Karrakatta Club and the minority of parliamentarians came earlier than had been expected. When in 1899 women were granted the franchise, Sir John Forrest (still Premier) faced accusations in Parliament that members had been prepared to turn their backs on themselves and fall over their own shadows when the Forrest Government reversed its previous opposition to the women's franchise.<sup>40</sup> There were also accusations that motives of electoral advantage had entered into the debate and influenced members to change their minds. The essence of the claim expressed in the Parliament and supported by some scholars,<sup>41</sup> was that the voting power of the coastal districts of the south west region would be doubled as the ratio of women resident in those districts was much higher than on the Goldfields. The increase of seats in the Goldfields could be countered by the increase in voting power of the south west where the Forrest Government had greater support. Premier Forrest rejected the claims of a 'remarkable somersault on this question'<sup>42</sup> with assertions that the Goldfields press were in favour of the measure<sup>43</sup> and that as a political leader he had a responsibility to respond to the views of the 'great mass' of colonists. Female suffrage had been adopted in New Zealand and South Australia, and while he would have preferred for the measure to be passed in the 'mother country' Forrest had no doubt that if a poll were taken of the electors of Western Australia, a majority would be in favour of the extension on the franchise to women.<sup>44</sup>

The motion moved by Walter James was approved by a 17 to 6 vote in the Legislative Assembly<sup>45</sup> and by a narrow margin in the Legislative Council of eight to six.<sup>46</sup> The necessary legislative changes were made in the Constitution Act Amendment Bill and Electoral Act Amendment Bills with the debate in each case largely centering on other issues. However, this extension of the franchise did not extend to Aboriginal women nor were any women given the right to sit in Parliament as had been the case with the 1894 South Australian legislation. It was not until 1920 that Western Australian women could be elected, which meant the gap between gaining the franchise and the right to sit in Parliament was longer in Western Australia than in any other State. The absence of social legislation in the post-war reconstruction phase after the devastation of normal community life during the First World War gave momentum to the possibility for women to be representatives in Parliament. Even then the passage of the Bill

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<sup>40</sup> Parliamentary Debates, Legislative Assembly, 12 July 1899, p. 303.

<sup>41</sup> See Betty Carter (2000), 'Votes for Women-Supply or Demand', in *Making a Difference: Women in the Western Australian Parliament 1921-1999*, Perth: Parliament of Western Australia, pp. 37-41. Note: Women voted in the 1900 Federation Referendum.

<sup>42</sup> Parliamentary Debates, Legislative Assembly, 12 July 1899, p. 306.

<sup>43</sup> Parliamentary Debates, Legislative Assembly, 12 July 1899, p. 313.

<sup>44</sup> Parliamentary Debates, Legislative Assembly, 12 July 1899, p. 311.

<sup>45</sup> Parliamentary Debates, Legislative Assembly, 12 July 1899, p. 319.

<sup>46</sup> Parliamentary Debates, Legislative Council, 17 August 1899, p. 939.

through the Parliament was not smooth, as in 1919 a constitutional majority in the Legislative Council was not achieved.<sup>47</sup> Nevertheless, success was finally achieved a year later. Ironically, Thomas Draper, the Attorney General responsible for the *Parliament (Qualification of Women) Act 1920* was to lose his West Perth Legislative Assembly seat to Edith Cowan at the 1921 election.

### **Aboriginal People's Suffrage**

While it took two decades between any women gaining the right to vote and sit in parliament, a most obvious denial of representational rights befell Aboriginal people for a considerable time to come. Aboriginal men were specifically excluded from the otherwise male franchise in 1893, and it was not until 1962 that Aboriginal peoples could enrol and vote for the Western Australian Parliament.

In March 1962 the *Commonwealth Electoral Act 1918* had been amended to provide that Aboriginal peoples could enrol to vote in federal elections if they wished. A year earlier a Commonwealth Parliamentary Committee had recommended that all Aboriginal and Torres Strait Islander people who did not already have the vote should be allowed to vote in Commonwealth elections.<sup>48</sup>

The Commonwealth *Franchise Act 1902* specifically *disfranchised* Aboriginal people the vote, except for a few who qualified under Section 41 of the Australian Constitution, which provides that:

*no adult person who has or acquires a right to vote in a State poll shall, while the right continues, be prevented... from voting at election for either House of Parliament of the Commonwealth.*

The main intention of this section was to protect the vote of women for federal elections who had gained the vote in their States (Colonies). However, the section had potential relevance to Aboriginal people who were otherwise excluded from the federal franchise. It has been noted that the decision of the federation founders to exclude Aboriginal people from the count of the population in Section 127 of the Australian Constitution 'meant their effective invisibility in the new Commonwealth'.<sup>49</sup> In Western Australia the *Aboriginal Act 1905* was passed and remained in force until 1963 and contained sweeping powers for the rigid control of Aborigines by Government appointed officers, in particular the so-termed 'Chief Protector of Aborigines'. Paradoxically, during the Second World War, legislation was passed to allow Aboriginal men to apply for citizenship on the

<sup>47</sup> Parliamentary Debates, Legislative Council, 2 December 1919, p. 1874.

<sup>48</sup> *History of the Indigenous Vote* (2006), Public Awareness Programs Section, Australian Electoral Commission, Kingston, Commonwealth of Australia.

<sup>49</sup> Alistair Dickson (1997), *From Subject to Citizen: Australian Citizenship in the Twentieth Century*, Cambridge: Cambridge University Press, p. 190.

condition they satisfied a magistrate they had ‘adopted the manners and habits of civilized life’. Having risked their lives for their country, applicants then had to provide evidence that they ‘had ceased from observing his tribal habits for at least two years and...lived in accordance with the standards of the white race’.<sup>50</sup> At the Commonwealth level, holders of a Certificate of Citizenship pursuant to the provisions of the *Native (Citizenship) Rights Act 1944* were able to vote but the numbers were few. About 400 who had enlisted for war service were also granted citizenship, and then from 1949, Aboriginal people who had served in the military forces were given entitlement to the vote at the Commonwealth level. Nevertheless, little was done to promulgate this newly established right.<sup>51</sup>

In October 1962, the Minister for Native Welfare, Edgar Lewis, told the Legislative Assembly that the granting of the vote would give Aboriginal people ‘some psychological uplift, and a sense of importance’<sup>52</sup> but he remained reluctant to grant full citizenship.<sup>53</sup> A leading Labor spokesperson, Colin Jamieson, contended it was not desirable to introduce a Bill that merely grants voting rights without the other obligations associated with citizenship.<sup>54</sup> What still remained, amongst other fundamentals of citizenship, was a constitutional right to be elected to Parliament. In fact, it seems this right merely evolved out the granting of the franchise to Aboriginal people as one of the conditions to stand for Parliament has been the capacity to exercise a vote. As early as 1965 a man of Aboriginal descent, Francis Cameron, ran without success as a Liberal Party candidate for North Province in the Legislative Council. This province encompassed the Legislative Assembly seats of Kimberley and Pilbara and it was not until 1980 that the first Aboriginal person was elected to the Western Australian Parliament, namely Ernie Bridge, who won the seat of Kimberley for the Labor Party. Twenty one years later, Carol Martin won the same seat for the same party upon Bridge’s retirement, gaining the distinction of being the first Aboriginal woman in Australia to gain a parliamentary seat. Remarkably, following Carole Martin’s retirement at the 2013 election, another Aboriginal woman Josie Farrer, won the same seat of Kimberley. In 2006, following the resignation of Labor Premier Geoff Gallop, Ben Wyatt had become, at that stage, the third Aboriginal person to be elected to the WA Parliament when he won the seat of Victoria Park in a by-election.

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<sup>50</sup> See Quentin Beresford and Paul Omaji (1998), *Our State of Mind: Racial Planning and the Stolen Generations*, Fremantle: Fremantle Arts Centre, p. 85.

<sup>51</sup> See John Chesterman and Brian Galligan (eds) (1999), *Determining Australian Citizenship: Selected Documents*, Melbourne: Melbourne University Press, p. 107.

<sup>52</sup> Parliamentary Debates, Legislative Assembly, 16 October 1962, p. 1755.

<sup>53</sup> Parliamentary Debates, Legislative Assembly, 16 October 1962, p. 1757.

<sup>54</sup> Parliamentary Debates, Legislative Assembly, 16 October 1962, p. 1758.

## Legislative Council Franchise Changes

The 29<sup>th</sup> Parliament (1962–1965), with David Brand as Premier, extended the franchise of Aboriginal peoples, and was also responsible for the abolition of the property qualification for the Legislative Council. In 1962 the franchise was firstly extended to spouses of householders, but at that stage the property qualification remained. A year later the adult franchise was introduced with enrolment and voting for the Legislative Council also being made compulsory. At the same time the qualifications for the membership of the Upper House was brought into line with those of the Legislative Assembly, lowering the minimum age from 30 to 21 and reducing the required residential period from two to one year.

There was a consensus that the major reform of the abolition of the property franchise was long overdue. It had been a component of the Labor Party platform for decades featured by a succession of failed Bills, and amendments on the subject and agitation for Council reform. For instance Labor member and electoral reform advocate, Robert ‘Stewart’ Hastie, unsuccessfully moved in 1903 that the Legislative Council have the same franchise as the Legislative Assembly, as was the case for the House of Representatives and Senate.<sup>55</sup> In 1911 there had been some success when the qualification for the franchise was modified to the possession of freehold worth at least fifty pounds and leasehold or householder qualifications of seventeen pounds annual value.

In 1919 there was a remarkable attempt to amend the franchise provisions for the Legislative Council when Attorney General Thomas Draper, as part of his constitutional amendment package for the right of women to gain a seat in either the Assembly or Council, also proposed that returned soldiers from the First World War be given the vote, even if they did not have the so called ‘property qualifications’ to do so. Draper saw this as fitting given the sacrifices of the servicemen and only six months earlier in the Upper House Sir Hal Colebatch had claimed ‘the soldiers who had fought for their country were entitled to full citizenship’.<sup>56</sup> However, the proposal met hostile resistance from those against weakening the restricted property franchise. After comfortable passage through the Assembly the plan struck heavy weather with those of conservative disposition in the Council where there were also complaints of ‘shameless and shameful bidding between the two parties...for the vote of the soldiers’.<sup>57</sup> Eventually the vote in the Legislative Council was a dramatic 13:13 tie. The deadlock was broken on the casting vote of the President, Sir Walter Kingsmill who, unusually for a Presiding Officer in such circumstances, gave a casting vote in support of the Bill. Immediately, though, Sir Walter was obliged to rule that as the Bill

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<sup>55</sup> Parliamentary Debates, Legislative Assembly, 12 August 1903, p. 484.

<sup>56</sup> Parliamentary Debates, Legislative Council, 27 November 1919, p. 1737.

<sup>57</sup> Parliamentary Debates, Legislative Council, 26 November 1919, p. 1695.

was an amendment to the State's Constitution, a constitutional majority of 16 of the House's 30 Members, was required. The measure thus failed with no amendment to the restrictive franchise property qualifications in the Legislative Council, even for returned soldiers.<sup>58</sup>

An attempt to amend the property qualifications for Legislative Council elections was contained in the recommendation of the 1935 *Joint Select Committee on the Electoral Act, 1907–1921, and Other Relative Matters*, which had its status converted to a Royal Commission. Over time a 'mighty problem' had emerged with determining who was or was not a householder qualifying for the Council franchise. Another difficulty arose from the fact that specification of voting rights for the Council existed in both the *Electoral Act 1907* and the constitutional documents, in particular Section 15 and 16 of the *Constitution Amendment Act 1899*. Relevant amendments to the Constitution had apparently not taken place, making it extremely difficult for electoral authorities who desired that all the provisions be consolidated in the *Electoral Act 1907*. After consulting with State and Commonwealth electoral officers and the Crown Solicitor, a Bill was drafted to give effect to the recommendations of the Commissioners (Members). The 1935 Bill gave the *Electoral Act 1907* an overhaul, with the object of removing incongruities that had crept in over a number of years. At the same time the Committee was reluctant to espouse the principle of an elector being eligible to vote in more than one province in the Council.<sup>59</sup>

After 1954 when Labor representation in the Council reached 13 of 30 seats, the long standing property qualification for voting came to be regarded as an obstruction to a Labor majority in the Upper House. Ruby Hutchison became the only member to be suspended from Parliament in the period 1947–1965 for refusing to withdraw her remark that she was ashamed to be part of an undemocratically elected House.<sup>60</sup> As historian Lenore Layman contended:

*eventually non-Labor accepted that it was time for the existing franchise to go. Subsequently, by 1963 the proposals were no longer controversial and were passed by Council without a division.*<sup>61</sup>

Then in 1964 Hutchison turned her attention to the franchise for local government elections. This was not to eventuate until 1984,<sup>62</sup> but one

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<sup>58</sup> Parliamentary Debates, Legislative Council, 2 December 1919, pp. 1873–1874.

<sup>59</sup> Report of the Royal Commission on the Electoral Act, 1907–1921, and Other Relative Matters, Perth: Parliament of Western Australia, pp. iv and v.

<sup>60</sup> Parliamentary Debates, Legislative Council, 30 October 1962, pp. 2083–2089.

<sup>61</sup> Lenore Layman (1990), 'Continuity and Change, 1947–1965', in David Black (ed), *The House on the Hill: A History of the Parliament of Western Australia 1832–1890*, Perth: Parliament of Western Australia, p. 167.

<sup>62</sup> See Noela Taylor (1997), *Adult Franchise in Local Government in Western Australia*, Unpublished Master of Philosophy Thesis, Murdoch University, p. ii.

extension of the franchise measure which was to be passed just before Hutchison retired in 1971 at the age of 79 years, was the vote for 18 year olds.

### **Voting Rights for 18 Year Olds**

Historically many of the franchise debates have been keenly fought. One measure, which passed quickly through both Houses in November 1970, was lowering the voting age to 18 years, making Western Australia the first State to concede this extension. As was indicated in the debate, the Hawke Labor Government had introduced such legislation as early as 1955. Even this claim overlooked the fact that men under 21 years of age serving in the armed forces outside Australia and within certain areas in Australia were temporarily permitted the franchise under the *Electoral (War Time) Act 1943*. During the 1955 debate former Premier and Leader of the Opposition Sir Ross McLarty claimed ‘there is no public demand for it at all. If it were possible to take a referendum on the matter, I believe it would not only be defeated, but it would be overwhelmingly defeated.’<sup>63</sup> Premier Bert Hawke was disappointed the measure could not gain the support of the Parliament but admitted ‘there were arguments for and against the proposition’.<sup>64</sup>

By 1970, however, both sides of the Parliament backed the proposal to give youth the franchise after regular reminders in the press that such legislation had been passed in the United Kingdom and was being considered in other Australia States, particularly New South Wales. According to an editorial in *The West Australian* ‘the case for lowering the age of majority rests on the fact that today’s young people are biologically, educationally and socially more advanced than their parents were at the same age [and that] there are good reasons for giving them more responsibilities as well as more rights’.<sup>65</sup> David Brand as Premier, with the knowledge that the move would add between 40,000 and 50,000 to the rolls, was satisfied that ‘by and large the percentage of responsible youth is much the same as it was in our day or anyone’s day’.<sup>66</sup> The Opposition Leader of the day, John Tonkin, thought that television, which had begun to rapidly expand its audience during the 1960s, had hastened the education of youth. He believed there would be less informal voting among the 18 to 20 year olds as young people had the capacity, knowledge and experience to exercise their vote widely.

The Deputy Leader of the Opposition, Herb Graham, thought the government should also have allowed 18 year olds the right to stand for Parliament. Although this constitutional amendment was not achieved until

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<sup>63</sup> Parliamentary Debates, Legislative Assembly, 11 October 1955, p. 1086.

<sup>64</sup> Parliamentary Debates, Legislative Assembly, 11 October 1955, p. 1084.

<sup>65</sup> *The West Australian*, 5 January 1970.

<sup>66</sup> Parliamentary Debates, Legislative Assembly, 18 November 1970, p. 2353.

1973, no member to either Chamber has been elected in this age cohort. Interestingly, at the same time a constitutional amendment provided for the election to the Parliament of ministers of religion after a previous attempt in 1944 had narrowly failed. In recent decades there have been occasional suggestions that the voting age be granted to youth when they reach 16 or 17 years of age, often in the context of a universal age of majority but to date no major party has adopted the platform. Greens (WA) members in the Legislative Council have however espoused the cause, mainly as a medium to engage young citizens in the political process. In late 2006 when the Carpenter Government was moving a series of amendments to the *Electoral Act 1907* Greens MLC Giz Watson unsuccessfully sought to grant 16 and 17 year olds the franchise.<sup>67</sup> At the same time Watson unsuccessfully attempted a rear-guard action to save the right to vote for prisoners serving a sentence of less than one year as she considered the move as ‘highly discriminatory against Aboriginal people, who make up 47 per cent of prisoners’.<sup>68</sup>

## Legal and Other Disqualifications

The gaining of universal suffrage for both Chambers and its broadening by lowering of the voting age has always been accompanied by a range of legal disqualifications. The disqualifications which prevailed in colonial times and the early years of Statehood were consolidated in the major *Electoral Act 1907* and specified in Section 18, which has remained as the ‘Disqualification’ section since that date. As noted, the vote was denied to any ‘aboriginal native of Australia, Asia, Africa, or the Islands of the Pacific, or a person of the half-blood’ and until its removal in 1962 there were many amendments to this clause, for example that every person shall be disqualified from being enrolled as an elector, or if enrolled, from voting at any election, who:

- (a) is of unsound mind; or
- (b) is wholly dependent on relief from the State or from any charitable institution subsidized by the by the State, except as a patient under treatment for accident or disease in a hospital; or
- (c) has been attained of treason, or has been convicted and is under sentence or subject to be sentenced for any offence punishable under the law of any part of the King’s dominions by imprisonment for one year or longer.

A century later the unsound mind provision has remained as a disqualification. From 1996 a mentally impaired person as defined in the *Criminal Law (Mentally Impaired Accused Act) 1996* was specifically disqualified. The criterion of being sentenced to imprisonment for one year or more has been maintained (until 2008) as a disqualification under various

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<sup>67</sup> Parliamentary Debates, Legislative Council, 31 October 2006, p. 7816.

<sup>68</sup> Parliamentary Debates, Legislative Assembly, 31 October 2006, p. 7818.

Acts or sections of *The Criminal Code*. Holders of temporary entry permits for the purposes of the *Migration Act 1958* or prohibited immigrants are also denied the vote in contemporary Western Australia.

As the 2006 amendments to the *Commonwealth Electoral Act 1918* had denied citizens serving prison terms the franchise for federal elections and referendums, the State government in the same year decided somewhat reluctantly to adopt similar legislation.<sup>69</sup> However, in late August 2007 the High Court of Australia, in the *Roach* case (2007) reinstated the voting rights of prisoners save those who as previously were serving sentences of more than three years as the 2006 amendments had violated sections 7 and 24 of the Commonwealth Constitution. As the Western Australian Deputy Premier Kim Hames told the Legislative Assembly in March 2009 that ‘the government had received and accepted legal advice that a blanket ban on all sentenced prisoners being prevented in all state elections is unconstitutional’.<sup>70</sup> Hence the government moved to amend the *Electoral Act 1907* so that prisoners serving less than one year would be allowed to vote in state elections and referendums. At the same time the Deputy Premier stressed that prisoners will remain would remain eligible to enrol and remain enrolled while serving a sentence.<sup>71</sup>

Other amendments to the *Electoral Act 1907* were to replicate the Commonwealth provisions so that Western Australians who had no fixed address could vote in State elections as the legislation had required a person to live at an address for one month being eligible to claim enrolment for State elections. For instance public concern had been raised with the WAEC by citizens who, having sold their home and no longer having a fixed address and perhaps decided to travel around Australia, found they were excluded from voting. Parliament was informed that concern about this exclusion was compounded when they discovered that citizens of no fixed address can vote in Commonwealth elections and people who have been living up to six months can now vote in both Commonwealth and State elections. The amendments were based was based on the *Commonwealth Electoral Act 1918* for itinerant electors whereby a hierarchy of options were available to enrol in an electorate even though they do not live there. This encompassed an electorate for which the elector last enrolled, the electorate for which the elector’s kin is enrolled, or if there is no next of kin, the electorate in which the elector was born, or if the elector was not born in Australia, the electorate with which the elector has the closest connection.<sup>72</sup>

The vote is no longer denied to those who are dependent on the State or from any charitable institution subsidised by the State. This relic of the

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<sup>69</sup> Parliamentary Debates, Legislative Assembly, 23 August 2006, p. 5080.

<sup>70</sup> Parliamentary Debates, Legislative Assembly, 31 March 2009, p. 2329.

<sup>71</sup> Parliamentary Debates, Legislative Assembly, 31 March 2009, p. 2329.

<sup>72</sup> Parliamentary Debates, Legislative Assembly, 31 March 2009, p. 2329.

English ‘poor laws’ where receipt of charitable assistance was associated with denial of various rights and freedoms, was not removed until 1964. The provision had been inserted in the *Constitution Amendment Act 1899* and was vigorously opposed in the 1907 consolidation by some members who thought that poverty should not be a crime denying those in receipt of charity (but not old age pensions) the rights of citizenship. However, an amendment to remove the clause was narrowly defeated in the Committee stage.<sup>73</sup> A Joint Select Committee on the *Electoral Act, 1907–1921*, which later merged into a Royal Commission, had adjudged in its 1935 report that the section, which did not apply in federal elections, was ‘not in accord with modern practice’.<sup>74</sup> In 1951, section 58 of the *Electoral Act 1907*, which provided for the Superintendent of Public Charities to furnish quarterly returns to the Chief Electoral Officer of those persons receiving relief from the State was repealed and the deletion of paragraph (b) of the relevant section 18 was apparently intended at that time.<sup>75</sup> Provision for the deletion was subsequently included in Labor’s package of electoral law amendments in 1957 but this legislation was not passed because of what Labor spokesperson Colin Jamieson described as an ‘unreasonable’ attitude by Liberal and Country Party members in the Legislative Council.<sup>76</sup>

Another franchise controversy is the denial of the vote to immigrants who opt not to adopt Australian citizenship. It should be noted, though, that British subjects who are not Australian citizens may also be eligible to vote if they were on the State roll or on the roll of the Commonwealth within the prescribed 26 October 1983 and 25 January 1984 inclusive. This category of law abiding persons, who are taxpayers, are said to number above 100,000 in Western Australia, although there is no certainty with this statistic. Significantly, such persons are counted, or estimated, in the population figures to determine the number of seats Western Australia is entitled to have in the House of Representatives. On the other hand when the Electoral Commissioners in Western Australia determine the boundaries for the Legislative Assembly and Legislative Council, such calculations are based on enrolled electors. Of course in the last century the redistribution guidelines and principles have been even more contentious than the gradual gaining of ‘universal franchise’. Of significance was whether the votes of those who had gained the franchise should have equivalent value. This will be addressed in the next chapter.

Meanwhile it should be understood that to be a member of either the Legislative Assembly or Legislative Council it is necessary to be entitled to

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<sup>73</sup> Parliamentary Debates, Legislative Assembly, 12 September 1907, p. 1449.

<sup>74</sup> Report of the Royal Commission on the Electoral Act, 1907–1921 and other relative matters (1935), Perth: Government Printer, p. v.

<sup>75</sup> See Parliamentary Debates, Legislative Assembly, 19 November 1964, p. 2863.

<sup>76</sup> Parliamentary Debates, Legislative Assembly, 25 November 1964, p. 3031.

vote at an election in a district. In addition the *Electoral Act 1907* specifies a number of other conditions including being an Australian citizen, being 18 years of age, is not subject to any legal incapacity and has resided in the State for one year.<sup>77</sup> The *Constitution Acts Amendment Act 1899* also contains disqualifications by reason bankruptcy, or has been convicted or on indictment for imprisonment for life or more than five years. In addition there are a range of public offices that cannot be held.<sup>78</sup>

Finally to nominate as a candidate in 2013 for either House a candidate must lodge a deposit of \$250. In the Legislative Assembly the deposit is refunded subject to receiving 4 per cent of the valid first preference vote, whereas in the Legislative Council a candidate, or his or her grouping, must receive 4 per cent of the vote. Historically in 1900 the required deposit was a staggering £25 pound with the requirement of at least 20 per cent of the vote for a return of the funds. This must have been a factor limiting the number of candidates standing for election and keeping the ratio of acclaimed victories very high. When decimal currency was introduced in 1966 the deposit was merely altered to \$50 dollars. The deposit was increased to \$100 in 1973 but it was until the major reforms in 1987 that the percentage of the vote required to obtain the return of the deposit was reduced to 5 per cent of the vote. Although the percentage required for the return of the deposit is much lower in contemporary times it can still strain a minor party's resources if their vote percentage falls below the 4 per cent of the valid vote threshold.

### **Informal Voting (Invalid or Spoiled Votes)**

Reference to the valid vote raises the perennial presence of invalid or informal voting recently below 3.00 per cent for the Legislative Council and just above 5.00 per cent in the Legislative Assembly (see Appendix Six). Despite considerable research and subsequent strategies by the WAEC (and AEC) the informal vote persists at levels that raise concern. Most commonly voters only designate one numeral instead of a full sequence of preferences. Ballots which are blank, have marks that may identify the voter, or are deliberately marked with slogans or scribble are considered informal. Moreover, the ballot paper must be authenticated by the initials of the presiding officer. More difficult to prove are links with low levels of civic education, ethnicity (whereby citizens have typically experienced plurality voting), or electorates with low socio-economic standing. Sometimes a general disillusionment with politics, or alienation, are indirectly linked to the prevalence of informal voting.

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<sup>77</sup> See *Electoral Act 1907*, s76a, 76b and 77.

<sup>78</sup> See *Constitution Acts Amendment Act 1899*, s31–38.

# 3

## Electoral Boundaries

The drawing of boundaries in electoral districts was to be (and remains) one of Western Australia's most contentious electoral system issues. Following Commonwealth moves toward a population model, the criteria for the drawing of boundaries within States was soon to include voter numbers, although a 20 per cent margin above or below each State quota was to be permitted. In Western Australia the redistribution of 1904 signalled a century of intermittent intense debate over what became labelled as 'one vote one value'. This (modified) principle was eventually adopted in 2005 for the electoral districts of the Legislative Assembly for the next expected State election, although vote weighting remained in Legislative Council electorates. A more extended coverage of the debate over the criteria for the drawing of boundaries has been published elsewhere,<sup>79</sup> but the unfolding of its history is broadly very interesting in that it demonstrates Western Australia's tendency, on occasions, to stand outside developments in other States.

### The Redistribution of 1904

At Federation, the Commonwealth Labor Party emerged with a platform which included the distribution of seats on a population basis. As the political party alignments of members emerged, legislative proposals set in motion a century of partisan debate in the new State about the principles of community of interest in relation to that of population numbers. In Western Australia, the first major parliamentary debate in this area occurred in the Legislative Assembly in 1903 and focused on re-drawing State electoral boundaries through an amendment to the *Constitution Act 1889*. What in fact took place was an unofficial cognate debate, encompassing the Constitution Acts Amendment Bill, the Electoral Bill and eventually a separate Redistribution of Seats Bill. Parliament, instead of embodying the boundaries of the electorates in the Schedule to the Act, passed a separate Act for the redistribution of seats. At that stage it was even proposed to reduce the Assembly from 50 to 48 seats and the Council from 30 to 24 seats, and in an early manifestation of the rivalry that arguably still exists between the Houses, Premier James said:

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<sup>79</sup> See Harry C. J. Phillips (2006), *The Quest for 'One Vote One Value' In Western Australia's Political History* (with the assistance of Kirsten Robinson), Perth: Western Australian Electoral Commission.

*In dealing with the Legislative Council, one is placed in a peculiar position. A feeling is no doubt growing-I do not say whether it is rapidly growing or slowly growing-that any reform which takes place in connection with the Legislative Council should be in the direction of abolition rather than reduction.*<sup>80</sup>

In any event, no reduction in the membership of either House took place at that time, nor did any real momentum develop for the abolition of the Council. Nevertheless an independently minded MLA Charles Moran suggested the Upper House could have the State as one electorate enabling the Members to consider the interests of the State as a whole, and at the very least ‘make the Chamber valued and respected... elected on some non-parochial basis representing for instance, the metropolitan area, the great agricultural interest, the great goldfields industry, and the great northern pastoral industry’.<sup>81</sup> This forerunner led to the regional multi-member electorates created in 1987, but in 1904 another significant constitutional change, not fully recognised at the time, was an entrenchment provision included in Section 6 of the *Redistribution of Seats Act* so that an absolute majority of the full membership in both Houses was required before new redistribution legislation could gain the Governor’s assent. This constitutional hurdle was to make redistributions for governments (particularly Labor) more difficult to secure, and became an important consideration in Supreme Court and High Court judgments nearly a century later. The influential and learned Hon. Dr Winthrop Hackett MLC had argued that stronger reasons needed to be provided for transferring the redistribution of seats from the ‘four corners’ of the Constitution Act Amendment Bill to the Redistribution of Seats Bills because it was ‘not wise to be tinkering’ in this manner.<sup>82</sup>

During the extensive and at times heated debates of 1903 and 1904, the Legislative Council rejected many proposals, and members complained they were not in a position to produce a better schema of electoral boundaries without accurate population figures or the services of the Chief Surveyor.<sup>83</sup> There was also considerable criticism of the composition of the select committee charged with drawing the boundaries.<sup>84</sup> The formidable task was to formulate a schedule of boundaries within the space of a few weeks; however, the scale of the exercise was enlarged by the House’s adherence to the usual practice of not giving instructions to select committees. As had been the case in colonial times in Western Australia, unlike perhaps New South Wales, there existed no legislative criteria to guide the committee in their deliberations. Thomas Bath, a future long serving Leader of the

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<sup>80</sup> Parliamentary Debates, Legislative Assembly, 8 September 1903, p. 852.

<sup>81</sup> Parliamentary Debates, Legislative Assembly, 8 September 1903, p. 846.

<sup>82</sup> Parliamentary Debates, Legislative Council, 14 October 1903, p. 1551.

<sup>83</sup> Parliamentary Debates, Legislative Assembly, 8 September 1903, p. 851.

<sup>84</sup> Parliamentary Debates, Legislative Assembly, 8 September 1903, pp. 852–853.

Opposition Labor Party, suggested that the House lay down criteria including the proportion of the population for electorates (or any scheme whatsoever), which the select committee could then follow to ‘harmonise with the opinion of the House’.<sup>85</sup> Bath attacked the Government’s stance of arranging electorates ‘to represent interests’ and believed:

*That step was absolutely dangerous. The great objection to the scheme of representation hitherto in force was that it gave representation to interests and gave certain sections of the community representation in this Chamber altogether out of proportion to their numbers. Those sections had used their power against other sections not represented here...<sup>86</sup>*

In 1904 more representation had been given to the Goldfields and metropolitan areas but Premier Walter James was ‘tired’ of indicating ‘that the Bill was not framed on a purely population basis’ and he had not heard a member of the Legislative Assembly ‘urge that the [redistribution] should be based entirely on population.’<sup>87</sup> The aim was to secure ‘effective representation’.<sup>88</sup> for a State that had population extending over a large area of nearly a third of the continent.

### **The Redistribution of 1911 and the 1913 Quest**

The quest for ‘effective representation’ in the Redistribution of Seats Bill 1911 was marked by parliamentary discord. John Nanson, Attorney General in Frank Wilson’s Liberal government, in his second reading speech said:

*While we should not shut our eyes to the claims of population, neither can we with a State like ours, afford to exclude from consideration the requirements of industrial or commercial interests, or refuse to give adequate voice and voting power to localities at present but scantily populated but possessing vast potentialities of expansion and progress, provided that public money is legitimately and wisely expended in the development of their latent wealth. The principal work of the Western Australian Parliament is, and must be for many years to come, the opening up of the vast territory and generally turning its resources to their best account; and the accomplishment of that aim must inevitably be influenced to a very considerable degree, at any rate, by the nature of representation in this Chamber.<sup>89</sup>*

Nanson’s extensive contribution to the debate was matched by Opposition Leader and future Premier Jack Scaddan, who was vehement in his criticism of the redistribution. Scaddan was critical of vote weighting because under

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<sup>85</sup> Parliamentary Debates, Legislative Assembly, 8 September 1903, p. 852.

<sup>86</sup> Parliamentary Debates, Legislative Assembly, 8 September 1903, p. 852.

<sup>87</sup> Parliamentary Debates, Legislative Assembly, 8 September 1903, p. 849.

<sup>88</sup> Parliamentary Debates, Legislative Assembly, 4 August 1903, p. 334.

<sup>89</sup> Parliamentary Debates, Legislative Assembly, 7 December 1910, pp. 2192–2193.

‘this method of gerrymandering’ it was possible to obtain a majority of seats without necessarily achieving a majority of votes. ‘Retaining office for a future term irrespective of the will of the people of the country’ was deemed to be the Government’s objective and ‘community of interest’ and ‘retention of office’ had become synonymous terms that if passed ‘would be asking Parliament to representation of acres and ignorance’.<sup>90</sup> Moreover, *The West Australian* newspaper employed similar language with the claim that the Government seemed ‘incapable of getting away from the antiquated and illogical notion that a Parliament should be chiefly concerned with acres and sheep rather than brains’.<sup>91</sup>

In committee on 12 January 1911 six Labor members were suspended and the remainder of the Opposition eventually left the Chamber.<sup>92</sup> On the following day one Labor speaker was suspended for a second time.<sup>93</sup> Despite the passage of what Scaddan regarded as such an unfavourable redistribution he was within a year swept into government as Premier. However, without a constitutional majority in the Legislative Council, it was unlikely that drastic electoral reform could be achieved. Nevertheless, the 1913 Electoral Districts Bill, tabled by Attorney General (and future Speaker) Thomas Walker, contributed to maintaining party-political bitterness during the long representational debate. The Bill, described as ‘a small Bill which contained a very considerable amount of venom’,<sup>94</sup> proposed the nomination of three electoral Commissioners to draw the boundaries and make the number of electors in each district as the key criterion in this exercise. Firstly, the four existing northern electorates of Kimberley, Roebourne, Gascoyne and Pilbara were to be set aside into three new electoral districts. Thereafter a quota was to be determined for the remaining 47 seats after calculating the aggregate number of electors in all such seats, with some flexibility to vary 20 per cent above and below the quota. In defining the boundaries the Commissioners were to have regard to the following criteria and order of priority:

- means of communication and distance from capital;
- physical features; and
- community or diversity of interests.

There was much discussion about the statutory northern seats with references to the five seats guaranteed Tasmania (or other States) by the Australian Constitution in the House of Representatives.<sup>95</sup> However, the

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<sup>90</sup> Parliamentary Debates, Legislative Assembly, 15 December 1910, p. 2459.

<sup>91</sup> Cited in Parliamentary Debates, Legislative Assembly, 15 December 1910, p. 2462.

<sup>92</sup> Parliamentary Debates, Legislative Assembly, 12 January 1911, pp. 2865–2982.

<sup>93</sup> Parliamentary Debates, Legislative Assembly, 13 January 1911, pp. 2996–3015.

<sup>94</sup> Parliamentary Debates, Legislative Assembly, 28 November 1913, p. 3182.

<sup>95</sup> Parliamentary Debates, Legislative Assembly, 28 November 1913, p. 3199.

main thrust of Opposition Leader Frank Wilson's attack was the use of equal numbers of electors as the key basis of representation. At the time Wilson argued that:

*the great south-western district has to be opened up, and it does not matter what argument is put up, if we are going to concentrate our Parliamentary representation in Perth, Fremantle and the surrounding municipalities, we will never get our outlying districts properly represented and attended to.*<sup>96</sup>

On the other hand Premier Scaddan claimed that:

*...the fact that a person is residing in Perth today and next year happens to reside in an agricultural district does not make him a more valuable citizen... That is why we provide, in arriving at the quota, that while the industrial classes in our towns, who are just as essential to the progress of the State as the man farming on the land, shall have fair representation in Parliament, they shall not have representation as will allow them to unduly influence the legislation or administration of the day.*<sup>97</sup>

In fact Scaddan was ahead of his time in contemplating a concept that was later adopted as part of the electoral system for South Australia's House of Assembly which became known as 'a fairness clause'.<sup>98</sup> Yet what would have made the application of a 'fairness clause' very difficult in Scaddan's era as Premier was the high ratio of acclaimed seats. For instance, in the 1914 election only 35 of the 50 Legislative Assembly seats were contested. In fact from the 1890s right through until the late 1960s in only 40 of the 50 seats available was an election even necessary. What appeared to be a truism in Western Australia's electoral history was the congruence between the party (or coalition) which won the popular vote also being the party of government. This history militated against a 'one vote one value' campaign winning popular support.

There is no doubt, though, that the 1913 legislation stands historically in Western Australia as one of the clearest attempts to introduce 'one vote one value' as a primary basis for representation in the Legislative Assembly.

### **Zoning: Legislative Vote Weighting from 1923**

Although the 1913 Electoral Districts Bill did not receive passage, it signalled the formal recognition of vote weighting in the *Electoral Districts Act 1923*. Again the responsibility for drawing boundaries was assigned to

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<sup>96</sup> Parliamentary Debates, Legislative Assembly, 28 November 1913, p. 3181.

<sup>97</sup> Parliamentary Debates, Legislative Assembly, 28 November 1913, p. 3190.

<sup>98</sup> With this clause there is a legislative requirement that on a two-party preferred basis, the party (or coalition of parties) with over 50 per cent of the two-party preferred votes should obtain sufficient seats to form a government.

an Independent Electoral Commission,<sup>99</sup> to divide the State into 50 electoral districts. Four areas were defined to contain 46 of the electoral districts, with the four northern electoral districts of Kimberley, Roebourne, Pilbara and Gascoyne being excluded and defined by statute. Districts in the areas were to have weightages per elector of 1 in the Metropolitan area, 2 in the Agricultural and Goldfields Central area, and 3 in the Mining area. Due consideration was to be given to the criteria outlined in the 1913 debates, and enrolment could vary by one-fifth from the area quota. The Commissioners' Report was also to include names of the electorates, be tabled in Parliament and a Bill then introduced to give it effect. The enabling Bill was defeated, although the impartiality of the Commissioners was never questioned.

Five years later an amendment to the *Electoral Districts Act 1928* abolished the Goldfields zone with the Mining area of the previous Act being renamed the Mining and Pastoral Zone. The weightages became Metropolitan 1, Agriculture and Mining and Pastoral 3, in addition to the four northern electoral districts. One veteran member described the Bill as being received with 'no anxiety to speak of'<sup>100</sup> and the legislation was described as the point at which 'the concept of malapportionment – if not the precise vote weighting given to different regions – entered a period of partisan acceptance that would last until the 1970s.'<sup>101</sup>

According to electoral law expert Jeremy Buxton 'the acquiescence of the Australian Labor Party (ALP) to this situation can be explained in part by the non-metropolitan, Australian Workers Union (AWU) section of the ALP, which supported rural weighting to protect its mining and rural constituencies...'<sup>102</sup> However, Buxton conceded:

*The ALP was of course, circumscribed by the continuous conservative majorities in the Legislative Council...through which any move for more radical change in electoral politics would have to pass, and this fact may go a long way in explaining the periods of bipartisan acceptance of regional weighting. ALP governments may have settled for half a cake rather than no cake at all.*<sup>103</sup>

Notably, though, Labor Premier Philip Collier in 1928 said:

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<sup>99</sup> The chair to be a judge of the Supreme Court and the others to be the Surveyor-General and the Chief Electoral Officer.

<sup>100</sup> Parliamentary Debates, Legislative Assembly, 9 December 1937, p. 2470.

<sup>101</sup> Ross van Brink (2004), 'An Historical Account of Population Weighting of Country Electorates in the WA Legislative Assembly', Parliamentary Internship Report prepared for Martin Whitley, MLA, p. 12.

<sup>102</sup> Jeremy Buxton (1979), 'Electoral Politics: Past and Present in Western Australia', in Ralph Pervan and Campbell Sharman (eds), *Essays in Western Australian Politics*, Nedlands: University of Western Australia, p. 38.

<sup>103</sup> Buxton (1979), 'Electoral Politics: Past and Present in Western Australia', p. 39.

... we have to bear in mind, the basic principle of one vote one value. We are not saying this should be the Act, but it is necessary to bear in mind the basic principle of one vote one value, and to determine how far we are justified in departing from it. I say we are not justified'.<sup>104</sup>

This drew an immediate response from the Hon. Sir James Mitchell, who said 'if you want to be a fair government you must depart from [one vote one value].<sup>105</sup> Mitchell's view was important as he was to gain the office of Premier in 1930 before later becoming Lieutenant Governor and then Governor of the State. Predictably, Mitchell's opinion was supported by Charles Latham, the prominent Country Party member, who said 'I believe in having a representative government. But we cannot have a...one vote one value principle in a State like this, with its vast areas, its scattered population, its great distances from the capital [and] the seat of government'.<sup>106</sup>

### 1947 Metropolitan and Non-Metropolitan Ratio of 1:2

The only other attempt to change the rationale for the drawing of boundaries prior to 1947 was in December 1937, but the legislation failed to secure the necessary constitutional majority. Remarkably this meant that the 1947 election was fought on the boundaries which had applied since 1930. For the Council, the boundaries had remained unchanged since 1911 despite an increase in enrolment of 500 per cent since 1916.<sup>107</sup> In 1947 the State was divided into a simplified three zone system; metropolitan, non-metropolitan (Agricultural, Mining and Pastoral), and a separate northern zone of three seats (from the previous four), the boundaries of which were still drawn by Parliament with a 10 per cent margin from the area quota permitted.

The *Electoral Districts Act 1947* was important because it established the 1:2 metropolitan/rural weighting for Assembly Districts and Council Regions for several decades. Significantly, too, the reports of the three Electoral Commissioners, the Chief Justice, the Under-Secretary for the Lands (replacing the Surveyor General) and the Chief Electoral Officer, took effect without ratification by Parliament.<sup>108</sup> The Act itself was entrenched by requiring absolute majorities of both Houses of the State Parliament for amendment and moreover, a requirement was laid down for redistributions to occur whenever a certain number of seats (five beyond 20 per cent) were out of balance. This was a provision which ran the

<sup>104</sup> Parliamentary Debates, Legislative Assembly, 30 October 1928, p. 1473.

<sup>105</sup> Parliamentary Debates, Legislative Assembly, 30 October 1928, p. 1473.

<sup>106</sup> Parliamentary Debates, Legislative Assembly, 30 October 1928, p. 1581.

<sup>107</sup> See N.F. Byrne (1959), *A Historical Survey of the Western Australian Electoral System, 1817–1956*, Unpublished MA Thesis, University of Western Australia, p. 29.

<sup>108</sup> It should be understood that the Commissioners were to make public their provisional redistribution in order to consider objections or representations on any part of the proposed redistribution.

gauntlet of a legal challenge.<sup>109</sup> At the same time the Council was brought back into the process of redistribution with the boundaries of its provinces the subject of regular review. For the first time the Commissioners were empowered to alter Legislative Council Province boundaries with the requirement that they would include complete and contiguous Legislative Assembly districts.

Perhaps 1947 marked one of the high watermarks of a Coalition and Labor consensus about the need for vote weighting. Coalition Attorney General, Ross McDonald (later Sir), acknowledged that the ‘one vote one value’ principle had been contained in the failed 1913 Bill. The principle was also mentioned in various redistribution debates and was broadly the system in the Federal arena. But McDonald maintained that he did not agree with those principles, stating:

*I think they would not be fair to the outer areas, and accordingly in this Bill we are preserving the ratio of two to one in favour of the outer areas of the State.*<sup>110</sup>

Significantly, Frank Wise, the Labor Opposition Leader and Member for Gascoyne, thought it would be ‘foolish ... to allow ourselves to be dominated by the idea of representation upon a population basis, an altogether disproportionate number of seats would be concentrated where the bulk of the population is located [that is the metropolitan area]’.<sup>111</sup> Further reports proclaiming new boundaries were gazetted in August 1955 and December 1961, although as Lenore Layman observed ‘the Labor government failed in 1954 to reverse the change [the 1:2 metropolitan ratio] and the Liberal-Country Party failed in 1959 to extend it’.<sup>112</sup> Buxton described these moves ‘as a feature of Western Australian electoral politics that parties should seek to protect themselves against...adverse demographic trends’.<sup>113</sup>

## **1965: Increase in Assembly Numbers/Dual Member Provinces in Council**

In 1965 the number of seats in the Legislative Assembly was increased from 50 to 51. The Minister in charge of the Bill, future Premier Charles Court, and Labor opponent Colin Jamieson, both noted that 66 years had elapsed since seats in that House were last increased,<sup>114</sup> although Jamieson did not accept the claim that the new ‘odd’ number of members would help prevent

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<sup>109</sup> David Black (1984), ‘Electoral Reform Since 1929’, Seminar on Progress Towards Parliamentary Democracy in Western Australia, Parliament Week, p. 32.

<sup>110</sup> Parliamentary Debates, Legislative Assembly, 26 November 1947, p. 2370.

<sup>111</sup> Parliamentary Debates, Legislative Assembly, 3 December 1947, p. 2370.

<sup>112</sup> Layman (1991), ‘Continuity and Change, 1947–1965’, p. 166.

<sup>113</sup> Buxton (1979), ‘Electoral Politics Past and Present in Western Australia’, p. 45.

<sup>114</sup> Parliamentary Debates, Legislative Assembly, 7 October 1965, p. 1305.

a rare deadlock.<sup>115</sup> Seat numbers were further increased to 55 in 1975, and 57 in 1981, which ensured that the number of non-metropolitan seats would remain intact, despite the metropolitan adjustments. The *Electoral Districts Amendment Act 1965* had adopted the recommended definition of the Metropolitan Area, but modified the North-West Area and the Agricultural, Mining and Pastoral Area by transferring portions of Murchison and Boulder-Eyre districts from the latter to the former. The enlarged North-West-Murchison-Eyre was to again contain four districts.

In the Legislative Council in 1963, the Electoral Commissioners divided the State into 15 electoral provinces in lieu of the existing ten. The *Constitution Acts Amendment Act 1963* had altered the basis of membership of the Legislative Council so that instead of 10 provinces each being represented by three members there would be 15 provinces each represented by two members. At the same time, changes were made to provide for polling day for both Houses to be held on the same day.

From 1965 the trigger for the redistribution of boundaries was that at least eight seats were to deviate by more than plus or minus 20 per cent of the area quota. Redistributions were subsequently gazetted in 1966, 1972, 1976 and 1986. At the same time, though, the vote weighting consensus (or tolerance) which had prevailed between the major parties had broken down. In the 1970s and 1980s Arthur Tonkin and Mal Bryce, two Labor Party gladiators at the helm of electoral reform, tabled several Bills that encompassed ‘one vote one value’ provisions. They often cited how most of the published indices of ‘malapportionment’ gave Western Australia top billing on these scales.<sup>116</sup> At one stage the Labor Party proposed an electoral reform convention, to be convened by the Chief Justice to find common ground between the parties on a desirable degree of Parliamentary and electoral reform.<sup>117</sup> This convention had been signalled by Brian Burke, then Leader of the Opposition, at a special sitting of the Parliament to commemorate the 150<sup>th</sup> anniversary of the Legislative Council.<sup>118</sup> Two public seminars in 1984 heightened interest in the issue and the influential *The West Australian* newspaper regularly supported one-vote-one-value’ in its editorials. At first the plans included the abolition of the Legislative Council but by 1982 the Labor Party had changed its platform to one of ‘reform’ of the Upper House. However, as the Coalition parties held a majority in the Legislative Council major changes to the criteria keenly sought in many bitter parliamentary debates were not to be accomplished as a constitutional majority was required in both Houses. Soon however, comprehensive changes were made to electoral arrangements when in 1987

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<sup>115</sup> Parliamentary Debates, Legislative Assembly, 14 October 1965, p. 1497.

<sup>116</sup> See Dean Jaensch (1984), ‘The Process of Electoral Reform’, in *Parliament Week: Seminar on Progress Towards Parliamentary Democracy in Western Australia*, September, p. 69.

<sup>117</sup> See *The West Australian*, 9 February 1982, pp. 3 and 9.

<sup>118</sup> Parliamentary Debates, Legislative Assembly, 8 February 1982, p. 6620.

the Labor Party were able to gain the legislative support of the National (old Country) Party. Vote weighting, however, was retained in the midst of the changes.

### **1987: Defined Metropolitan Boundary and Legislative Council Regions**

A major breakthrough in electoral arrangements came with the governing Labor Party in 1986 and 1987 when it reluctantly decided to accept the National Party's proposal for restructured boundaries in the Legislative Council. This was accompanied by the introduction of the proportional representation voting system as employed to elect Senators to the Commonwealth Parliament (see Chapter Five). At the same time an independent Western Australian Electoral Commission (WAEC) was created, a statutory body with educative responsibilities, modelled on the Australian Electoral Commission. The WAEC would also resource electoral redistributions conducted by three independent electoral commissioners (the Electoral Commissioner, Chief Justice and State Statistician) after two terms of government. The Legislative Council was to have a four year fixed term with the Legislative Assembly to have a four year maximum term.

The new arrangements for the Council provided for six multi-member regions, three in the metropolitan area and three in the remaining non-metropolitan area. This system placed 17 members in country regions and 17 in metropolitan regions. In the Assembly there would be 34 metropolitan seats and 23 country or rural seats, slightly lessening vote weighting. A previously contentious issue (the location of the metropolitan area) was addressed by using the Metropolitan Region Scheme Boundary. Previously the Electoral Commissioners had been guided by the number of electors in districts which they deemed to be Metropolitan.<sup>119</sup> The Council regions were still to consist of complete and contiguous Assembly districts, in conjunction with the adoption of the proportional representation voting system. In terms of vote weighting for the Legislative Council it stood at 2.75:1 on a country versus city basis, while the reading for the Assembly was a lesser but still marked 1.86:1 country-to-city ratio.<sup>120</sup>

The adoption of regional boundaries in the Legislative Council was not mooted in most of the moves to adopt the proportional representation voting system in the late 1970s and early 1980s. The Bills and motions were for proportional representation on a state-wide basis and would have had the effect of achieving 'one vote one value' in the Upper House. When Matt Stephens, and other Nationals, held the balance of power in the Legislative

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<sup>119</sup> See Government Gazette of Western Australia, 14 December 1961 and Parliamentary Debates, Legislative Assembly, 7 October 1965, p. 1305.

<sup>120</sup> See David Black (1987), 'Political Chronicle: Western Australia', *Australian Journal of Politics and History*, Vol. 33, No. 3, p. 300. Coverage of the debate is included.

Council after the 1986 election, they were in a position to gain the passage of regional electorates.

**Table 3.1 Legislative Council Region Electors 1987<sup>121</sup>**

Metropolitan	MLCs	LA Members	Electors (1987)	Projected (1991)
North Metropolitan	7 members	14 members	278,499	313,000
East Metropolitan	5 members	10 members	195,221	221,000
South Metropolitan	5 members	5 members	195,574	217,000
Country	MLCs	LA Members	Electors (1987)	Projected (1991)
South-West	7 members	10 members	99,510	110,900
Agricultural	5 members	7 members	80,626	81,000
Mining and Pastoral	5 members	6 members	59,944	65,400

### **WA Inc Royal Commission and Commission on Government (COG)**

The Report of the Royal Commission into Commercial Activities of Government and Other Matters (1992) (WA Inc Royal Commission), revisited the question of electoral boundaries and asserted that ‘the regional division of the State strongly inhibits the possibility of significant minority interests obtaining representation in the House’.<sup>122</sup> It recommended that when the proposed Commission on Government (COG) was established it give consideration to the issue in both the Legislative Council and Legislative Assembly.

COG recommended that the Legislative Council representational pattern take the form of five regions with seven electoral districts for each region, amounting to a new total of 35 seats, and that the Assembly should have its membership increased from 57 to 61 with the boundaries drawn in accordance with the ‘one vote one value principle’. The Commissioners were requested to place the primary emphasis on community of interest as a criterion for the allocation of voters to electoral districts, with secondary criteria to be:

- means of communication and distance from Perth;
- geographical features; and
- existing boundaries of regions and districts, including local government boundaries.

Some of the issues that had previously thwarted reform attempts had or could now be addressed to a greater or lesser extent by technological and other advancements. Recommendations included that communication and administrative issues could be improved by the provision of free telephone

<sup>121</sup> Government Gazette of Western Australia, No. 40, 29 April 1988, p. 5.

<sup>122</sup> Report of the Royal Commission into Commercial Activities of Government and Other Matters Part II (1992), Perth: Western Australia, pp. 5–8.

and other electronic services for regional members of Parliament, and if necessary the appointment of more than one electoral office and agents in the district to act as contact points for members.<sup>123</sup> When the Joint Standing Committee on the Commission on Government reviewed the host of COG recommendations, it endorsed the provision of more resources but unanimously rejected the innovative notion of the use of agents as contact points. The means of achieving a State quota was supported, except that a plus or minus deviation was permitted, taking into account the usual criteria. The Joint Committee, like COG, did not support a ‘fairness clause’ which had been enshrined into the South Australian Constitution.<sup>124</sup> Not surprisingly, possibly fearing media criticism, the proposal to increase the membership of the Legislative Assembly was rejected.<sup>125</sup>

Regardless of the COG and Joint Committee stances on electoral boundaries the Court and Cowan Coalition government of the 1990s did not move to implement the recommendations, but it should not be assumed that the key issue of ‘one vote one value’ was solely an objective of the Labor Party. George Strickland, Speaker of the Legislative Assembly between 1997 and 2001, was a prominent Liberal Party member and ‘one vote one value’ advocate, with a small section of the Liberal Party considered to be in the Strickland camp.<sup>126</sup> Prior to the 1996 State election the Coalition Premier, Richard Court, revealed that based on an agreement between the Liberal and National parties, the Coalition would introduce ‘one vote one value’ legislation, with a 15 per cent toleration as COG had recommended.<sup>127</sup> It was later reported that the Coalition would permit a 20 per cent tolerance to accommodate concerns held by the National Party.<sup>128</sup> However, soon after the 1996 election the National Party’s state council indicated it was opposed to the mooted reforms as vote weighting was ‘nearly the holy grail of the National Party’.<sup>129</sup> A month later the Electoral Affairs Minister and Liberal

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<sup>123</sup> Commission on Government (1995), Report No. 1, Perth: Western Australia, p. 302.

<sup>124</sup> Under this clause the electoral distribution commissioners were required to ensure as far as practicable that the party of government should obtain more than 50 per cent of the two-party preferred vote. In South Australia the provision was supported by both sides of Parliament in 1990, followed by an overwhelming majority of South Australians in a referendum.

<sup>125</sup> Joint Standing Committee on the Commission on Government (1995), Fourth Report, Perth, Parliament of Western Australia, pp. 1–8.

<sup>126</sup> See John Cowdell (2004), ‘From Court to Court: The Legislative Quest for One Vote One Value in the 36<sup>th</sup> Parliament of Western Australia’, Paper delivered by Hon. John Cowdell MLC, President of the Legislative Council, at the Australasian Study of Parliament Conference, Perth, 28–29 May, pp. 2–4.

<sup>127</sup> Grace Meertens (1996), ‘Court calls for voting reform’, *The West Australian*, 1 November, p. 4.

<sup>128</sup> Anne Burns and Rebecca Rose (1996), ‘Electoral reform mooted’, *The West Australian*, 14 December, p. 4.

<sup>129</sup> Judy Hughes (1997), ‘Nats prepare for battle to retain vote weighting’, *The Australian*, 17 February, p. 8.

Doug Shave, announced that the Government had shelved its plans due to its coalition partner's objections.<sup>130</sup>

### **The Gallop – McGinty Drive**

When in January 2001 the Premier Richard Court travelled to the regional city of Bunbury to call the election for 10 February, he announced the Coalition was committed to the retention of rural vote weighting. Opposition Leader, Dr Geoff Gallop, then took his party to the polls with a platform strongly committed to the introduction of 'one vote one value'. Labor's gain of government in the Legislative Assembly, but denial of a constitutional majority in the Legislative Council, signalled the beginning of, yet thwarted the Gallop government's push for major electoral reform. There was to be a judicial battle and protracted parliamentary debate before the principle of vote weighting was finally (broadly) removed in 2005 in the Legislative Assembly, with its manifestation due no later than 2009.

Given the centrality of the 'one vote one value' issue in Western Australian politics for the period from the beginning of 2001 until May 2005, aspects of its history have been canvassed by several authors. Some of the highlights of the quest, including a High Court challenge in the 1986 *McGinty Case*, deserve brief consideration here. Although Gallop had long championed the introduction of the principle, it was arguably the efforts of then Attorney General and Minister for Electoral Reform, Jim McGinty, in carrying the difficult passage of the relevant Bills. McGinty began the legislative steps in August 2001 when he introduced the Electoral Distribution Repeal Bill, which sought to repeal the *Electoral Distribution Act 1947* (WA) and amend the *Constitution Acts Amendment Act 1899*. The Electoral Amendment Bill 2001 provided a new mechanism for drawing district and region boundaries<sup>131</sup> to ensure voter enrolments in each district were to be no more than 10 per cent above or below the average district enrolment, and considering the total number of enrolled electors, divided by the 57 seats in the Legislative Assembly. This would have meant that the Lower House voting power of all Western Australian citizens would have been broadly equal with the practical outcomes being specified in the Legislative Council as:

... to create four electorates in the Mining & Pastoral Region, which currently has six; four electorates in the Agricultural Region, which currently has seven; seven electorates in the South West Region, which currently has 10; and 42 electorates in the metropolitan area, which currently has 34.<sup>132</sup>

<sup>130</sup> Shaun Antony (1997), 'Climbdown over one vote one value reforms', *The West Australian*, 14 March, p. 5.

<sup>131</sup> Parliamentary Debates, Legislative Assembly, 1 August 2001, pp. 1850–1856.

<sup>132</sup> Hon Nick Griffiths, Parliamentary Debates, Legislative Council, 30 August 2001, p. 3432.

Some attention was devoted to the ‘large district allowance’ provision which had its origins in Queensland for districts with areas beyond 100,000 square kilometres, its inclusion a pre-requisite to win the support of the five Greens in the Council. The Greens floated the need for improved administrative and staffing facilities for remote and large electoral districts, improved teleconferencing and electronic networking centres as well as the appointment of agents to act as contact points for members.<sup>133</sup> The government accepted a proposal from the Greens to actually increase the number of the members in the Legislative Council from 34 to 36, with each of the six regions, similar to those already existing under the 1987 legislation, returning six members. This increase was to reinforce the status quo of country vote weighting, as the two extra members would not alter the country and metropolitan ratio, changing from 17:17 to 18:18.

From the outset the Liberal and National Parties were vehement in their united opposition to the proposals for the Legislative Assembly. National Party Leader Max Trenorden MLA asserted the Bill had one purpose, ‘to turn country people into second-class citizens’,<sup>134</sup> while Liberal Dan Barron-Sullivan suggested the proposals were blatantly rigged to favour Labor interests.<sup>135</sup> Barron-Sullivan thought the Bills were designed to circumvent the entrenchment provision of the *Electoral Distribution Act 1947*.<sup>136</sup> His demand for a referendum on the resultant constitutional changes was supported by former President of the Legislative Council George Cash, who recalled Labor’s Arthur Tonkin’s call for a ‘one vote one value’ referendum in 1983. Cash referred to an opinion poll which suggested that the public did not support ‘one vote one value’,<sup>137</sup> and queried why the new Labor Government had not conducted the promised People’s Constitutional Convention, with electoral rights firmly on the agenda. Cash was a member of the Legislative Council’s Standing Committee on Legislation, which broadly examined ‘one vote one value’ for the Legislative Assembly, regional representation for the Legislative Council and the ‘manner and form’ requirements, if any, for the repeal of the *Electoral Distribution Act 1947*.<sup>138</sup> In fact, the committee’s membership was patterned on the outcome of the 2001 election for the Legislative Council (ALP 13, Liberal 12, Greens WA 5, National Party 1, and One Nation 3), leaving Labor one short of the important constitutional majority after nominating John Cowdell as the President.

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<sup>133</sup> Parliamentary Debates, Legislative Council, 19 September 2001, pp. 3957–3958.

<sup>134</sup> Parliamentary Debates, Legislative Assembly, 22 August 2001, p. 2740.

<sup>135</sup> Parliamentary Debates, Legislative Assembly, 22 August 2001, p. 2732.

<sup>136</sup> Parliamentary Debates, Legislative Assembly, 22 August 2001, p. 2734.

<sup>137</sup> See Parliamentary Debates, Legislative Council, 18 September 2001, pp. 3820–3821 and *The West Australian*, 9 July 2001, p. 4.

<sup>138</sup> Report of the Standing Committee on Legislation in Relation to the Electoral Distribution Repeal Bill 2001 and the Electoral Amendment Bill 2001, Legislative Council, 26 November 2001, p. 4.

That Committee's extensive report was tabled on 21 November 2001 and listed 31 recommendations, with 12 winning unanimous support. Importantly, it was unanimously agreed that the existing 50:50 ratio balance between regions based on metropolitan and non-metropolitan be retained for the Legislative Council and given the divergence of party representation on the Committee<sup>139</sup> it was not surprising that many of the recommendations were accompanied by majority and minority positions including a divergence on 'one vote one value' in the Legislative Assembly. On this vexed question agreement was predictably not achieved, although the members were unanimous in their rejection 'of any argument for vote weighting based on wealth or wealth creation'.<sup>140</sup> Of significance was a recommendation, supported by the non-government committee members, that steps should be taken to obtain a Supreme Court ruling on the legality of 'the Bills' being presented for Royal Assent, in the event that they were passed without an absolute majority of the full membership of each House.<sup>141</sup>

### **Action by the Clerk of the Parliaments**

The proposal to seek a Supreme Court ruling upon whether it would be lawful to present the one vote one value legislation to the Governor for assent without the constitutional majority had not originated from the Standing Committee Report, although George Cash moved a motion to this effect at the earlier date of 19 September 2001. However, once the Standing Committee presented its November report, the President of the Legislative Council John Cowdell tabled the written advice from the Clerk of the Legislative Council, Laurie Marquet (also Clerk of the Parliaments) on the issue of compliance with manner and form for 'The Bills'.<sup>142</sup> Marquet indicated that he intended to seek a declaratory statement from the Supreme Court as to whether he could present the Bill for Royal Assent. President Cowdell then immediately indicated that 'it was not his intention to make any ruling from the Chair that would preclude or prevent the Supreme Court from determining the validity of the Electoral Amendment Bill 2001 and the Electoral Distribution Repeal Bill 2001'.<sup>143</sup>

Both Bills passed both Houses, despite lengthy and heated debates, a detailed Standing Committee Report, not to mention media comment and a flow of 'Letters to the Editor' at *The West Australian* newspaper.

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<sup>139</sup> Three Labor, two Liberal, one Green as well as One Nation member.

<sup>140</sup> Report of the Standing Committee on Legislation in Relation to the Electoral Distribution Repeal Bill 2001 and the Electoral Amendment Bill 2001, Legislative Council, 26 November 2001, p. 77.

<sup>141</sup> Report of the Standing Committee on Legislation in Relation to the Electoral Distribution Repeal Bill 2001 and the Electoral Amendment Bill 2001, Legislative Council, 26 November 2001, p. vii.

<sup>142</sup> Parliamentary Debates, Legislative Council, 28 November 2001, p. 5953.

<sup>143</sup> Parliamentary Debates, Legislative Council, 28 November 2001, p. 5953.

Remarkably the legislation passed with a legislative majority, without any major amendment from the original model that had been agreed to by Electoral Affairs Minister Jim McGinty and the Greens (mainly Dr Christine Sharp). It appeared ‘one vote one value’ was to be enacted for the Assembly and that Council representation was to consist of six regions, each returning six members and maintaining the 50:50 metropolitan and country ratio.

However, McGinty was soon disappointed, as the Supreme Court of Western Australia in *Marquet v Attorney General of Western Australia* (2002) ruled that the Bills could not be presented for Royal Assent because the government did not have a constitutional majority in the Legislative Council. Even before the Supreme Court decision there had been speculation that the High Court of Australia would activate the ‘casting vote’ on the matter. This proved to be an accurate forecast as one month after the Government had received its adverse decision, Premier Gallop announced an appeal to the High Court, buoyed by legal advice that it ‘should succeed’.<sup>144</sup> Then, in November 2003 the High Court upheld the decision of the Western Australian Supreme Court and ruled that the method of passing the electoral reform legislation (‘The Bills’) was invalid. The significance of the courts in the evolution of electoral law in Western Australia will be briefly considered in Chapter Eight, although it should be emphasised here that the court decisions which arose from Marquet’s declaratory statement pertained to the constitutionality of the legislative process, rather than the merits or otherwise of the principle of ‘one vote one value’.

## The Bills Return

During the campaign for the 2005 election the Coalition Liberal and National Parties announced a plan to entrench vote weighting in the State’s constitutional documents. The ratio of metropolitan seats to country seats, which stood at 34 to 23 in the Assembly and 17:17 in the Council, was not to be altered unless approved by referendum, or as Deputy Opposition Leader Dan Barron-Sullivan espoused at the time, ‘if it ain’t broke, don’t fix it’.<sup>145</sup>

Before election day on 26 February 2005, Premier Gallop caused a surprise in Kalgoorlie when he acknowledged the need to exempt five Assembly districts in the Mining and Pastoral region, including Eyre and Kalgoorlie, from the strict application of ‘one vote one value’. Although Gallop justified his stance with the claim ‘that I think people accept that in some parts of Western Australia ... sizes are so great that there should be allowances there

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<sup>144</sup> Anne Burns (2002), ‘High Court’s casting vote on reform looms’, *The West Australian*, 15 February, p. 12.

<sup>145</sup> Mike Steketee (2005), ‘Blow to voting equality’, *The Australian*, 24 February, p. 24.

for representation’,<sup>146</sup> the apparent shift in ALP policy drew immediate criticism. Labor stalwart Arthur Tonkin, the former Electoral Affairs Minister and dedicated ‘one vote one value’ advocate described the move ‘as shameful’ and went as far as to say ‘there is no point in voting for the Gallop Government. A Labor Party without principle is like a mother without love for its child’.<sup>147</sup> Greens MLC, Dr Christine Sharp added to the debate and publicly stated that she would not vote for any ‘dodgy’ one vote one value legislation which appeared to be designed to quarantine one party [Labor] from its effects.<sup>148</sup>

Despite the ‘fallout’ from his Kalgoorlie commitment, Premier Gallop announced after his second electoral victory that he intended to recall Parliament in a bid to achieve the party’s mandate of electoral reform. Giving encouragement to Gallop’s strategy were reports that out-going and unhappy Liberal Alan Cadby was still entertaining support for ‘one vote one value’. Cadby had lost pre-selection for his North Metropolitan seat and subsequently lost at the election, but would not depart the Legislative Council until 21 May 2005. In 2004, immediately after the pre-selection outcome, Premier Gallop had resisted pressure to attempt the passage of one vote one value as he was not sure that Cadby would support the model that Labor had negotiated with the Greens. There, was evidence, though, of some disappointment in both Labor and Green circles concerning the Premier’s 2004 stand, with a Green member reportedly opining, ‘there it was on a plate...it would have gone through’.<sup>149</sup>

Given the apparent urgency to pass the ‘one vote one value’ legislation the Labor government successfully ‘guillotined’ debate in the Legislative Assembly and voted for business on the legislation to take precedence over the Address-in-Reply debate. There was much repetition during the debate, although the key to its ultimate passage was perhaps the so-called ‘creative solution’ whereby it was agreed to increase the number of members in the Legislative Assembly from 57 to 59. This facilitated the preparedness of the Greens to support the Bill as well as helping to meet Geoff Gallop’s Kalgoorlie commitment of a minimum of five Legislative Assembly seats in the Mining and Pastoral Region. At the insistence of the Greens, who continued to seek strong regional representation reflecting ideals of a Senate type House of Review, vote weighting was maintained in the Legislative Council. The Council was, from 22 May 2009, to be composed of six regions of six members, with 18 rural seats (agricultural, south-west and

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<sup>146</sup> Robert Taylor (2005), ‘Tonkin attacks Labor on values’, *The West Australian*, 15 February, p. 8.

<sup>147</sup> Taylor (2005), ‘Tonkin attacks Labor on values’, *The West Australian*, 15 February, p. 8.

<sup>148</sup> Robert Taylor (2005), ‘One vote plus one value equals double standards’, *The West Australian*, 10 March, p. 21.

<sup>149</sup> See Norman Kelly (2004), ‘Vote Weighing in Electoral Systems: The ‘One Vote, One Value’ Debate in Western Australia’, Unpublished Honours Thesis, Curtin University of Technology, p. 76.

mining and pastoral) and 18 metropolitan city seats (north metropolitan, south metropolitan and east metropolitan). The Parliament was therefore to expand from 91 to 95 seats.

When it became apparent that Cadby's vote would enable a constitutional majority to be achieved in the Council there were signals that senior Liberal Party strategists,<sup>150</sup> sought to play a role in achieving a consensus on the electoral reform measures. McGinty rejected these overtures but did accept an amendment proposed by Liberal MLC Peter Foss to call the legislation the *Electoral Amendment and Repeal Act 2005*.

In accordance with the legislation the State, after each 'expected' four year election shall be divided into 59 electorates for the Legislative Assembly. As soon as practical after 26 February 2007 (two years after the last State poll), a 'relevant day' was set to determine 'the average district enrolment'. Following a process that invited written comments and suggestions from political parties and citizens, the Electoral Distribution Commissioners published prospective maps and names of the various districts and finally published the new boundaries in the *Government Gazette*.

The direction of the Redistribution Commissioners retains the 'usual' consideration factors but now include consideration of additional 'secondary' factors, including:

- land use patterns;
- physical features;
- existing boundaries of regions and districts;
- existing local government boundaries; and
- the trend of demographic patterns.

Finally, 'the Bills' were passed and given the Royal Assent. This occurred despite the eleventh hour bid to halt the passage of the legislation on a technical point that the Legislative Council amendments constituted a financial burden on the people, in contravention of section 46 of the *Constitution Acts Amendment Act 1899*. In essence the Opposition claimed that as the increase in the number of seats in the Parliament from 2009 incurred greater costs, such legislation should have been introduced in the Legislative Assembly. To the very end 'one vote one value' as a key criterion for drawing electoral district boundaries in Western Australia was being bitterly fought as Speaker Hon Fred Riebeling had cause to suspend the Deputy (and later) Leader Paul Omodei from the service of the Assembly.<sup>151</sup>

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<sup>150</sup> In the Legislative Council Alan Cadby mentioned George Cash, Norman Moore and Liberal Party President, Danielle Blain, thought the Liberal Party should seek a role in shaping the legislation. See Parliamentary Debates, Legislative Council, 7 May 2005, p. 481.

<sup>151</sup> Parliamentary Debates, Legislative Assembly, 17 May 2005, pp. 1610–1611.

# 4

## **Plurality (First Past the Post) and The Alternative (Preference) Vote in the Legislative Assembly**

In colonial Western Australia, the use of plurality, or ‘first-past-the-post’, was the commonly accepted voting formula in many walks of life. Although the electoral law debates had focused largely on the qualifications for the franchise as well as the criteria for the drawing of boundaries for both the Legislative Assembly and the Legislative Council, there was discussion at the federal level, even an expectation, that the alternative (preference) vote would be adopted for the election of members to the House of Representatives for its second poll. Eventually, plurality was enshrined in federal law, although in 1918 this situation changed when the alternative vote legislation was passed for all seats in the House of Representatives. Western Australia became the first State to introduce the alternative (preference) vote in 1907, with the proviso that it was optional to distribute preferences. It soon became apparent, however, that optional preferential voting could be a defacto form of plurality, and moves were soon made to make the distribution of preferences a compulsory requirement for a valid vote. In Western Australia, the alternative vote has been used for Legislative Assembly polls since 1911, and while the return of optional preferential has been mooted, the demands for such changes have not had the required support to pass both Houses.

### **The Federal Quest for the Alternative Vote**

The first serious consideration of the alternative vote has sometimes been traced to Professor W.R. Hare’s 1871 experiments with voting procedures on college students. Hare was said to have been influenced by eighteenth century French nobleman Charles de Borda in the means of voting in assemblies and committees and demonstrated that, where no candidate has an absolute majority, the sequence of elimination of the lowest placed candidate and the transfer of his or her votes to continuing candidates, could work in single member electorates, just as effectively as John Stuart Mill’s complex scheme of proportional representation (PR).<sup>152</sup> The Electoral Law Bill (1902) that was introduced in the first Federal Parliament provided for

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<sup>152</sup> See Vanessa Beckingham (2004), ‘The Alternative Vote: In Theory and Practice’, Unpublished Honours Thesis, Edith Cowan University, p. 33.

the alternative vote (AV) with numerical preferences to be coupled with single member electoral divisions for the House of Representatives. Although first-past-the-post (plurality) was eventually adopted the bill had been advocated by Edmund Barton, the first Prime Minister, indicating that the alternative vote was being seriously considered in Australia.

Often arguments for PR and the alternative vote went hand in hand, and supporters of one were often supporters of the other as both provided for greater scope of representation, particularly of minorities, and the lessening effect of the ‘wasted vote’. In fact, what many may not have realised was that the electoral outcomes from PR and the alternative vote were likely to be very different. Moreover, these debates were taking place at a time when the party system was in embryonic stages in Commonwealth and State politics, and the consequence of preference flows were difficult to predict. When the likely impact of the alternative vote became more obvious it was introduced in 1918 for the House of Representatives, facilitating preference ‘swaps’ between the Nationalist (Liberal Party) and the emergent Country Party and to militate against the Labor Party. In 1915 a Royal Commission into Commonwealth Electoral Law and Administration strongly advocated the adoption of the alternative vote. Indeed, the first State to adopt the alternative vote was Western Australia in 1907 with the legislation providing for the optional use of preferences. In Victoria, from 1911 to 1916 the optional preferential form of the alternative vote had been the Lower House law while in Queensland a system known as ‘contingent’ voting had been introduced in 1892, which was only superficially similar to the alternative vote and had quite different antecedents and results.<sup>153</sup> Nevertheless, some classifications include contingent voting in the family of majoritarian voting formulas, along with the double ballot (see Appendix Two). A 1910 Report of the British Royal Commission on Electoral Systems weighed into the debate when it declared that:

*When all due weight has been given to them (referring to ‘absolute majority systems’) the ‘Alternative Vote’ remains that best method of removing the most serious defect which a single-member system can possess – the return of minority candidates – and accordingly, we recommend its adoption in single-member constituencies.*<sup>154</sup>

### **Optional Preference Voting (Alternative Vote) in 1907**

The introduction of the alternative vote in Western Australia in 1907 was part of a major consolidation of the State’s electoral provisions, which encompassed several reforms. The introduction of the alternative vote, being

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<sup>153</sup> Benjamin Reilly (2001), ‘Preferential voting and its political consequences’, in Marian Sawer (ed.), *Elections Full, Free and Fair*, Annandale: The Federation Press, p. 82.

<sup>154</sup> Ernst Stenberg (1914), *Report upon the Principal Electoral Systems for the Election of Members of the Legislatures in Self-Governing Countries*, Perth: Law Book Company, p. 13.

quite novel, was sometimes confused by those debating the bill with a system of PR, as one of the latter's major forms was known as the 'single transferable vote' (or STV). This lack of understanding was acknowledged in a moment of candour by the Attorney General Norbett Keenan when in speaking to the Legislative Assembly he noted:

*I know members have an idea that when I spoke on preferential voting on a former occasion I did not quite understand the subject, but I hope to be able tonight, whether I understand it or not, to make the House understand it.*<sup>155</sup>

Some weeks later the Opposition leader, Thomas Bath, objected to what he regarded as a 'Machinery Act'.<sup>156</sup> Bath implored his fellow members to engage in 'some adequate and mature deliberation on behalf of the Assembly as to the best system to adopt'.<sup>157</sup>

Unsurprisingly, the Legislative Assembly appointed a Select Committee to report on the matter. Fortunately the Committee was able to call upon the Chief Electoral Officer, Ernst Gottfried Stenberg, as a key witness<sup>158</sup> to review the literature on electoral law, giving much weight to the concise statements contained in Lord Avebury's publication, *Representation* (1904). According to Stenberg the advantages to be gained by initiating the principle of preferential voting where single electorates are statutory read as:

- 1) The certainty of the election of a candidate representing the majority, according to the votes cast.*
- 2) There would be no necessity for the selection of candidates by selection committees [meaning that political parties could endorse multiple candidates].*
- 3) It would prove useful for gauging the strength of public opinion on various questions. These would be questions outside the main planks of politics, upon which perhaps, no opinion in ordinary circumstances, could be gained, but by this system the first preference votes cast for candidates out with such object would to a certain extent show the strength of public opinion on such questions.*
- 4) There would be no waste of voting power, but everybody's choice would be given effect to as indicated on the ballot papers. Perhaps I need not have put that last'.<sup>159</sup>*

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<sup>155</sup> Parliamentary Debates, Legislative Assembly, 1 August 1907, p. 621.

<sup>156</sup> Parliamentary Debates, Legislative Assembly, 22 August 1907, p. 1014.

<sup>157</sup> Parliamentary Debates, Legislative Assembly, 22 August 1907, p. 1018.

<sup>158</sup> See Ernest Gottfried Stenberg (1911), *Principal Electoral Systems for the Election of the Legislatures in Self-Governing Countries*, Perth: Government Printer.

<sup>159</sup> Report of the Select Committee of the Legislative Assembly to Which Clause 90 of the Electoral Bill was referred, Perth: Government Printer, p. 4.

Stenberg thought that affording voters the opportunity to express preferences had the advantage of providing a straight-off result, which the sometimes mooted double ballot did not provide. In Stenberg's view it was difficult enough to get electors to record their votes on polling day at the first election, and under these circumstances one would anticipate it may be rather difficult to get voters in anything like similar numbers at the second election. Further, the alternative vote would eliminate extra costs for printing, and so on, estimated at some 5,000 or 6,000 pounds. Stenberg did not favour PR and subsequently the Select Committee recommended 'that the system of preferential voting by means of the single transferable vote in electorates returning only one member [the AV] should be included in the provisions of the Bill'.<sup>160</sup> It is conceivable that the members were at that time mindful that here had been an attempt to resurrect the alternative vote in the House of Representatives when the protectionist Prime Minister Alfred Deakin wrote to his Labor counterpart Chris Watson in May 1906, suggesting the alternative vote was possibly 'a great safety valve for both of us',<sup>161</sup> to isolate the free-trade forces of George Reid. Watson, aware that his Labor Party had been the clear beneficiary of vote-splitting amongst non-Labor candidates, did not positively respond to the offer. The Deakin Government introduced another alternative vote Bill in August 1906, but it lapsed with the parliament's dissolution. Then, a few years later in 1911, a private member's bill introduced by a Liberal member was also unsuccessful.<sup>162</sup>

## Compulsory Preferences in 1911

In the first decade after federation vote splitting plagued the non-Labor (Liberal) leagues, which were still quite unorganised and fragmented.<sup>163</sup> The introduction of the alternative vote was expected to alleviate the problem in Western Australia. In the 1908 State election the non-Labor parties listed up to four candidates in some electorates, leaving the choice between them to the voters. It was assumed that the most popular candidate would collect the preferences of the other non-Labor candidates and thus be elected on a majority of votes. This tactic, however, did not operate as effectively as envisaged because voters did not, in most cases, go beyond the first choice of candidate. This practice, commonly called 'plumping', meant that only about one in three voters listed further preferences. There were several instances whereby a candidate was elected with only a

<sup>160</sup> Report of the Select Committee of the Legislative Assembly to Which Clause 90 of the Electoral Bill was referred, Perth: Government Printer, p. 3.

<sup>161</sup> See G.S. Reid and Martyn Forrest (1989), *Australia's Commonwealth Parliament 1901–1988, Ten Perspectives*, Melbourne: Melbourne University Press, p. 114.

<sup>162</sup> Benjamin Reilly (2001), 'Preferential voting and its political consequences', in Marian Sawyer (ed.), *Elections Full, Free and Fair*, Annadale: The Federation Press, p. 82.

<sup>163</sup> David Black (1979), 'The Liberal Party and Its Predecessors', in Ralph Pervan and Campbell Sharman (eds), *Essays on Western Australian Politics*, Nedlands: The University of Western Australia Press, pp. 194–195.

‘relative’ instead of an ‘absolute’ majority of votes, and in the 1908 election preference votes were largely ineffective, being counted in only eight of the 50 electorates, and effecting the results in none of these counts. This figure is somewhat distorted, however, by the high ratio of seats held by acclamation (uncontested seats) prevalent in early Western Australian elections,<sup>164</sup> (see also Appendix Three).

In introducing a clause in 1910 providing for the full distribution of preferences to be shown on the ballot paper, the Attorney General cited an example of the failure of the optional system. In a by-election for the Legislative Assembly seat of Albany in 1909 it was observed that of the 1,587 votes cast, 47.5 per cent ‘plumped’ for only one preference, 49 per cent two preferences, with only 3.5 per cent casting for the full schedule of three preferences. As a result, the successful candidate was declared elected on 745 valid votes – 49 short of an absolute majority.<sup>165</sup> One speaker in the debate questioned the number of sitting members that represented a majority of the electors,<sup>166</sup> while another member opined that:

*... if they did not represent a majority it was not a desirable state of affairs. This compulsory preference would make the members represent a majority of voters, if not of electors. We would not compel people to vote, but when they did go to vote they should exercise a preference’.*<sup>167</sup>

It was said that the failure to make the distribution of preferences compulsory in 1907 was a ‘blot on the Act’,<sup>168</sup> although it was conceded that optional preferences could be regarded as a trial in the direction of the effective operation of the alternative vote. Opposition Leader, ‘Jack’ Scaddan, claimed that compulsory preferential marking would keep voters away from the polls rather than be forced to vote for candidates against whom they had conscientious objections. However, Scaddan was making technical observations about the alternative vote, rather than expressing a basic disagreement with the Bill.<sup>169</sup>

## **Labor’s Stance on the Preference Vote**

As early as 1916, a motion was carried at the Congress of the State branch of the Labor Party stating ‘that compulsory preferential voting be abolished’

<sup>164</sup> Jeremy Buxton (1979), ‘Electoral Politics Past and Present in Western Australia’, in Ralph Pervan and Campbell Sharman (eds), *Essays in Western Australian Politics*, Nedlands: University of Western Australia Press, pp. 35–36.

<sup>165</sup> Parliamentary Debates, Legislative Council, 27 September 1910, p. 803.

<sup>166</sup> Parliamentary Debates, Legislative Council, 26 October 1910, p. 1169.

<sup>167</sup> Parliamentary Debates, Legislative Council, 26 October 1910, p. 1169.

<sup>168</sup> Parliamentary Debates, Legislative Council, 26 October 1910, p. 1169.

<sup>169</sup> N.F. Byrne (1960), ‘The Western Australian Electoral System, 1917–1956’, *University Studies in Western Australian History*, Vol. 111. No.4, p. 27.

because speakers had expressed the view that it did not favour Labor.<sup>170</sup> At the next Congress in 1919 a motion was carried by a narrow majority of 38 to 36, affirming the principle of ‘proportional representation’. Yet at the 1922 Congress a speaker indicated that PR had operated ‘to the injury’ of the Labor Party in New South Wales. In her maiden speech as the first woman elected to an Australian Parliament in 1921, Edith Cowan floated the ideal of proportional representation,<sup>171</sup> despite her election having been facilitated by the practice of the Nationalist Party being prepared to have multiple endorsements under the alternative vote.<sup>172</sup> Two years later Edwin Corboy, a young Labor Party MLA moved for the principle of PR to be introduced. The amendment was voted down but the debate gave no indication that there was any suggestion that the alternative vote would be abandoned.<sup>173</sup>

Although research indicated the leakage of preferences in Western Australian elections was high and sometimes decisive, for several decades there were no concerted moves to adopt another voting system.<sup>174</sup> The use of the alternative vote for House of Representative elections probably contributed to its acceptance for the Assembly in Western Australia, but it should be noted that its use was not common in other nations with Westminster majority type legislatures. The Canadian provinces of Manitoba and Alberta had employed the alternative vote in rural areas from the 1920s to the 1950s, with PR in the respective urban constituencies of Winnipeg, Edmonton and Calgary. British Columbia had provincial wide alternative voting for elections in 1952 and 1954, reportedly because the conservative coalition (Liberals and Progressive Conservatives), with the aid of the alternative vote could prevent the Co-operative Commonwealth Federation (CCF) from forming government and ‘wrecking’ British Columbia’s economy with socialist policies.<sup>175</sup> Ultimately, the CCF was denied government, but in a surprise result a new party, the Social Credit League won government. The conservative coalition in British Columbia were right about the disadvantage to the CCF, a Labor type party, but it

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<sup>170</sup> N.F. Byrne (1960), ‘The Western Australian Electoral System, 1917–1956’, *University Studies in Western Australian History*, Vol. 111, No.4, p. 27.

<sup>171</sup> Parliamentary Debates, Legislative Assembly, 27 July 1921, pp. 15–19.

<sup>172</sup> See Harry Phillips (1996), *The Voice of Edith Cowan: Australia’s First Woman Parliamentarian 1921–1924*, Churchlands: Edith Cowan University, p. 27. In 1924 Edith Cowan lost her seat to another Nationalist candidate Thomas Davy, who had also led after the first count.

<sup>173</sup> Parliamentary Debates, Legislative Assembly, 25 January 1923, p. 2882.

<sup>174</sup> See N.F. Byrne (1960), ‘The Western Australian Electoral System, 1917–1956’, *University Studies in Western Australian History*, Vol. 111, No.4, pp. 26–32.

<sup>175</sup> Harry C. J. Phillips (1976), *Challenges to the Voting System in Canada, 1874–1974*, Unpublished Ph.D. Thesis, University of Western Ontario, pp. 271–273.

misjudged the benefit the alternative vote would bring to their own chances of electoral success.<sup>176</sup>

In Australian Labor circles, there developed a view that the alternative vote was working as a 'brake' on the success of their party. Many supporters of the Democratic Labor Party (DLP), who had previously been ALP voters, began directing their second preferences to the Coalition Liberal or Country Party candidates. Some candidates reportedly changed their surname by deed poll to gain top position on the ballot paper and gain a supposed advantage in preference distribution. However, legislation in 1970 provided for ballot position to be determined by lot rather alphabetical order.

When the Labor Party won office in Western Australia in 1971, it soon indicated its intention to repeal provisions regarding preference voting, which meant in effect that first-past-the post would be implemented if it could win the necessary parliamentary approval. However, the Opposition was justifiably critical that no rationale was provided at the second reading stage.<sup>177</sup> Sir Charles Court considered first-past-the-post as 'something the Labor Party believes will give it some political advantage'<sup>178</sup> and noted that people from overseas found the AV system 'odd at first', but recognised that 'at least it gives a vote a full value'.<sup>179</sup> Debate on Labor's first-past-the post legislation did not survive adjournment. Thereafter, in 1974, with the return of the Coalition to government led by Premier Sir Charles Court, the retention of the alternative vote was assured at least until Labor returned to office.

Predictably, when Brian Burke became Premier in 1983 the Labor Party Minister for Electoral Affairs, Arthur Tonkin, soon tabled a comprehensive Fair Representation Bill (1984) which included a clause for the adoption of optional preferential voting, which had the objective 'of making voting easier'. As the Bill also sought the introduction of 'one vote one value' in the Legislative Assembly and a significant representational shift in the Legislative Council, it is not surprising that optional preferential voting was not given much focus. Electors only had to indicate as many preferences as there were candidates for election in each constituency with an X also being accepted as a formal vote in a Legislative Assembly district. Moreover, the long ballot papers in the proposed multi-member electorates (in the Legislative Council) would present no great problem to electors as their votes would be counted as long as their intentions were clear.<sup>180</sup>

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<sup>176</sup> Harry C. J. Phillips (1976), *Challenges to the Voting System in Canada, 1874–1974*, Unpublished Ph.D. Thesis, University of Western Ontario, pp. 276–281.

<sup>177</sup> See *Parliamentary Debates, Legislative Assembly*, 5 October 1972, p. 3817. T.D. Evans (Attorney General) Second Reading Speech.

<sup>178</sup> *Parliamentary Debates, Legislative Assembly*, 21 November 1972, p. 5482.

<sup>179</sup> *Parliamentary Debates, Legislative Assembly*, 21 November 1972, p. 5482.

<sup>180</sup> *Parliamentary Debates, Legislative Assembly*, 25 September 1984, p. 1685.

As expected, the Bill floundered in the Council where the governing Labor Party did not command a majority.

The Electoral Amendment Bill of 1985 contained a number of machinery amendments. This time optional preferential voting was included, with a range of related proposals. Minister Tonkin noted that in addition to permitting certain types of error in voting like 'X's and a blank square, the amendments added two other permissible errors, a repeated preference or a gap in the sequence of preferences would not invalidate a vote. Indeed the Bill included a clause that a vote was not considered to be informal, even though the sequence of preferences is broken or the preferences included a repeated number. Liberal Party MLA Andrew Mensaros asked why 'fancy names' such as optional preference should be used when in fact 'first-past-the post' is proposed. In Mensaros' view the Bill 'support[ed] the concept that people are stupid and cannot count beyond five or seven'.<sup>181</sup> Eventually, the Bill was amended in the Council and subsequently referred to a Conference of Managers. The latter failed to agree, after what was later described as a '20 second meeting',<sup>182</sup> which meant that the alternative vote with compulsory preference distribution was to prevail for the 1986 State election.

## The 1980s

At the 1986 State election, the Labor Party was returned to office. Seven of the 57 seats required preferences to determine the winning candidate, with two results being changed as a consequence of seeking an absolute majority from the first count of votes (refer to Appendix Three). Once again the introduction of optional preferences was proposed as part of the substantial overhaul of the electoral system. However, in the negotiations between Labor and the National Party, optional preference voting was a casualty. Although 'one vote one value' was a major objective of the Government, this reform was not achieved but was keenly debated in the Parliament which did introduce a proportional representation voting system for the Legislative Council. In fact when Mal Bryce, as the new Minister for Parliamentary and Electoral Reform, spoke of the five major concepts which had been promoted in the previous Parliament he did not include optional preferences for the alternative vote in the tabulation.<sup>183</sup> Nor was the placement of party labels on the ballot paper for both chambers mentioned. Labor had included this provision, firstly in its comprehensive *Electoral Act 1907* amendments in 1957,<sup>184</sup> which foundered in the Legislative

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<sup>181</sup> Parliamentary Debates, Legislative Assembly, 16 October 1984, p. 2443.

<sup>182</sup> Parliamentary Debates, Legislative Council, 11 November 1986, p. 3909.

<sup>183</sup> Parliamentary Debates, Legislative Assembly, 8 July 1986, p. 1429.

<sup>184</sup> Parliamentary Debates, Legislative Assembly, 25 July 1957, p. 458.

Council then,<sup>185</sup> and again in 1985.<sup>186</sup> When the optional preference proposal was reintroduced in the 1986/1987 package, Mal Bryce stated:

*The Government seeks to make voting more straightforward. A broader definition of a valid vote will mean that many honest and trivial mistakes made by voters will not prevent them from recording valid votes. The most important thing is the intention of the votes, and if this is clear the vote should be counted... Under the current law, even though a preference must be marked for every candidate on every valid vote, the preferences of approximately 95 per cent of ballot papers are never distributed in the count.*<sup>187</sup>

Deputy Leader of the Opposition Barry McKinnon was ambiguous towards many of the reform measures and was suspicious about Arthur Tonkin's resignation a few months earlier from the Cabinet.<sup>188</sup> Further, McKinnon did not want the legislation referred to a Select Committee where 'one party dominates'<sup>189</sup> and on optional preference voting, McKinnon noted it was rejected after the Liberal Party had given it careful consideration. However, he added:

*should the relative majority principle (optional preferential) be advocated, then the Liberal Party would entertain considering it only if accompanied by no preferential voting at all and voluntary enrolment and voting.*<sup>190</sup>

On the other hand Liberal Jim Clarko, a former politics teacher with a knowledge of electoral systems, was strongly opposed to the optional preferential voting system and regarded it as 'a disguised attempt to move closely to the first-past-the-post principle', warning that the situation 'might not help Labor'.<sup>191</sup>

In the Legislative Council, the Liberal Party Leader of the Opposition Gordon Masters also opposed optional preferential voting and linked compulsory preferences with the ideas of compulsory voting and enrolment. In Masters' view:

*if we are to have compulsory enrolment, then people should be required to follow the voting pattern and fill in preferences... it is wrong to say that people find that difficult, because most people in Australia have grown up with that system.*<sup>192</sup>

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<sup>185</sup> Parliamentary Debates, Legislative Council, 24 October 1957, p. 2514.

<sup>186</sup> Parliamentary Debates, Legislative Assembly, 21 August 1985, p. 164.

<sup>187</sup> Parliamentary Debates, Legislative Assembly, 8 July 1986, p. 1431.

<sup>188</sup> Parliamentary Debates, Legislative Assembly, 23 July 1986, p. 2322.

<sup>189</sup> Parliamentary Debates, Legislative Assembly, 23 July 1986, p. 2320.

<sup>190</sup> Parliamentary Debates, Legislative Assembly, 23 July 1986, p. 2330.

<sup>191</sup> Parliamentary Debates, Legislative Assembly, 23 July 1986, p. 2337.

<sup>192</sup> Parliamentary Debates, Legislative Council, 11 November 1986, p. 3919.

Masters did concede that, having come from the United Kingdom, some people may have an initial difficulty, but as how to vote cards are used the problem of expressing a full schedule of preferences is readily overcome.<sup>193</sup> Meanwhile, the National's Eric Charlton was prepared to consider changes to the Legislative Council voting arrangements, but optional preference voting in the Legislative Assembly was not to be entertained.<sup>194</sup>

Historically the accepted wisdom was that the alternative vote facilitated the coalition arrangement between the Liberal Party and Country (later National) parties, enabling them to stand candidates in some seats without the danger of extensive vote-splitting. From the mid 1950s the preferences of the DLP, flowed predominantly against the ALP and assisted the Coalition to maintain government for long periods. However, in the late 1980s the partisan impact of the alternative vote appeared to turn around with minor party preferences playing a crucial role in the 1990 Labor victory in federal politics. During the 1990 campaign, it became clear that Bob Hawke's Labor Government was trailing the conservative Coalition in the polls, and that defeat was likely. As part of a deliberate strategy Labor sought the second preferences from supporters of the Australian Democrats and the Greens, which had reached historic heights in the polls. The apparent success of this approach helped to undermine Labor's support for the optional preference version of the alternative vote. In fact, in Western Australia the Labor Party had lost its appetite for the preference version for the alternative vote by the time the WA Inc. Royal Commission had reported in 1992.

### **WA Inc Royal Commission (1992) and the Commission on Government (COG) 1995**

Some of the impetus for the introduction of optional preferential voting had stemmed from New South Wales, where in 1980 a Labor government had passed such legislation. In fact, this electoral provision, along with compulsory voting, was entrenched in the New South Wales Constitution and its removal could not be achieved without a successful statewide referendum. Given that the Goss Labor government in Queensland had also introduced optional preference voting in 1992 it was not surprising that its currency led to the consideration of its merits by the Commission on Government (COG) after the WA Inc. Royal Commission recommended 'a majoritarian approach should prevail'.<sup>195</sup> The COG recommendations included the rejection of plurality (or first-past-the-post), a position favoured by

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<sup>193</sup> Parliamentary Debates, Legislative Council, 11 November 1986, p. 3919.

<sup>194</sup> Parliamentary Debates, Legislative Council, 11 November 1986, p. 3923.

<sup>195</sup> Report of the Royal Commission into Commercial Activities of Government and Other Matters, Part II (1992), Perth: Western Australia, pp. 5–8.

some who had made representations to the inquiry. For example, the National party submission to the COG stated:

*Preferential voting ensures votes for minor parties and independents are not wasted and therefore has the effect of increasing the level of effective competition at elections. Under 'first past the post voting', a person who votes for a 'minor candidate' has no influence on the election result.*

*Preferential voting encourages parties to develop constructive relationships with other parties and candidates (in order to attract their preferences).<sup>196</sup>*

Labor MLA David Smith favoured the retention of the alternative vote, with full expression of preferences, because of the choice it gives voters. Smith claimed that:

*Through the preferential system the minorities in the community get the opportunity to have a say not only in terms of their personal experiences as to who they would like to represent them but in the end they get to exercise a preference in terms of who actually governs the people.<sup>197</sup>*

The COG agreed that the full expression of preferences meant that the elected candidate would have the support of an absolute majority of voters. However, it then presented three short paragraphs focused on the optional preferential voting version of the alternative vote. It was conceded that a key disadvantage of optional preferential voting was that a significant number of exhausted ballots may result. Any extensive occurrence of this pattern would detract from the 'representativeness' of such a system. It was however, contended:

*Optional preferential voting provides greater freedom and flexibility to voters. It does not require voters to determine preferences for candidates who they may not like or may not have heard of ... This flexibility more accurately reflects the principles of accountability and representation, as members of parliament recontesting their seats are then judged on their past performance and all candidates are more likely to be chosen because of what they represent. Full preferential voting does not necessarily permit this, as voters are forced to express a preference on candidates whom they may not know or want to vote for.<sup>198</sup>*

The COG then added a consideration which was regarded as a telling argument in favour of the introduction of optional representation:

*In keeping with the theme of public submissions, this method of voting may reduce the dominance of the major parties as well as*

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<sup>196</sup> Report No. 1, Commission on Government, Perth: Western Australia, p. 311.

<sup>197</sup> Report No. 1, Commission on Government, Perth: Western Australia, p. 312.

<sup>198</sup> Report No. 1, Commission on Government, Perth: Western Australia, p. 312.

*improving the standard of their campaigning. Voters would no longer be required to make an ultimate choice between two candidates whom they wish to see as the Legislative Assembly member. If the voters preferred neither of the major parties, or did not like preselected candidates, they would be able to ignore them when determining their preferences. As a result, the major parties would have to work harder when campaigning to convince voters in each electoral district to mark a preference for their candidate.*<sup>199</sup>

COG recommended ‘a system of optional voting should be adopted for the election of members to the Legislative Assembly’.<sup>200</sup> Nevertheless it was soon clear that no parliamentary party (including Labor) was considering the implementation of optional preference voting when the Joint Standing Committee on the COG recommendations rejected the case for optional preferential voting, and the Court Coalition Government in its response then stated ‘there is no pressing popular demand for optional preferential voting and it should not be adopted’.<sup>201</sup>

However, no public opinion polls were published on the matter, and in fact there is surprising dearth of research upon the opinions of the electorate towards electoral systems of the Parliament. Some citizenship studies suggest that an understanding of voting mechanisms is regarded as an ideal, even a desired pre-requisite of citizenship. Yet few experts and parliamentarians alike can cope with the complexities of preference exchange for either the alternative vote or proportional representation. Nevertheless, former Premier Geoff Gallop once claimed that the system of electing the Legislative Assembly from single-member constituencies through compulsory preference voting is ‘well established and understood’.<sup>202</sup>

With these views in mind, a study was commissioned to assess broad community understanding of the alternative vote (proportional representation is covered in Chapter Five). A total of 403 respondents participated in a state-wide survey in July 2006, with the results being obtained from both regional (84) and metropolitan respondents (319) in line with the general population proportions applicable to each.<sup>203</sup>

As Table 4.1 indicates some 60 per cent of the electorate believed they had a very good, good or fair understanding of the alternative vote voting system for the Legislative Assembly (and the House of Representatives). Nearly 30 per cent admitted their understanding was either poor or very poor,

<sup>199</sup> Report No. 1, Commission on Government, Perth: Western Australia, p. 313.

<sup>200</sup> Report No. 1, Commission on Government, Perth: Western Australia, p. 313.

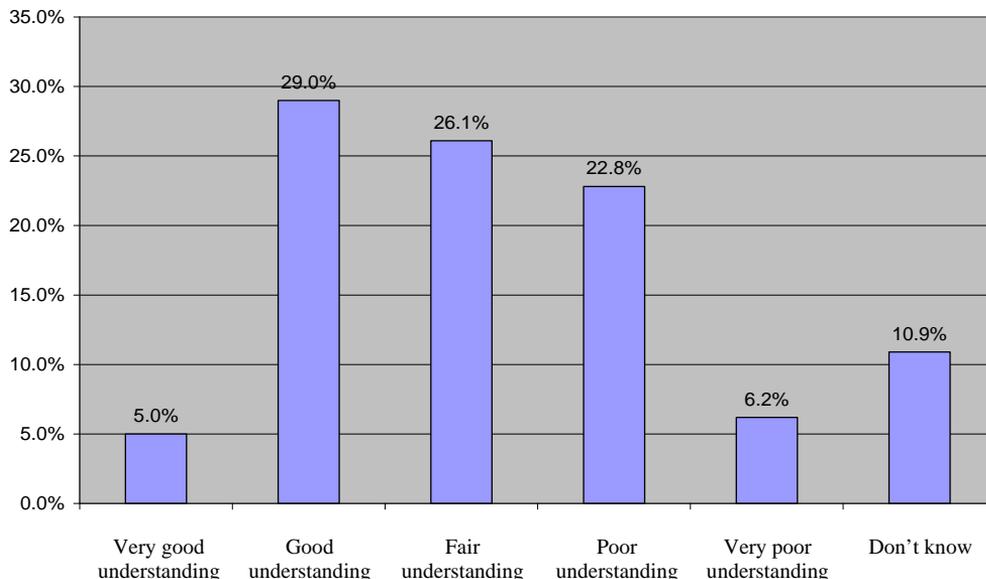
<sup>201</sup> Government Response to Commission on Government Reports Nos. 1–5, p. 10.

<sup>202</sup> Geoffrey Gallop (1998), *A State of Reform: Essays for a Better Future*, Wembley: Helmwood, p. 80.

<sup>203</sup> Survey conducted by Asset Research for author Harry Phillips.

whilst nearly 11 per cent confessed to being in the ‘don’t know category’. On balance, the level of understanding was comparable for male and female respondents, with the best results being recorded for those in the 18 to 19 or over 65 years of age category. A key factor in educational levels was the attainment of Year 12 high school, while the completion of a university degree did not statistically improve personal understanding.

**Table 4.1: Respondents’ Understanding of the Alternative (Preference) Vote**



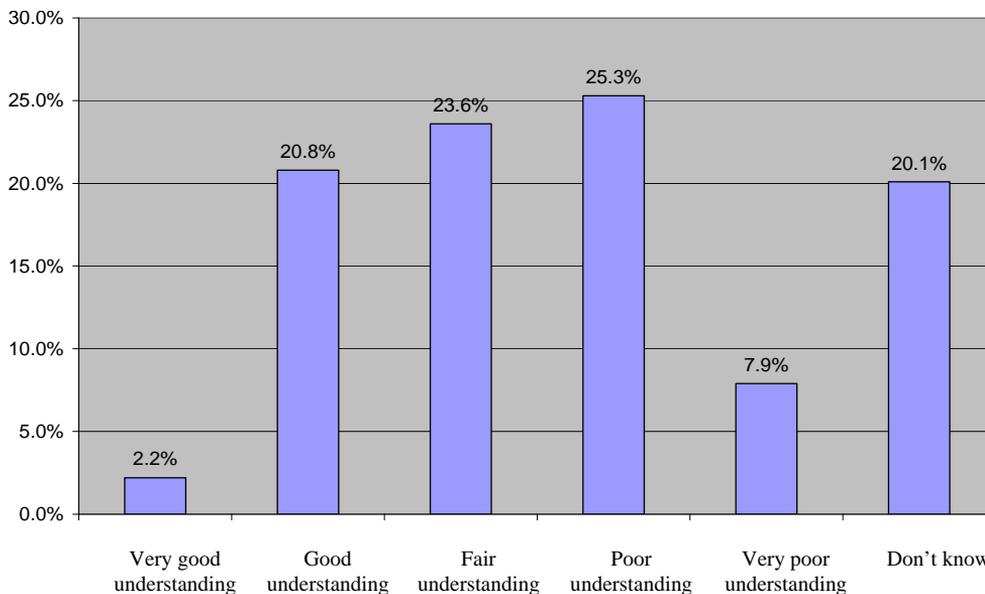
When respondents were asked what level of understanding they considered the community held of the alternative vote system, the overall findings as illustrated in Table 4.2 (below) indicated that respondents believed the electorate in general had a lower level of understanding of the alternative vote than they held individually. Certainly the ‘don’t know’ scores were markedly higher for the electorate than for individual respondents. These responses were based on a subjective assessment by respondents, without them necessarily being aware of the full details of the actual alternative voting system.<sup>204</sup>

In another study employing focus group methodology across a range of six socio-economic categories, the researcher concluded:

*... that the mechanics of the [alternative vote] system are generally little understood. It appears that voters understand some aspects of the system without fully understanding how the system works to ensure that the candidate elected has been elected taking all voters’ preferences into account.*<sup>205</sup>

<sup>204</sup> Vanessa Beckingham (2004), ‘The Alternative Vote: In Theory and Practice’, Unpublished Honours Thesis, Edith Cowan University, p. 82.

<sup>205</sup> Vanessa Beckingham (2004), ‘The Alternative Vote: In Theory and Practice’, Unpublished Honours Thesis, Edith Cowan University, p. 82.

**Table 4.2: Electorates' Understanding of the Alternative (Preference) Vote**

One widespread misconception was that political parties somehow ‘gave’ preferences to, or ‘took’ preferences from other parties through the medium of ‘how to vote cards’.<sup>206</sup> The Australian Democrats and the Greens (WA) have been on record seeking to ban ‘how to vote cards’ with suggestions that each polling booth display how to vote information. Dean Jaensch, a long-time critic of ‘how to vote cards’ believes they ‘entrench a mindlessness and a tendency for people not to think when they go towards an election’.<sup>207</sup> Significantly, the COG recommended ‘there should be no change to the existing rules for the distribution of how to vote cards’.<sup>208</sup>

By 2007 Western Australia could celebrate a century of the alternative vote, the longest of any jurisdiction in the world. Despite the fact that one international electoral law scholar, Stein Rokkan, once described the alternative vote as a ‘great innovation’, its employment throughout the world has been limited.<sup>209</sup> However, with the globalization of electoral assistance and the opportunity for the diffusion of what have been until

<sup>206</sup> Vanessa Beckingham (2004), ‘The Alternative Vote: In Theory and Practice’, Unpublished Honours Thesis, Edith Cowan University, p. 77.

<sup>207</sup> Cited in Vanessa Beckingham (2004), ‘The Alternative Vote: In Theory and Practice’, Unpublished Honours Thesis, Edith Cowan University, p. 76.

<sup>208</sup> Report No. 1, Commission on Government, Perth: Western Australia, p. 319. See also discussion of ‘How to Vote’ cards at the conclusion of Chapter Five.

<sup>209</sup> Cited in Benjamin Reilly (2001), ‘Preferential voting and its political consequences’, in Marian Sawyer (ed.), *Elections Full, Free and Fair*, Annandale: The Federation Press, p. 92.

recently distinctively ‘Australian’ electoral procedures, this situation may change. In the United Kingdom the Jenkins Commission in 1998 recommended changes to the voting system as part of a package known as ‘AV plus’. A year later the United Nations Representative in Bosnia sought the alternative vote in that troubled nation.

There was also interest and experimentation in Papua New Guinea and across Australia’s ‘sphere of interest’ in the Pacific Islands. Further, the alternative vote has been the subject of initiatives in several jurisdictions in the United States of America, where the alternative (preference) vote is commonly referred to as ‘instant run-off voting’.<sup>210</sup>

According to Benjamin Reilly, an acknowledged researcher on preference voting, an explanation for renewed interest in the alternative vote is that its outcomes have been ascertained to be beneficial. Promoting majority party victories, aggregating common interests, combating vote splitting and the ability to refer to the majority mandate of a candidate in a single electorate have been widely recognised in the past. In addition Reilly contends that the need to reach preference swapping agreements:

*can create “arenas of bargaining” between rival candidates and parties giving them room to explore potential areas of commonality not just on policy strategy but on substantive policy areas as well.*<sup>211</sup>

Drawing particularly on the research by Donald Horowitz, it was Reilly’s hypothesis that ‘the ability of preferential voting systems to aggregate political interests for inter-party and perhaps inter-communal cooperation has led to increasing focus on its potential as a form of “constitutional engineering” for divided societies around the globe’.<sup>212</sup> Interestingly, though, this observation was thought to be applicable to other forms of preferential voting such as the single transferable vote (STV) form of proportional representation.

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<sup>210</sup> Benjamin Reilly (2001), ‘Preferential voting and its political consequences’, in Marian Sawer (ed.), *Elections Full, Free and Fair*, Annandale: The Federation Press, p. 82.

<sup>211</sup> Benjamin Reilly (2001), ‘The Global Spread of Preferential Voting: Australia’s Institutional Imperialism?’, *Australian Journal of Political Science*, Vol. 39, No. 2, July, p. 263.

<sup>212</sup> Benjamin Reilly (2001), ‘Preferential voting and its political consequences’, in Marian Sawer (ed.), *Elections Full, Free and Fair*, Annandale: The Federation Press, p. 92.

# 5

## The Legislative Council and Proportional Representation

When the Legislative Council conducted its first meeting on 7 February 1832 it was an appointed Chamber, over which Governor James Stirling presided with five nominated officials. The non-elected membership of the Council gradually increased until 1870 when representative government was introduced. Thereafter the membership of the Chamber expanded with two-thirds elected on a restricted male franchise until responsible government was gained in 1890. Eventually, when the population of the Colony reached 60,000 people in 1893, the Legislative Chamber became an elected Upper House with multi-member provinces elected by the traditional plurality formula. When the Legislative Assembly adopted the alternative vote in 1907, and compulsory distribution of preferences in 1911, the Legislative Council followed suit. Yet it was not until the 1960s that conjoint elections for both Houses were held.

With decades of conservative party electoral dominance in the Legislative Council some of the elections, featured by voluntary voting on a restricted franchise (until the 26<sup>th</sup> Parliament in 1965) were widely regarded as ‘sideshow’. There were numerous attempts to introduce a proportional representation voting system and when this occurred in 1987, the Legislative Council’s representational composition was soon discernibly altered.

### **Plurality, Provinces and Preferences**

The first election for the Legislative Council after Western Australia had gained statehood took place on 12 May 1902. The Chamber had been expanded to a full membership of three members from ten provinces, each serving six years before again facing the electorate. There had been nine by-elections since the 14 May 1900 periodic election, occasioned by an appointment to the Senate, three deaths, and four appointments to the Ministry. The early Westminster practice of a by-election requirement subsequent to an appointment to the Ministry had been inserted in the *Constitution Act 1889* and was not removed until 1947. Frequently the member in this ‘predicament’ was un-opposed, but in November 1901 lawyer Matthew Moss was appointed as the Colonial Secretary, and lost his seat at the subsequent by-election. Moss was then returned unopposed for West Province at the 1902 Periodic Election.

Under plurality, and for several elections under the alternative (preference) vote, it was difficult to accurately label the elected members with political party allegiances. Many MLCs regularly spoke of their roles in non-partisan terms until gradually party lines firmed. It was not until the mid-1960s that a package of reforms was implemented to broaden the franchise, but the alternative vote was not repealed until 1987 when a proportional representation voting system was introduced. In fact, the quest for proportional representation had a long history in the Council, as was the case for other Australian Upper Houses.

### **The Quest for Proportional Representation (PR)**

At the time of federation inaugural Prime Minister Edmund Barton had high hopes for ‘innovative rules for representation’ including proportional representation for the newly established Senate. Barton was influenced by a formidable body of idealists in the various colonies who advocated various forms of PR modified from the major works of Thomas Hare and given scholarly recognition by English liberal thinker John Stuart Mill. Those with the most extensive publications included Catherine Helen Spence, Professor E.J. Nanson, brothers T.R. and H.P.C. Ashworth and J.B. Gregory. In a seminal work Reid and Forrest recognised that:

*Each, directly and indirectly, influenced the electoral law we know today. The idealists were reformers, and they found that their innovations took many years to win acceptance. Politicians, on the other hand, were pragmatists, which meant their ideals and their advocacy of them would be embraced publicly only if they met immediate political needs, which frequently were expressed only in private...their ideals were sometimes accepted, sometimes not; their existence, and their influence, were often denied the acknowledgement they deserved.<sup>213</sup>*

The Commonwealth Parliament commissioned two reports in its first year of proceedings to prepare the ground for the Barton Government’s 1902 Commonwealth Electoral Bill. Home Affairs Minister Sir William Lyne, who was controversially offered the post of Prime Minister by Governor General Lord Hopetoun, convened a committee of parliamentary experts on electoral law. In 1901 the group reported in favour of a PR system for the Senate with no reasons given, despite the fact that PR was entirely new to most members. A second report was prepared for the Senate by the Returning Officer and Statistician from Tasmania. However, despite the findings of both reports and the weight of arguments presented by the idealists, the Senate rejected the PR proposal.

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<sup>213</sup> G.S. Reid and Martyn Forrest (1989), *Australia’s Commonwealth Parliament 1901–1988: Ten Perspectives*, Melbourne: Melbourne University Press, pp. 87–88. See Reid and Forrest’s analytical resumes of the works by Nanson, Clark, Spence and the Ashworths, pp. 88–94. Gregory did not feature in this resume.

Although PR was not implemented for the Senate when the Commonwealth electoral law took effect, it was clear that the extensive PR literature was being considered in parliamentary circles. In Western Australia, as early as 1870 there had been a plea by a newspaper correspondent to adopt the John Stuart Mill and Thomas Hare version of PR at the beginning of representative government in 1870.<sup>214</sup> However, the first extensive examination of the merits of PR by the Western Australian Parliament came when the matter was researched by a Select Committee in 1907.

### **Legislative Assembly Select Committee (1907)**

As will be recalled, a major consolidation of many components of the electoral law took place in the *Electoral Act 1907*. A Select Committee was established in the Assembly to look at two terms of reference namely:

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

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

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

*Your Committee, however, recognises that in the application of the system of proportional representation to electorates returning more than one member, there exists considerable diversity of opinion, both as to its application to the redistribution of seats and also as to the particular scheme of proportional representation to be adopted, and regards it as one deserving of further more extensive inquiry before being embodied in our electoral machinery.<sup>215</sup>*

During the Committee proceedings, Chief Electoral Officer Ernst Stenberg devoted time to clearly differentiating between the alternative vote and proportional representation, which as the above terms of reference illustrate, were both labelled as the ‘single transferable vote’. His comments were favourable to the alternative vote ahead of plurality, the second ballot and the ‘contingent vote’. Stenberg cited the authoritative work of Lord Avebury (Sir John Lubdeck) entitled *Representation* which contained several

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<sup>214</sup> See ‘Representation of Minorities’, *Inquirer*, 10 August 1870.

<sup>215</sup> Report of the Select Committee of the Legislative Assembly to Which Clause 90 of the Electoral Bill was referred (1907), Perth: Government Printer, p. 3. See Legislative Assembly, Votes and Proceedings.

advantages of the alternative vote in single member constituencies.<sup>216</sup> Many other electoral law authorities were mentioned, and evidence attributed to Lord Avebury indicated that PR results in three great requisites of representation, namely ‘power to the majority, a hearing to the minority, and lastly, the representation of every considerable party and section by its best and ablest leaders’.<sup>217</sup> Stenberg was circumspect about the single transferable version of proportional representation and was concerned that the views of John Stuart Mill were being presented without recognition that Mill was proposing a representative assembly as a purely deliberative body, devoid of governmental functions.<sup>218</sup>

Proportional representation was introduced in 1896 for the Hobart and Launceston electorates in the Tasmanian House of Assembly, but was later abandoned, with evidence of a marked increase in informal votes.<sup>219</sup> At that stage information about its re-introduction for all electorates in Tasmania was not yet known, and of major concern to Stenberg were the problems arising from the quota and formula used. J.B. Gregory, a mathematician who had devised solutions to the transfer of surplus votes conundrum as early as 1880, was later very influential for the Australian Senate and the Western Australian Legislative Council.

Although PR was not adopted in 1907 it was not entirely removed from the agenda of Western Australian politics. In 1910, during the bitter Redistribution of Seats Bill, Opposition Leader and future Premier Jack Scaddan, believed that the only true method of representing the will of the people would ultimately reside with the introduction of a proportional representation voting system. In the debate Scaddan predicted:

*Proportional representation would result in our best men representing the people in Parliament. Under proportional representation the member for Menzies would not have to run in the new Wagin seat for the next Parliament, for the Minister for Mines would not be required to get down to the depths he had reached in gerrymandering electorates to secure his return to the next Parliament. Proportional representation would secure his return.*<sup>220</sup>

Earlier in the debate Premier Frank Wilson had recommended caution, declaring:

<sup>216</sup> Report of the Select Committee of the Legislative Assembly (1907), p. 4.

<sup>217</sup> Report of the Select Committee of the Legislative Assembly (1907), p. 32.

<sup>218</sup> Report of the Select Committee of the Legislative Assembly (1907), p. 22.

<sup>219</sup> Scott Bennett (1995), ‘These New-Fangled Ideas: Hare-Clark 1896-1901’, in Marcus Haward and James Warden (eds), *An Australian Democrat: The Life, Work and Consequences of Andrew Inglis Clark*, Hobart: Centre for Tasmanian Historical Studies, p. 153.

<sup>220</sup> Parliamentary Debates, Legislative Assembly, 12 January 1911, p. 2921.

*...I admit again there is much to be said for the system, and so far as I am concerned I am rather enamoured of it from what I can read of it; still we ought to be cautious before we launch out on the system of this description and abolish the system under which we are governed.*<sup>221</sup>

There was clearly a belief that party feuds over boundaries would be reduced by the adoption of PR with its multi-member constituencies, and larger electorates would not need regular readjustment. That PR would facilitate the election of the most prominent and able members had been part of the argument for the single transferable vote version, based on the capacity of individuals to win votes in large multi-member electorates. The great bugbear was that the scheme was too intricate.<sup>222</sup> However, the reintroduction of the Hare–Clark system for all members of the Tasmanian House of Assembly in 1907 prompted a member to say:

*I would consider it an insult to the Western Australian electorate to suppose that they not have the same capacity as the electors in Tasmania...I would consider it also an insult to the State Electoral Department to suppose they are not capable of organizing and carrying through an election equally well as the Department in Tasmania.*<sup>223</sup>

## **The 1912 Gawler Proportional Representation Motion and Machinery Bill**

The frequently mentioned merits and defects of proportional representation were given parliamentary focus in 1912 by the Hon Douglas Gawler, elected in a March 1910 by-election in the Metropolitan–Suburban region of the Legislative Council. Gawler, a highly educated barrister and solicitor and Liberal Party member moved:

*That in the opinion of this House the proportional representation system on the Hare-Spence method should be adopted in the Parliamentary electoral system of this House.*<sup>224</sup>

Gawler gave a lengthy, learned exposition of the benefits of proportional representation and drew heavily on the scholarly literature, including a 1911 publication entitled *Proportional Representation* by John Humphreys, and a precise handbook prepared by Stenberg. Gawler's thesis was that political party cleavage in Western Australia was between 'capital' and 'labour', which had not yet learned to understand one another. In his view the dividing lines between parties should be those of principle and thought, rather than class feeling. Proportional representation would give

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<sup>221</sup> Parliamentary Debates, Legislative Assembly, 10 December 1910, p. 2539.

<sup>222</sup> Parliamentary Debates, Legislative Assembly, 20 December 1910, p. 2561.

<sup>223</sup> Parliamentary Debates, Legislative Assembly, 20 December 1910, p. 2561.

<sup>224</sup> Parliamentary Debates, Legislative Council, 6 August 1912, p. 845.

representation to minorities and help them ‘take a broader view of local affairs’.<sup>225</sup>

Another speaker to the motion, Hon. Joseph Cullen, supported the broad principle of PR but did not want the House tied to either the flawed Hare–Spence or Hare–Clark formulas for the transfer of preference votes. Cullen also raised the prospect of less direct contact between the member and large constituency, and noted the problems associated with an enlarged ballot, the risk of delays in achieving results, the greater likelihood of informal votes and the inability of the system to cope satisfactorily with by-elections.<sup>226</sup>

Prominent journalist Archibald Sanderson, elected to the Legislative Council in May 1912, thought that some people were ‘mixed up’ between the system of PR and the system of preferential voting.<sup>227</sup> This confusion became apparent in 1911 when the Parliament legislated to make the full expression of preferences compulsory to ensure a valid vote for Assembly elections. Interestingly Sanderson thought that PR would bring about more interest in public affairs, presumably because a citizen’s vote would not be ‘wasted’. In Sanderson’s view, Gawler needed to establish himself as President of a PR society to arouse interest both inside and outside Parliament, with such action ‘worth the support of half a dozen newspapers’.<sup>228</sup> An active PR society in Tasmania, coupled with the leadership of Inglis Clark, undoubtedly contributed to the adoption of PR in that State. In South Australia too, where Helen Spence led an Effective Voting League, it was noteworthy that PR legislation was frequently tabled in the Parliament.<sup>229</sup>

Jabez Dodd, an Honorary Minister in the Legislative Council, was supportive of endeavours to make the Council a non-party chamber. Dodd thought that with PR there would soon follow a move to introduce the democratic mechanisms of the referendum, the initiative and perhaps the recall.<sup>230</sup> Indeed, given the supportive tone across the political spectrum, it was not surprising that the Hare–Spence motion for the Parliamentary electoral system of the State was passed on the voices in the Legislative Council.<sup>231</sup> This was progress for the PR case, but supporters would have

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<sup>225</sup> Parliamentary Debates, Legislative Council, 6 August 1912, pp. 845–846.

<sup>226</sup> Parliamentary Debates, Legislative Council, 6 August 1912, pp. 941–946.

<sup>227</sup> Parliamentary Debates, Legislative Council, 8 August 1912, p. 946.

<sup>228</sup> Parliamentary Debates, Legislative Council, 8 August 1912, p. 947.

<sup>229</sup> Susan Magery (1985), *Unbridling the Tongues of Women: A Biography of Catherine Helen Spence*, Sydney: Hale and Ironmonger, pp. 162–163.

<sup>230</sup> Parliamentary Debates, Legislative Council, 28 August 1912, p. 1357.

<sup>231</sup> Parliamentary Debates, Legislative Council, 28 August 1912, p. 1358.

noticed that when the message was conveyed to the Legislative Assembly it was ruled out of order on the ground that it was not a Bill.<sup>232</sup>

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

*In bringing forward this Bill I would like to dissociate myself from party feeling whatever. Further than that, I wish to say that I am satisfied with the justice of proportional representation system, but have some doubts as to its applicability, taking the State as a whole. There is no doubt that in addressing the House on this measure one is addressing a sympathetic audience, because recently we have carried a resolution approving of the system of proportional representation, and I think all members are satisfied that there is a certain amount of injustice in connection with the present electoral laws inasmuch as they do not act fairly at times to any party.*<sup>233</sup>

Dodd made it clear that the PR Bill was only a Machinery Bill, necessarily to be followed by a redistribution of electorates and constitutional changes to the method of retiring members for the Upper House.<sup>234</sup> Dodd quoted at length from Stenberg's Electoral Office publication on the advantages and disadvantages of proportional representation and was concerned that even if members devoted a week to the intricacies of the system they would not be able to comprehend its workings. This led to a suggestion that Sir Winthrop Hackett, at *The West Australian* newspaper, should allocate space in his daily paper to educate the public on what the system really means.<sup>235</sup> Although the Bill was passed at the second reading in the Council, it was shelved and not presented to the Assembly.

Whilst in opposition 'Happy Jack' Scaddan had floated the merits of PR during the bitter 1910 redistribution debate, yet upon becoming Premier was not in the vanguard pressing for its introduction. Again, during the 1913 Redistribution debate, there were references to PR with Labor maverick newcomer Edward 'Bertie' Johnston, a man of ideas arguing for free education in State schools and the University of Western Australian, at the forefront of the cause.<sup>236</sup> Nevertheless, no legislation was forthcoming, with some analysts suggesting that Scaddan's Labor Government missed an

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<sup>232</sup> Parliamentary Debates, Legislative Assembly, 13 November 1912, p. 3299.

<sup>233</sup> Parliamentary Debates, Legislative Council, 10 September 1912, p. 1529.

<sup>234</sup> Parliamentary Debates, Legislative Council, 10 September 1912, p. 1532.

<sup>235</sup> Parliamentary Debates, Legislative Council, 10 September 1912, p. 1531.

<sup>236</sup> See Parliamentary Debates, Legislative Assembly, 28 November 1913, p. 3197; p. 3209 and p. 3217.

opportunity in 1913 to introduce a form of ‘one vote one value’.<sup>237</sup> Perhaps the same can be said for PR, and as history unfolded in Western Australia both ‘one vote one value’ and PR were decades away.

## Edith Cowan and Proportional Representation

One of the most celebrated calls for PR in Western Australia emanated from Edith Cowan, the first woman elected to an Australian Parliament. Cowan’s 1921 and 1924 election pamphlets for the seat of West Perth in the Legislative Assembly, contained commitments to both PR and compulsory voting.<sup>238</sup> Cowan’s inaugural speech, which aroused widespread interest, duly referred to the need for compulsory voting and proportional representation along the lines that it operated in Denmark.<sup>239</sup> Later, during debate upon the Electoral District Bill of 1923, Cowan indicated she would back a move for PR. At the same time she was unsupportive of the Select Committee motion which she believed would be a ‘waste of time’, probably in the realisation that apart from suggestions for PR, other representational matters such as a reduction in members of parliament and a move towards ‘one vote one value’, were lacking broad support.<sup>240</sup>

During Cowan’s term in Parliament a young Labor member, Edwin Corboy, moved for the principle of PR to be incorporated for the redistribution of the Legislative Assembly’s 50 seats.<sup>241</sup> In presenting his case Corboy referred to the anomalies which had occurred in Senate counts, the results of recent elections in the United Kingdom and extensive quotes from John Humphries 1911 treatise titled *Proportional Representation*.<sup>242</sup> Corboy conceded that ‘it would be foolish to claim infallibility for any system’, yet he believed ‘an efficient system of proportional representation would give effect [to his] desire’.<sup>243</sup>

Significantly, Premier James Mitchell (Nationalist Party) opposed Corboy’s amendment, arguing that by combining half a dozen electorates, finding men willing to stand for Parliament would prove difficult.<sup>244</sup> Mitchell conceded that ‘it might be argued proportional representation is a fair

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<sup>237</sup> See Harry C.J Phillips (with the assistance of Kirsten Robinson) (2006), *The Quest for One Vote One Value: In Western Australia’s Political History*, Perth: Western Australian Electoral Commission, pp. 25–29.

<sup>238</sup> Peter Cowan (1978), *A Unique Position: A Biography of Edith Dirksy Cowan 1861–1932*, Perth: University of Western Australia, p. 163 and p. 230.

<sup>239</sup> Parliamentary Debates, Legislative Assembly, 21 July 1921, pp. 15–19.

<sup>240</sup> Parliamentary Debates, Legislative Assembly, 20 September 1923, pp. 786–787.

<sup>241</sup> Parliamentary Debates, Legislative Assembly, 25 January 1923, p. 2882.

<sup>242</sup> Parliamentary Debates, Legislative Assembly, 24 January 1924, p. 2811.

<sup>243</sup> Parliamentary Debates, Legislative Assembly, 24 January 1923, p. 2810.

<sup>244</sup> Parliamentary Debates, Legislative Assembly, 25 January 1923, p. 2883.

system’, but then added, ‘this question should be brought before the people’.<sup>245</sup> Mitchell declared:

*I read the newspapers and listened to the Hon. Member, and I have not heard any mention of proportional representation from him until this Bill came under consideration. The people have not had an opportunity to consider the question, and they should be educated to a knowledge of what the change would mean. We have no right to make such a drastic change without first consulting the people.*<sup>246</sup>

Upon Corboy’s motion failing, George Lambert, the Labor Member for Coolgardie said ‘it was regrettable that such an important matter should be dismissed so lightly’.<sup>247</sup> Although Lambert was not sufficiently ‘enamoured’ of PR to give it whole-hearted support, he did concede that ‘big minorities are entitled to representation, and proportional representation is the only system under which [it] can be brought about’.<sup>248</sup> Lambert complained of being ‘enslaved in a monkey-like fashion to a system that was adopted by our forefathers’.<sup>249</sup>

These moves reflect some interest in PR by the Labor Party in those early years. At the 1919 Western Australian State Labor Party Congress a motion was tabled ‘that the Congress affirms the principle of Proportional Representation’. After much debate the motion was carried 38 to 36.<sup>250</sup> Then at the 1922 Congress a speaker reported that the PR system had operated to the ‘injury’ of Labor in New South Wales, which between 1910 and 1918 had also experimented with the double ballot. In 1927 PR was abandoned in New South Wales, but in Western Australia Labor’s success at the 1924 election made the occasional quests for a PR system, or any other voting method, less likely.<sup>251</sup>

Observing its operation in the Senate (from 1949) was certainly a key factor in the eventual acceptance of PR for the Council in 1987, although Labor’s push for PR in the 1970s and 80s was arguably born out of a desire to break down rural vote weighting in Western Australia.

### **Labor’s Push for PR in the Legislative Council**

In 1977 Labor MLC Roy Cloughton moved an amendment to the Address-in-Reply to seek the principle of ‘one vote one value’ in the Legislative

<sup>245</sup> Parliamentary Debates, Legislative Assembly, 25 January 1923, p. 2883.

<sup>246</sup> Parliamentary Debates, Legislative Assembly, 25 January 1923, p. 2883.

<sup>247</sup> Parliamentary Debates, Legislative Assembly, 25 January 1923, p. 2883.

<sup>248</sup> Parliamentary Debates, Legislative Assembly, 25 January 1923, p. 2883.

<sup>249</sup> Parliamentary Debates, Legislative Assembly, 25 January 1923, p. 2883.

<sup>250</sup> N.F. Byrne (1959), ‘A Historical Survey of the Western Australian System, 1917–1956’, Unpublished MA thesis, University of Western Australia, p. 59.

<sup>251</sup> N.F. Byrne, ‘A Historical Survey of the Western Australian Electoral System 1917–1956’, p. 59.

Assembly, and for a more representative Legislative Council.<sup>252</sup> The motion was soundly defeated with experienced Liberal MLC Norman Baxter stating his long-held belief that:

*...the introduction of proportional representation into Australian politics has been the greatest farce ever perpetrated on the people of Australia, and I say that advisedly.*<sup>253</sup>

Within a few months a Private Members' Bill explicitly seeking PR in the Legislative Council was introduced by Labor's Bob Hetherington MLC, a former politics lecturer with a sound knowledge of voting systems.<sup>254</sup> Although the object of Hetherington's Bill was to introduce a state-wide system of PR based on a list system with half house elections and six year terms, he was happy to accept amendments based on any version of PR during the Committee stage. For Hetherington, a key benefit arising from PR in the Legislative Council was its potential to lead to the election of members 'on strong personal votes',<sup>255</sup> an argument usually associated with STV rather than list system PR. At the same time it was contended that PR would ensure the major parties appealed to 'the people as a whole', particularly if they elected representatives from the north and south of the state.<sup>256</sup> However, amid (perennial) accusations that the Labor Party was planning to abolish the Legislative Council, the debate was adjourned to allow members more time to research the Bill.<sup>257</sup>

Yet again in 1978 a senior Labor figure Colin Jamieson MLA moved for the adoption of a list form of PR in the Council as per Labor's 1977 election campaign platform. The counting system proposed by Jamieson would be similar to that used in the Senate, except that it was proposed that if any group did not obtain 50 per cent of a quota, it would no longer be eligible to take part in the further distribution, should there be a need.<sup>258</sup>

The Labor Party recognised that gaining parliamentary approval of PR for the Council was unlikely while they remained in Opposition, and even when the party won government in 1983, the absence of a party majority in the Upper House meant the necessary constitutional majority would not be attained. Since 1978 any law to reduce the numbers of either House of the Parliament required passage through both Houses with an absolute majority in addition to approval in a referendum. Nevertheless with Arthur Tonkin as the Minister for Parliamentary and Electoral Reform, PR remained firmly on the agenda. In the early 1980s the PR drive was closely associated with

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<sup>252</sup> Parliamentary Debates, Legislative Council, 17 August 1977, p. 549.

<sup>253</sup> Parliamentary Debates, Legislative Council, 17 August 1977, p. 589.

<sup>254</sup> Parliamentary Debates, Legislative Council, 2 November 1977, p. 2910.

<sup>255</sup> Parliamentary Debates, Legislative Council, 2 November 1977, p. 2907.

<sup>256</sup> Parliamentary Debates, Legislative Council, 2 November 1977, p. 2907.

<sup>257</sup> Parliamentary Debates, Legislative Council, 2 November 1977, p. 2910.

<sup>258</sup> Parliamentary Debates, Legislative Assembly, 20 September 1977, p. 3264.

Tonkin and a band of supporters, dedicated in their commitment to ‘one vote one value’. The story has been detailed elsewhere but two important Bills contained PR provisions worth considering here. Firstly the Acts Amendment (Constitution and Electoral) Bill was introduced in August 1983 to include the STV version of PR for a single State-wide electorate in the Legislative Council. Then in September 1984 the Acts Amendment (Fair Representation) Bill was introduced to include STV-PR, with the Legislative Council to be divided into four regions. Predictably both Bills were eventually rejected amidst some of the bitterest debates in the history of the Western Australian Parliament.<sup>259</sup>

### **National Matt Stephens and Regional PR**

Various models of PR were floated in the late 1980s by Labor members. However, it was a National Party MLA Matt Stephens who proposed the introduction of PR in the Council, dividing Western Australia into three regions, with half metropolitan and half country seats. Whilst the Bill lapsed, this was not Stephens’ first or last attempt at pressing for consideration of a regional PR plan. In his 1976 Address-in-Reply Speech, Stephens envisaged the Council as a House of Review, elected on a PR basis and modelled on the Australian Senate.<sup>260</sup> In August 1979 Stephens moved, again without success, for the appointment of a Select Committee to consider several important representational and constitutional matters, including the adoption of PR for the Council. In 1982 Stephens failed in his bid for a referendum to be held conjointly with the next general election to vote on a proposal for PR in the Legislative Council, with 18 metropolitan and 16 country seats.

The newly elected Burke Labor Government appeared confident that a referendum would endorse the changes, and in fact in November 1985 extended the referendum strategy by introducing a Bill to provide for its application on the question of equal electoral rights, an article of faith for many ALP members and supporters.<sup>261</sup> Once again the Bill lapsed in the Council after Parliament was prorogued for the 1986 election, yet this did not deter Burke viewing the election result as a ‘quasi-referendum’ on electoral reform.<sup>262</sup> In the lead up to the election, Tonkin, on behalf of the ALP, signed a compact with the Australian Democrats (AD) whereby in exchange for AD preferences, Labor would introduce a PR Bill for 34 members in six regions, three country and three metropolitan, with

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<sup>259</sup> See Harry C.J Phillips (2012) *Proportional Representation in Western Australia: Its Principles, History, Outcomes and Education*: Perth, Western Australian Electoral Commission, Chapter 5.

<sup>260</sup> Parliamentary Debates, Legislative Assembly, 14 April 1976, pp. 655–657.

<sup>261</sup> Parliamentary Debates, Legislative Assembly, 26 November 1985, p. 5067.

<sup>262</sup> See Mike Pepperday (2002), ‘Improving Democracy Through Elite Power Struggle: The Introduction of Proportional Representation in the Legislative Council’, Unpublished MA Thesis, University of Western Australia, p. 38.

whole-house elections.<sup>263</sup> Given Stephens' parliamentary stance and reports that the leader of the newly formed National Party Hendy Cowan also supported PR for the Upper House, it was clear a re-elected Burke government would move in this direction, with a key to success being whether the Nationals or Australian Democrats could gain a balance of power position in the Council.

### **The Introduction of PR for the Legislative Council in 1987**

The 1986 election provided the National Party with the 'balance of power' in the Legislative Council and it soon became apparent that Labor was prepared to negotiate a 'deal' to introduce PR based on regions, even with vote weighting being maintained in both Chambers. The prospect of this being accomplished was thought to be enhanced with the appointment of Mal Bryce (rather than Arthur Tonkin) as Minister for Electoral Reform and Parliamentary Affairs. Bryce had been a keen advocate of electoral reform, and while Tonkin was generally regarded as the campaign leader he was considered by some to be too inflexible to carry the legislation. Bryce was chosen for the position amidst claims that he possessed better negotiation skills and would be able to compromise to achieve some progress on electoral reform.<sup>264</sup> Disappointed and perhaps somewhat dejected, Tonkin reportedly penned his letter of resignation from the Cabinet, broadly complaining the Government had placed 'pragmatism' above principle.

The PR formula adopted during the Committee stage in the Legislative Council was to be the STV model. However, as it was based on the 1983 Senate PR form it virtually constituted a list type of voting mechanism. The Senate permitted the so called 'ticket vote' for a political party 'above the line', whereas the Western Australian ballot paper permitted 'ticket voting' with the various political parties listed vertically rather than horizontally on the ballot paper.

One modification adopted in Western Australia was the opportunity for Independents to register a preference schedule and permit the indication of a '1' beside the line. The standard arguments were heard during the debate with metropolitan MLC Liberal Phillip Pandal recognising how:

*The debate now under way is perhaps of more historic significance than any other on the subject of constitutional change in Western Australia in the past generation. That historic significance and more importantly, the future impact, is in danger of being submerged or even lost. For the first time in a quarter of a century, each party is prepared to acknowledge the need for change. But it*

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<sup>263</sup> Pepperday (2002), 'Improving Democracy Through Elite Power Struggle: The Introduction of Proportional Representation in the Western Australian Legislative Council', Appendix 5.

<sup>264</sup> There was evidence of support for the preparedness of Bryce to consult on electoral reform. See Gordon Masters (MLC), Parliamentary Debates, Legislative Council, 11 November 1986, p. 3909.

*is more than that. Each party, has, for the first time in a generation, actually formulated its own package of electoral change. To my personal knowledge the Liberal Party has shifted very substantially.*<sup>265</sup>

Most of the resistance emanated from Liberal Party members, partly because they perceived a likely Labor Party political advantage. Although Liberal MLA Jim Clarko believed the Bill was designed for this purpose, he was also critical of the size of the multi-member electorates and the likely election of minor parties.<sup>266</sup> Old stagers like Mick Gayfer<sup>267</sup> and Vic Ferry<sup>268</sup> did not believe there was any evidence of the need for reform. Finally, it was PR-STV which was passed in association with the multi-member districts, conjoint with Assembly districts, similar to the plan envisaged by Stephens and others nearly a decade earlier.

**Table 5.1: Proposed Composition of Legislative Council Regions – November 1987**<sup>269</sup>

Name of Region	No. of MLCs	No. of LA Districts	Projected Enrolment
<b>Country</b>			
Mining/Pastoral	5	6	60,545
Agricultural	5	7	80,080
South West	7	10	99,456
<b>Metropolitan</b>			
North Metro	7	14	279,262
East Metro	5	10	196,592
South Metro	5	10	193,439
<b>Totals</b>	<b>34</b>	<b>57</b>	<b>909,374</b>

Proportional representation had been introduced but as scholar Mike Pepperday observed:

*... few members recognised the implications. All parties did discuss, on a couple of occasions, the possibility of minor parties winning significant representation and the newspapers speculated on it however the pre-eminence of the one vote one value issue distracted most MPs from appreciating the impact of the much more important proportional representation.*<sup>270</sup>

Outcomes of electoral law changes can defy predictions made by parliamentarians, who often argue from a partisan perspective. Furthermore,

<sup>265</sup> Parliamentary Debates, Legislative Council, 12 November 1986, p. 4039.

<sup>266</sup> Parliamentary Debates, Legislative Assembly, 23 July 1986, p. 2336.

<sup>267</sup> Parliamentary Debates, Legislative Council, 12 November 1986, p. 3947.

<sup>268</sup> Parliamentary Debates, Legislative Council, 12 November 1986, p. 4046.

<sup>269</sup> Drawn from *Electoral History in Outline* (1990), Perth: Western Australian Electoral Commission, p. 17.

<sup>270</sup> Pepperday (2002), 'Improving Democracy Through Elite Power Struggle: The Introduction of Proportional Representation in the Western Australian Legislative Council', p. 54.

discussion of representation principles may lack cohesion and consistency, and although the passage of the legislation is often hard fought and lengthy, there is rarely, if ever, any consideration of a sunset clause to assess the reliability and validity of the assertions which have been articulated. Surprisingly though, a comprehensive review of PR was soon to be undertaken. This did not take the shape of a Select or Standing Committee of the Parliament but as part of the deliberations of the WA Inc. Royal Commission, and a subsequently appointed Commission on Government.

### Royal Commission and Commission on Government

The ‘WA Inc’ Royal Commissioners regarded the Legislative Council as ‘a vital, if unrealised, place in our constitutional fabric’ as it could ‘serve as the House primarily responsible for the systematic oversight and review of the public sector as a whole’.<sup>271</sup> Without seeking to diminish some of its other functions the Commission recommended that:

*The Legislative Council be acknowledged as having the review and scrutiny of the management and operations of the public sector of the State as one of its primary responsibilities.*<sup>272</sup>

Although the Legislative Council was not to be regarded as ‘the public’s sole guardian’, it had the capacity to exploit its procedures and committees and even regulate its sittings to enhance its systematic oversight and review role.<sup>273</sup> MLCs did not have ‘immediate constituency concerns’ and were considered better placed to accommodate the proposed review role.<sup>274</sup> It was also added that as there was ‘not the same constitutional imperative as there is in the Assembly to produce a government, the justification for the Council having an electoral system which precludes the representation of minority interests having significant support is difficult to sustain’.<sup>275</sup>

The Commissioners further developed their argument that the Legislative Council should represent minority interests when they said:

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

<sup>271</sup> Report of the Royal Commission into Commercial Activities of Government and Other Matters (1992), Part II, Perth: Western Australia, pp. 5–6.

<sup>272</sup> Report of the Royal Commission into Commercial Activities of Government and Other Matters (1992), Part II, Perth: Western Australia, pp. 5–7.

<sup>273</sup> Report of the Royal Commission into Commercial Activities of Government and Other Matters (1992), Part II, Perth: Western Australia, pp. 5–7.

<sup>274</sup> Report of the Royal Commission into Commercial Activities of Government and Other Matters (1992), Part II, Perth: Western Australia, pp. 5–7.

<sup>275</sup> Report of the Royal Commission into Commercial Activities of Government and Other Matters (1992), Part II, Perth: Western Australia, pp. 5–7.

*difficult to deny, the more so given the pluralist character of our society.*<sup>276</sup>

It was clear that the Commissioners believed there should be re-consideration of the regional basis which had been legislated in 1987 for the PR system. Predictions of minority party representation had not come to pass. They had witnessed the results of the 1989 Legislative Council with Labor and Liberal respectively gaining 16 and 15 seats, and the National Party the remaining three. Perhaps the Commissioners had state-wide PR in mind or metropolitan and country wide constituencies, when they argued:

*We are suggesting that regional interests represent only one variety of the community interests which should be able to secure representation in the Council. We acknowledge that proportional representation now provides one element in the electoral system for the Legislative Council. We consider, however, that the effect on it of the present regional division of the State strongly inhibits the possibility of significant minority interests obtaining representation in the House, representation which we believe should be promoted on democratic grounds.*<sup>277</sup>

Accordingly, the Royal Commission recommended that:

*The Commission on Government review the electoral system for representation in the Legislative Council.*<sup>278</sup>

A more extensive examination of PR was undertaken by COG when compared to the alternative vote in the Legislative Assembly. Brief consideration was given to a proposal once floated by prominent Labor parliamentarian Alannah MacTiernan when she was an MLC, namely mixed member proportional (MMP). However, this combination of majoritarian and proportional models, drawn from Germany and New Zealand, was rejected.<sup>279</sup> After careful consideration the Commission did not seek state-wide PR but contended the 1987 regions for the Council should be abolished as there was no justification for weighting on a geographical basis. Elements of the existing regional model were retained, while five regions with seven members in each region were recommended to provide a Legislative Council of 35 members. Such a change had the additional benefit of creating an odd number of members in the Legislative Council, removing the anomaly of a House with an even number membership having a Presiding Officer with a casting, not deliberative, vote.<sup>280</sup>

<sup>276</sup> Report of the Royal Commission into Commercial Activities of Government and Other Matters (1992), Part II, Perth: Western Australia, pp. 5–8.

<sup>277</sup> Report of the Royal Commission into Commercial Activities of Government and Other Matters (1992), Part II, Perth: Western Australia, pp. 5–8.

<sup>278</sup> Report of the Royal Commission into Commercial Activities of Government and Other Matters (1992), Part II, Perth: Western Australia, pp. 5–8.

<sup>279</sup> Commission on Government: Report No. 1, August 1995, p. 288. See also Appendix Two.

<sup>280</sup> Commission on Government: Report No. 1, August 1995, p. 338.

It was further considered a seven member electorate would produce diversity of representation, while not unduly burdening the electors with the indication of their preferences. This would overcome the New South Wales' issue of the so-termed 'tablecloth ballot', which produced on occasions over 250 candidates, and at one election returned a candidate with just 0.2 per cent of the first preference vote.<sup>281</sup> Electors were to be permitted to exercise an optional expression of preferences, meaning that a valid vote could still be cast without having to mark preferences for each and every candidate on the ballot paper, minimising any potential increase in informal voting. It was considered that it should be voters who indicate how their preferences should be distributed, not the political parties.

### **Robson Rotation and the Weighted Inclusive Gregory Method**

Consistent with the COG view that the voters should be sovereign when distributing the preferences, the Commissioners recommended the introduction of the Robson Rotation method for ballot papers for the Legislative Council. Neil Robson, a former Tasmanian parliamentarian, had devised a system which involved the printing of different batches of ballots, with different orders of candidates. It was first used in 1980 and was subsequently adopted by the ACT in 1995.

In Western Australia this would involve grouping political party candidates with a draw taking place to allocate groups on the ballot paper in each region. On this model all candidates would be randomly rotated within their grouping, supposedly forcing competition and enhancing the ability of members to act more independently of their party. In addition, Robson Rotation was purported to reduce the effects of the so termed 'donkey vote', by distributing random first preference votes evenly between candidates.<sup>282</sup>

Ultimately though, neither the Parliamentary Joint Committee, established to review the COG recommendations, or successive governments accepted the recommended amendments to the operation of PR. The most significant move came in November 2003 when the Attorney General Jim McGinty indicated that the Labor Government would legislate to change from the existing 'Inclusive Gregory Method' to the 'Weighted Inclusive Gregory Method' for the transfer of surplus votes. This followed a research monograph sought by Electoral Commissioner Ken Evans after the 2001 Legislative Council election<sup>283</sup> as the count for one region in particular (Mining and Pastoral) had yielded unusual results. Although no legislation was passed during that session, in August 2006 McGinty re-introduced a

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<sup>281</sup> Graeme Orr (2004), *Australian Electoral Systems-How Well Do They Serve Political Equality?* Democratic Audit of Australia, Report No. 2, Canberra: Australian National University, p. 23.

<sup>282</sup> Commission on Government: Report No. 1, August 1995, p. 348.

<sup>283</sup> Narelle Miragliotta (2002), *Determining the Result: Transferring Surplus Votes in the Western Australian Legislative Council*, Perth: Western Australian Electoral Commission.

Bill to adopt the Weighted Inclusive Gregory method, and significantly there was no suggestion that PR-STV be replaced by any other voting system as it had seemingly become settled policy in Western Australia.

## **Proportional Representation and Local Government**

In October 2006 the Labor Government moved to extend the use of PR-STV to the growing number of multi-member wards in the 144 local government authorities. A year earlier the Local Government Minister, John Bowler, announced a review of structural and electoral reform of local government, to be undertaken by the Local Government Advisory Board (LGAB). However, when this body reported in April 2006 it recommended ‘that the current provisions for the ‘first past the post system of voting be retained’<sup>284</sup>.

When the voting change was announced in Parliament, the Western Australian Local Government Association (WALGA) expressed forthright opposition to PR-STV for this tier of government. The Legislative Council agreed to divide the Local Government Amendment Bill 2006 into two separate bills. The first became the *Local Government Amendment Act 2006*, and formalised the date for ordinary local government elections as the third Saturday in October. The second, the Local Government Amendment Bill (No. 2) 2006, which focused on the voting system, was referred to the Standing Committee on Environment and Public Affairs for inquiry and report by 3 April 2007.

A comprehensive report was duly tabled with the majority recommendation to approve the Local Government Bill No.2 and provide for the use of the preference (alternative vote) in single member wards, and PR in multi-member wards. Consistent with the amendment for the Legislative Council the weighted inclusive Gregory Method of PR-STV was employed.

The majority perspective, while recognising the absence of consultation with local government bodies, argued the electoral changes would ‘more democratically represent the views of the majority of electors’ and would not increase factional or party politics partly because political party representation is not as strong in local government as it is in other States.<sup>285</sup>

On the other hand, the minority report favoured the retention of plurality voting, introduced in 1995 and favoured by the LGAB. It was said that no public benefit or improved democratic voting outcomes had been demonstrated or identified, and that the use of different voting systems for local government authorities was likely to cause confusion for voters. The minority perspective was to disagree with the view that, due to the

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<sup>284</sup> Local Government Structural and Electoral Reform in Western Australia: Ensuring the Future Sustainability of Communities (2006) Perth, pp. 1–2.

<sup>285</sup> Local Government Structural and Electoral Reform in Western Australia: Ensuring the Future Sustainability of Communities (2006) Perth, p. 42.

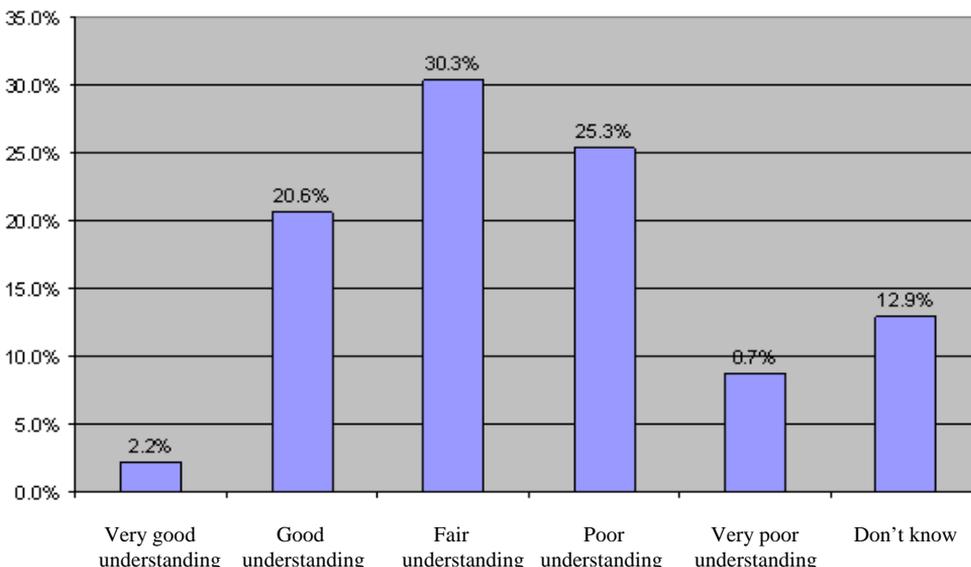
consistency between the State and Federal use of the preference (alternative) vote, PR would be ‘understood’ and ‘accepted’ by electors.<sup>286</sup>

### Electoral Understanding of PR-STV

One of the concerns about PR-STV is how adequately it is understood by electors. It is recognised that only a few experts can cope with the complexities of explaining the transfer of surplus votes but it is instructive to assess broad community understanding of the PR system. In a state-wide survey undertaken in July 2006, which did not encompass local government, it was found that some 53 per cent of respondents believed they had a very good, good or fair understanding of the PR voting system for the Legislative Council (and Senate) (Table 5.2).<sup>287</sup>

About one third of the respondents admitted their understanding of PR was either poor or very poor, whilst nearly 13 per cent of the sample admitted to being in the ‘don’t know category’. On balance the level of understanding was marginally higher for male respondents, with the best results being recorded for male respondents in the 18 to 19 or over 65 years of age category. Perhaps to be expected, respondents with university degrees, particularly post graduate degrees, claimed better levels of understanding for the PR system.

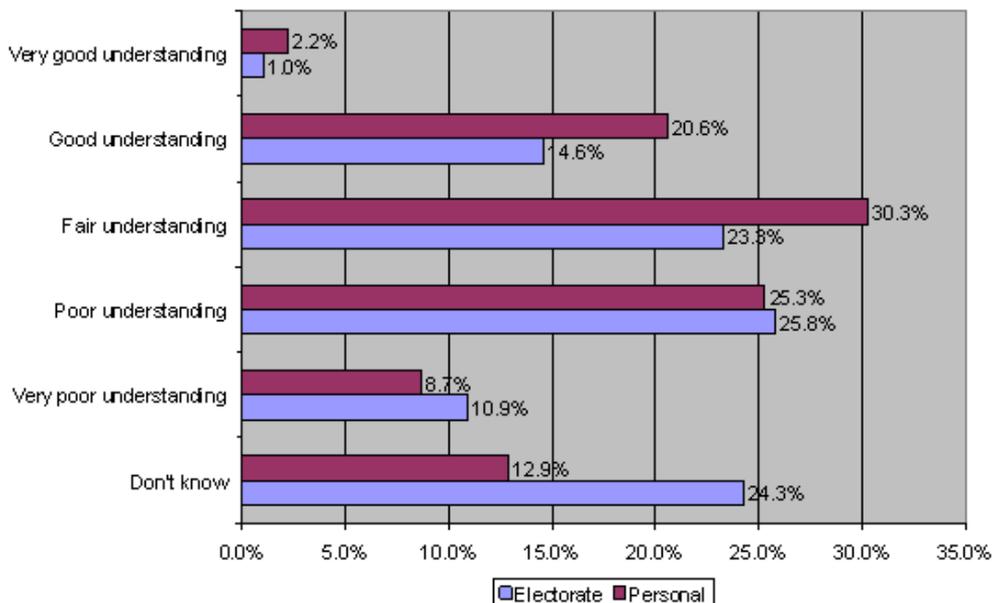
**Table 5.2: Public understanding of the Proportional Representation voting system in Western Australia**



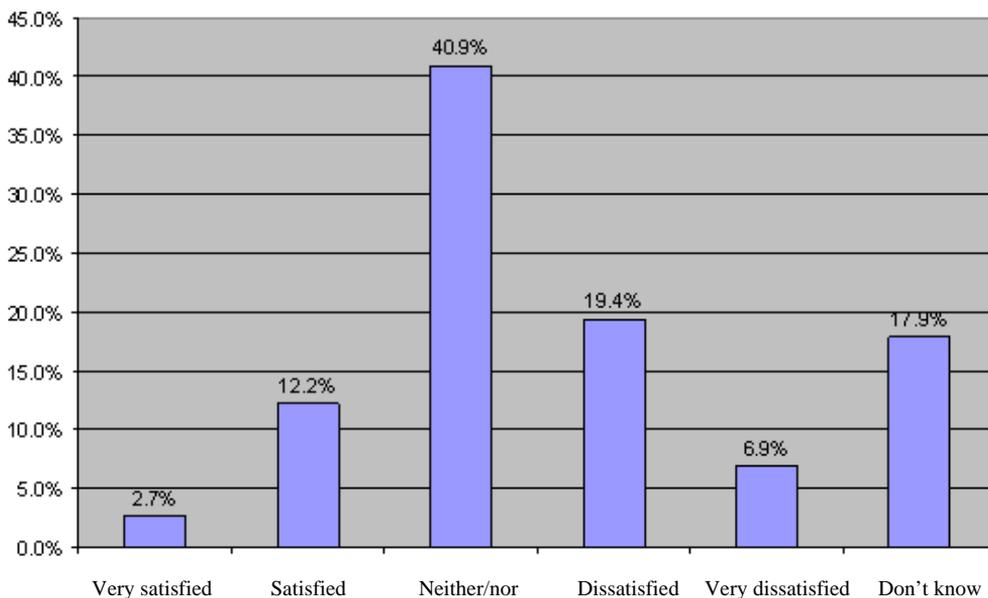
<sup>286</sup> Local Government Structural and Electoral Reform in Western Australia: Ensuring the Future Sustainability of Communities (2006) Perth, pp. 42–43.

<sup>287</sup> See survey conducted by Asset Research for author Harry C.J Phillips (July 2006).

**Table 5.3: Comparison of electorate and personal understanding of the Proportional Representation voting system in Western Australia**



**Table 5.4: Satisfaction with the Proportional Representation Voting System**



On the level of understanding of PR that respondents *considered* the community held, the overall findings (Table 5.3) indicate they assigned a lower level of understanding to the broader electorate than they held for themselves. Certainly the ‘don’t know’ scores were markedly higher for the electorate than for individual respondents.

The results also show that the largest group of respondents (40.9 per cent) were neither satisfied nor dissatisfied with the PR voting system and only 14.9 per cent registered being satisfied or dissatisfied with the PR voting system. These findings suggest that proposals to either abolish PR or seek its extension face an electorate open to persuasion.

## How to Vote Cards

Whilst PR (and the alternative vote) is retained, it is also likely that ‘How to Vote’ cards will remain part of the campaign setting at election times. The *Electoral Act 1907* does not preclude their use but historically the issue has often been debated in the Parliament, with an assessment of their use conducted by the COG in 1995. Greens WA MLC Jim Scott best illustrated the arguments against the practice of distributing how to cards when he said:

*In each election the practice of staffing polling places with volunteers or paid assistants to hand out how to vote cards involves thousands of people across the state. Voters run the gauntlet of pamphleteers trying to thrust their candidates’ how to vote card into their hands. Sometimes this practice can border on harassment. However, the worst aspect...is that it is basically undemocratic, if one considers the independent candidates and to some degree the smaller parties....they are faced with the near impossible task of staffing polling booths all over the state.<sup>288</sup>*

During the COG hearings those representing the major parties opposed any change to the use of how to vote cards. Labor MLC John Cowdell warned against ‘setting in place a deliberate set of devices to frustrate the voter being able to receive party advice’.<sup>289</sup> Jeremy Buxton, who often provided advice to the Liberal Party contended:

*Banning of How-to-Vote cards is an undemocratic device to suit the purposes of those political parties who lack the large and committed membership prepared to man the polling booths.<sup>290</sup>*

The National Party offered a compromise on the issue with a proposal to enable political parties to place a composite ‘how to vote’ poster in each

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<sup>288</sup> Report No. 1, Commission on Government (1995), Perth, p. 318.

<sup>289</sup> Report No. 1, Commission on Government (1995), Perth, p. 318.

<sup>290</sup> Report No. 1, Commission on Government (1995), Perth, p. 319.

booth at each polling station.<sup>291</sup> Political observer Stan Johnston also advocated this proposal, and noted that under Section 72 of the *Electoral Act 1899* ‘the form of Directions for the Guidance of Voters’ was to be placarded inside and outside of every polling booth on election day and was the only legally displayed ‘How to Vote’ card needed.<sup>292</sup> Finally though, COG considered such cards as a useful means to assist electors in casting their vote, and recommended no change to the existing rules for their distribution.<sup>293</sup> Hence they were to remain part of the campaign scene, particularly with compulsory voting (and enrolment) remaining settled policy in Western Australia. Then in 2009 an amendment to the *Electoral Act 1907* made the legislation consistent with the Commonwealth law making it legal for candidates to hand out ‘how to vote cards’ providing they are six metres from the entrance to a polling place. This was aimed at avoiding a situation whereby a candidate could be found guilty of undue influence if he or she was deemed to solicit the vote of an elector.

‘How to Vote Cards’ were critically important in the Legislative Council as it was soon discovered that some 95 per cent of voters across all parties simply by the use of the numeral one. The STV form of proportional representation has enabled electoral breakthroughs for registered minor parties such as the Greens (WA), Australian Democrats, One Nation as well as the Shooters and Fishers (see Appendix 5). This has taken place despite the fact that when proportionality formulas are applied, such as the well-known Gallagher’s Squares Index comparing the percentage of seats won with the percentage of the vote achieved, there are indications that the formula and regional model adopted has not resulted in high order measures of proportionality compared with a jurisdictions such as New Zealand or other mainland State upper-houses. As has been the case elsewhere in Australia the last seat in each region can be won by a candidate with a very low first preference count. To date there have not been any concerted parliamentary moves to require a minimum first count preference for election. However, forecasts that proportional representation would lead to the election of more women have proven to be accurate. In fact for the 2013 election each of the six Metropolitan East Region seats were won by women. In terms of nation-wide statistics the Western Australian Legislative Council has the highest ratio of women in any Australian Parliament. Women, with the absence of Robson rotation recommended by the Commission on Government, appear to be adept at winning high order positions on the party ticket, particularly when combined with party policy, which is a vitally necessary step in achieving a quota for election.

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<sup>291</sup> Report No. 1, Commission on Government (1995), Perth, p. 319.

<sup>292</sup> Report No. 1, Commission on Government (1995), Perth, p. 319.

<sup>293</sup> Report No. 1, Commission on Government (1995), Perth, p. 319.

## 6

# Postal and Absentee Voting and Compulsory Enrolment and Voting

Enrolment procedures had troubled legislators in colonial times and although a specific post was created in 1898 titled the Inspector of Parliamentary Rolls post, the position did not survive the introduction of the *Electoral Act 1907*. In 1905, a Legislative Assembly Select Committee condemned the existing enrolment procedures, and as universal compulsory registration was introduced by the Commonwealth Parliament in 1911 it provided at least a point of comparison with the Western Australian records. By 1919 Western Australia followed suit with compulsory enrolment, after which there were various levels of co-operation between the State and Federal governments on the creation of voting lists. Whilst there was much flexibility with postal voting provisions, in 1904 absentee voting was abolished for Western Australian elections until its reintroduction until 1948. Meanwhile compulsory voting, or compulsory attendance or ‘turnout’, remained a feature of the electoral law for Western Australian elections. After numerous assertions that ‘it was a corollary of compulsory registration’, its introduction in 1936 and use in the Secession Referendum of 1933, had followed the 1924 Commonwealth legislation. Polls indicated strong support for the retention of compulsory voting, although there remains a school of thought which favours voluntary voting.

### **Early Enrolment Provisions and a Select Committee Review**

Debates leading to the *Electoral Act 1904* were lengthy and often bitter, during which some of the provisions included in the *Electoral Act 1899* came to the fore. There was widespread dissatisfaction with the state of the rolls and serious questions were asked about the performance and usefulness of the Inspector of Parliamentary Rolls, who under the legislation was also the Chief Electoral Officer and although amendments were moved to abolish the dual provision this did not take place until 1907. Arrangements in 1904 provided for Registrars in each province and district to prepare and keep electoral rolls under the direction of the Chief Electoral Officer. The 1904 Schedule for each Province and District in the Legislative Assembly required an elector’s surname, given names, sex, residence, occupation, while for the Legislative Council an additional requirement for details of property holdings and their location was included. Surprisingly there was no column for date of birth or age for either Schedule, although it was

necessary for the electors to indicate they were 21 years of age, were a natural born (or naturalised subject of the King) and had resided continuously in Western Australia for six months. The lists of municipal and road boards were specified but as the Chief Electoral Officer of the time noted it was difficult to ascertain the place of residence from the ratepayers list, with local bodies concerned more about where a property was rather than where the ratepayer lived.<sup>294</sup>

The enrolment provisions failed the test of the 1904 General Election, with complications attributed to the abolition of plural voting for the Assembly (which required names to be erased from many district rolls), and evidence that many citizens had enrolled in multiple provinces for the Legislative Council despite the provisions of the Act. So serious were the problems that a Select Committee of the Legislative Assembly was established on 30 November 1905 to inquire into the matter, and heard evidence from 13 witnesses, including the Chief Electoral Officer, the Solicitor General, and several Electoral Registrars. The Labor Chairman Thomas Walker MLA tabled an extensive report with a host of findings and recommendations which suggested a complete condemnation of the methods authorised by the Act, and the means adopted by the Department in compiling the State's Electoral Rolls.<sup>295</sup>

The Select Committee's evidence indicated that on a state-wide basis, the number of potential electors exceeded the total population, and in a telegram recorded in the evidence the Premier was asked to 'account for the striking discrepancy between the total number of qualified adults in Western Australia and the 161,000 enrolled at recent elections'.<sup>296</sup> Interestingly, there were claims of under-enrolment, with an assertion being made during the hearings 'that Parliament does not represent the people because people are not on the roll'.<sup>297</sup> There were also staggering differences between the Commonwealth and State records, and despite provincial loyalties it was suggested that due to 'the superiority of the Commonwealth methods of preparing the roles...the differing systems between the Commonwealth and the States [should] be unified, and one method finally adopted throughout the Commonwealth'.<sup>298</sup>

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<sup>294</sup> Select Committee Report appointed by the Legislative Assembly to inquire into the Compilation of Electoral Rolls, Perth: Government Printer, 20 December 1905, p. 9.

<sup>295</sup> Select Committee Report appointed by the Legislative Assembly to inquire into the Compilation of Electoral Rolls, Perth: Government Printer, 20 December 1905, p. 1.

<sup>296</sup> Select Committee Report appointed by the Legislative Assembly to inquire into the Compilation of Electoral Rolls, Perth: Government Printer, 20 December 1905, p. 16.

<sup>297</sup> Select Committee Report appointed by the Legislative Assembly to inquire into the Compilation of Electoral Rolls, Perth: Government Printer, 20 December 1905, p. 14.

<sup>298</sup> Select Committee Report appointed by the Legislative Assembly to inquire into the Compilation of Electoral Rolls, Perth: Government Printer, 20 December 1905, p. 1.

The rights of voters appeared to be better catered for in Victoria and New South Wales and the Revision Court,<sup>299</sup> included in the Western Australian legislation to cater for objections to enrolments, was deemed to be ‘a totally inadequate means of keeping the rolls as a reliable registration of voters’,<sup>300</sup> with the 1904 election yielding some 20,000 objections in the Metropolitan electorates. Not surprisingly the Committee recommended ‘fresh legislation to meet existing difficulties’ and contended that the Electoral Department should be re-organised with the directive that the Chief Electoral Officer ‘should give his whole time to the working of the Department’.<sup>301</sup> Significantly, during 1906 Ernst Stenberg assumed the post of Chief Electoral Officer, taking over from Octavius Burt. Stenberg soon began working on a major revision of the Act and in the light of the Select Committee Report gave focus to enrolment procedures as part of his overhaul.

### **The *Electoral Act 1907* Enrolment Provisions**

The 1907 changes included the introduction of more effective enrolment procedures whereby the Chief Electoral Officer was to provide quarterly lists, for alterations including: the name changes of newly-married female electors, the removal of deceased and insane persons; those in receipt of Government Charitable Relief; or those sentenced for a prison term of more than one year. All Government (including Local Government) public officers were required to furnish information necessary for the preparation and revision of the rolls. There were also provisions to allow arrangements for the Commonwealth to issue joint rolls and for a regular issue of Quarterly Supplementary Rolls. For both the Council and Assembly a combined roll containing the names of all electors in a Province replaced separate rolls for each sub-division of a Province. There was also a reduction in the availability of Rolls sold to the public; however, provision was made for the exhibition of the State Parliamentary Roll at every Registrar’s Office.

These data sharing arrangements were accompanied by the repeal of Sections 26 to 28 of the *Constitution Amendment Act 1899*, which were substituted with a simplification of qualifications of electors for the Assembly, plus clarification of the disqualifications. Although this was within the ambit of the franchise, the previous Chief Electoral Officer Octavius Burt complained about how electoral officials were ‘handicapped’

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<sup>299</sup> The Electoral Act 1899 (Sec. 47 to 73) , provided for a Revision Court to consist of a Resident magistrate; or any two or more Justices of the Peace resident in the Electoral District; or all of any two of those officers. They were to meet yearly in May, at places fixed by Proclamation, for the purpose of revising the Provincial and District rolls.

<sup>300</sup> Select Committee Report appointed by the Legislative Assembly to inquire into the Compilation of Electoral Rolls, Perth: Government Printer, 20 December 1905, p. 11.

<sup>301</sup> Select Committee Report appointed by the Legislative Assembly to inquire into the Compilation of Electoral Rolls, Perth: Government Printer, 20 December 1905, p. 1.

because provisions (particularly with respect to place of residence) were spread across the Electoral Act and the Constitutional documents.<sup>302</sup>

Other changes associated with the re-organisation of the Electoral Department included a disqualification under the new Act of any person connected with a political organization or electoral committee,<sup>303</sup> but importantly, there was a simplification of the procedure relating to the removal of disqualified persons and objections to claims lodged by Registrars or private persons, and a new procedure replaced the cumbersome system of holding Revision Courts.

A key innovation in the management of the electoral roll was the introduction of a General Card Index. The 1907 legislation provided for the supply of all claim forms in duplicate, one copy to be kept in the District or Province Office (as authority for any action taken by the Electoral Register), and the duplicate to be forwarded to head office and used in the establishment and maintenance of a General Index of Electors. Previously, a quirky system prevailed whereby when new enrolments took place the name of the elector would remain on the roll for a citizen's previous district, unless the removal to another district was within the Registrar's personal knowledge. However, the advent of the General Card Index meant that an enrolment in one district was to be followed by an automatic removal of the name from any other roll upon which it was enrolled.<sup>304</sup> When combined with other measures, the 'purification' of the rolls was to a large extent to be carried out automatically at Head Office. It was recognised that these innovations, which required new forms and a new filing system, amounted to a considerable cost of over 1,100 pounds. Stenberg was confident, however, that the outlay was wise, as it provided the Department with the most efficient and time-saving manner to manage the electoral roll.<sup>305</sup>

## Postal Voting

Postal voting was a particularly contentious component of the early electoral law. Although there is evidence of a political will to retain this form of voting, it is clear that allegations of abuses had to be addressed. In colonial times there were legislative provisions for electors living out of the district or beyond thirty miles of a polling place.<sup>306</sup> Absent voters<sup>307</sup> were

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<sup>302</sup> Select Committee Report appointed by the Legislative Assembly to inquire into the Compilation of Electoral Rolls, Perth: Government Printer, 20 December 1905, p. 10.

<sup>303</sup> See Chapter 9.

<sup>304</sup> Select Committee Report appointed by the Legislative Assembly to inquire into the Compilation of Electoral Rolls, Perth: Government Printer, 20 December 1905. See General Card Index, p. 9.

<sup>305</sup> Select Committee Report appointed by the Legislative Assembly to inquire into the Compilation of Electoral Rolls, Perth: Government Printer, 20 December 1905, p. 9.

<sup>306</sup> See the *Electoral Act 1896*, Section 75.

<sup>307</sup> See *Electoral Act, 1899*, Section 84.

subsequently designated as postal voters, who from 1904 had to confirm that they would be more than seven miles from a polling place on polling day, with the reasons to be stated in writing. A declaration was required to indicate that the vote had not already been cast in the election, whereas no such acknowledgement or declaration was required under the old Act.

Where previously a Postal Vote Officer could accept a vote practically anywhere, such a vote could now only be taken in a prescribed manner. Rather than being confined to the Returning Officer, any ‘department’ officer was empowered to receive a postal vote by 7.00 p.m. on polling day, while Postal Vote Officers were to be required to submit their postal vote books for inspection. A counterfoil system and ballot numbering system was also introduced to enable a Judge sitting in the newly formed Court of Disputed Returns to determine the relevant details, including a voter’s identity and the name of the Postal Vote Officer. This measure, to be administered without contravening the principles of the secret ballot, was apparently deemed necessary in the light of an election petition in the case of *Angwin v. Holmes* in 1906<sup>308</sup> (see Chapter Nine).

By the 1908 Legislative Assembly election, postal votes averaged 8.20 per cent of all votes cast. Even with the 1907 amendments the Chief Electoral Officer was not optimistic about overcoming the problems associated with postal voting and opined:

*As there is little chance of altering human nature, so there is, in my opinion at any rate, small prospect at preventing abuses of the postal vote system, unless it is so curtailed as to cease to supply the main requirements for which it was originally created.*<sup>309</sup>

In fact in 1911, with Labor in office federally, postal voting was dropped. When the Liberals tried to restore it in 1913 it became one of two Bills to precipitate a double dissolution. While the Royal Commission of 1915 argued for the federal re-introduction of postal voting, pointing out that its abolition effectively disfranchised about 77,000 or 3 per cent eligible voters,<sup>310</sup> it was not until 1918 that postal voting was restored by the Nationalists, again against Labor Opposition, whose calculations later proved correct. Later research indicated that in federal politics at least, postal voting favoured the non-Labor parties.<sup>311</sup>

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<sup>308</sup> See First Report of the Chief Electoral Officer for the Period 1 July, 1906 to 31 October 1908, Perth, Government Printer, ‘Voting by Post’, p. 15. In 1908 there was also the case *Gregory v. Buzacott*.

<sup>309</sup> First Report of the Chief Electoral Officer for the Period 1 July, 1906 to 31 October 1908, Perth, Government Printer, p. 16.

<sup>310</sup> Report of the Royal Commission upon the Commonwealth Electoral Law and Administration (1915), Melbourne: Government Printer, p. 7.

<sup>311</sup> Murray Goot, ‘Electoral Systems’ (1985), in Don Aitkin (ed), *Surveys of Australian Political Science*, Sydney: George Allen and Unwin, p. 208.

While postal voting was not removed from the Western Australian statute books, the geographic expanses of the State posed obvious difficulties in delivering universal suffrage to all eligible citizens. In 1932 the Mitchell Non-Labor government introduced an Electoral Bill to, among other things, abolish the use of postal vote officers. That bill was withdrawn before it reached the Committee stage, but the issue was later given detailed attention by a 1935 Joint Select Committee, which proposed arrangements more closely aligned with the Commonwealth provisions, with which there was reported elector confusion. Although a 1935 Court of Disputed Returns proved postal votes were had been wrongly taken in over 200 instances,<sup>312</sup> it was generally contended that the management of postal voting would improve after the introduction of compulsory voting and enrolment, as the electoral rolls would be in better order.<sup>313</sup> The adoption of absent voting (not passed until 1948), would also be advantageous to voters.

In 1987 two major changes were made to postal voting. Firstly, legislation established that a person whose residence was more than 20 kilometres by the nearest practical route from a polling place was eligible for a postal vote, as was a person who could not attend a polling place during or throughout the greater part of polling day due to religious beliefs. By 1987 statutory provisions provided for elections to be held on a Saturday. Secondly, and significantly, a permanently disabled person was also to be eligible for a postal vote.

In 2000, the so called postal vote was replaced with the term 'Early Vote', either by post or in person. It could be granted to an elector more than eight kilometres from any polling place throughout the hours of polling. Other reasons for an Early Vote, which had gradually expanded, were for electors who were precluded from attending the polling place because of emergency duty or employment; membership of a religious order or beliefs which precluded attendance at a polling place or voting on polling day; serious illness or infirmity; caring for someone with a serious illness of infirmity; approaching maternity; travel; enrolment as a silent electors; and some 'citizens' serving a sentence or in lawful custody or detention. In 2012 it was made possible for persons who are seriously ill or infirm or over the age of 70 to also apply to be a general early voter. It was also made possible for a postal vote appropriately witnessed and dated before the close of poll, to be included in the election count in circumstances where the postmark indicates the Sunday immediately following polling day.

### **Absentee Voting and Mobile Polling Booths**

An absentee vote is lodged by a voter who, on polling day, is outside the district within which the person is enrolled. At the federal level it was

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<sup>312</sup> Parliamentary Debates, Legislative Assembly, 17 September 1935, p. 699.

<sup>313</sup> Parliamentary Debates, Legislative Assembly, 17 September 1935, pp. 702–703.

introduced by the Labor Government in 1911, purportedly to provide for ‘the shearers, seamen and other shifting classes who vote[d] Labor’.<sup>314</sup> The aforementioned Royal Commission on Electoral Law in 1915 recommended its continuance, as it was a matter of convenience and appreciated by a large number of electors.<sup>315</sup> However, the time taken in dealing with an absentee vote was calculated to be about ten minutes, which resulted in administrative problems and increased costs. While in Western Australia absentee voting had a very brief life from 1899 to 1904, it did not become a permanent feature until 1948, despite veteran MLC James Cornell reminding the House in 1936 that a provision for absent voting had been agreed to at the referendum on secession three years earlier.<sup>316</sup> As noted, research has indicated that contrary to early predictions, the measure favoured non-Labor parties to a greater extent than did postal voting, because it was asserted that ‘those who travel are more likely to be middle class’.<sup>317</sup> This may explain why the long period of Labor government between 1933 and 1947 was not accompanied by the introduction of absent voting.

During the 1948 debate over amendments to the *Electoral Act 1907* it was clear that some members thought that the effective system of postal voting in Western Australia precluded the need for absent voting.<sup>318</sup> One major problem was the confusion which emanated from the absent vote being available for Federal and not State Elections, with a concern being that electors did not realise that absent voting was not available for Western Australian parliamentary elections.<sup>319</sup> Although the amendment, based on the federal law, was only narrowly approved, it soon became an established feature of the State legislation and eventually became widely exercised by electors, particularly as mobility became so common for a greater number of voters. By 2005 the absent vote reading across the State, without any research to suggest that it favoured either major political party, was 10.47 per cent whereas postal voting was only 3.33 per cent, to which had to be added pre-poll voting of 2.93 per cent, permitted since 2000. The State-wide readings for the 2013 election indicated the absent vote was 9.46 per cent, the postal vote was 5.91 per cent, while the pre-poll vote reading has risen to 6.29 per cent.

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<sup>314</sup> Cited in Murray Goot, ‘Electoral Systems’ in Don Aitken (ed), *Surveys of Australian Political Science*, Sydney: George Allen and Unwin, p. 209.

<sup>315</sup> Report of the Royal Commission upon the Commonwealth Electoral Law and Administration (1915), Melbourne : Government Printer, p. 7

<sup>316</sup> Parliamentary Debates, Legislative Council, 10 November 1936, p. 1653.

<sup>317</sup> Research cited in Murray Goot, ‘Electoral Systems’ in Don Aitkin (ed), *Surveys of Australian Political Science*, Sydney: George Allen and Unwin, p. 209.

<sup>318</sup> Parliamentary Debates, Legislative Assembly, 30 November 1948, p. 2847.

<sup>319</sup> Parliamentary Debates, Legislative Assembly, 30 November 1948, p. 2854.

Mobile polling booths became another avenue for voters keen to cast their vote with the *Electoral Act 1907* amended as far back as 1959 to provide for the use of mobile ballot boxes in institutions and hospitals. Amendments to the *Electoral Act* in 1979 expanded their use to regional and remote areas. For the 2013 election the Commission visited hospitals and selected institutions such as nursing homes, aged care facilities and retirement homes to provide electors the opportunity to vote without having to leave their premises. In addition mobile voting teams visited a selection of indigenous communities. Mobile voting places were also made available at Perth Airport to cater for fly-in and fly-out workers. Mobile polling teams were also sent to mine sites and other places in the more remote parts of Western Australia. At one stage it appeared that Cyclone Rusty would jeopardise the proposed mobile polling arrangements but this threat did not eventuate. At the same time early voting centres were established at various magistrates courts throughout the state, including the northern locations of Broome, Derby, Kununurra, Karratha, South Headland and Roebourne. Without doubt with Western Australian (and Australian) law providing for both compulsory enrolment and compulsory voting it is a feature of Electoral Commission philosophy to provide every practical assistance for such laws to be upheld.

### **Compulsory Enrolment**

In 1911 the Federal Government introduced compulsory enrolment. By 1915 in comparison with the State, the Commonwealth rolls showed ‘an enormous inflation’, as there was no legal responsibility on persons to enrol as State electors.<sup>320</sup> In 1919 Attorney General Thomas Draper, moved for the adoption of compulsory enrolment for the Legislative Assembly, in the expectation it would greatly improve the quality of the roll.<sup>321</sup> It was also believed that as it was possible to take advantage of some of the ‘federal machinery’, to minimise associated costs. Nevertheless, coterminous electorates with the House of Representatives, as was the case in Tasmania, were rejected.

Despite criticism that Draper’s legislation had been introduced late in the year without forewarning, there was no opposition to what was classified as a Private Members Bill. During the Committee stage the fine for failing to enrol within 21 days of becoming eligible for the relevant district was lowered from a formidable ten pound fine to a maximum of two pounds.<sup>322</sup> John Cornell, Leader of the House in the Council, was unsuccessful when

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<sup>320</sup> Report of the Royal Commission upon the Commonwealth Electoral Law and Administration (1915), Melbourne: Government Printer, p. 5.

<sup>321</sup> Parliamentary Debates, Legislative Assembly, 6 November 1919, p. 1261.

<sup>322</sup> Parliamentary Debates, Legislative Assembly, 25 November 1919, p. 1667.

he moved that the provision be made law for the Upper House<sup>323</sup> and asserted that he:

*...never agreed with compulsory enrolment unless it [WA]s accompanied by its natural corollary, compulsory voting.*<sup>324</sup>

Thomas Walker, a former Attorney General, queried the value of the measure from a citizenship perspective without also introducing compulsory voting,<sup>325</sup> while Thomas Chesson, a Labor MLA, was another who believed that compulsory voting should be introduced to obtain ‘the true reflex of the opinions of the electors’.<sup>326</sup> Finally though, Attorney General Draper did not amend his legislation to incorporate compulsory voting, despite it being widely considered throughout Australia. However, the various degrees of co-operation from Federal authorities have often been fraught with difficulties resulting in comparatively high numbers of citizens failing to have their names placed on the electoral roll (see Chapter Nine).

In contemporary times the maintenance of accurate rolls remains a formidable challenge. Many electors do not comply with their obligations to re-enrol one month after changing address, and many do not respond to correspondence about their enrolment. Contemporary innovations to assist in the management include the capacity for electors to update their details on the Commission’s web site, and on average the Western Australian Electoral Commission estimates that the State electoral roll has a turnover of around 20 per cent per annum.<sup>327</sup> The Commission must also provide each member of State Parliament and parliamentary parties with copies of the electoral roll, and indeed the Electoral Commissioner must make rolls available in any form the Commissioner thinks fit, for free inspection by the public at the Office of the Electoral Commissioner. In making copies available it is necessary to ensure certain conditions are complied with, including a provision that the rolls are not used for commercial advantage.

In 1983, a Joint Roll Arrangement (JRA) between the Western Australian Electoral Commission and its Commonwealth counterpart was a significant introduction, as was an agreement in 1985 dealing with silent enrolment. A new JRA was negotiated in 2005 and 2006, with one of the major initiatives a process called Continuous Roll Update (CRU), which includes regular activities to encourage enrolment and maintain roll accuracy. The CRU uses change of address information from other State and federal agencies,<sup>328</sup> while other CRU activities include attendance at citizenship ceremonies,

<sup>323</sup> Parliamentary Debates, Legislative Council, 3 December 1919, p. 1936.

<sup>324</sup> Parliamentary Debates, Legislative Assembly, 3 December 1919, p. 1933.

<sup>325</sup> Parliamentary Debates, Legislative Assembly, 11 November 1919, p. 1309.

<sup>326</sup> Parliamentary Debates, Legislative Assembly, 11 November 1919, p. 1308.

<sup>327</sup> Annual Report 2005–2006, Western Australian Electoral Commission, Perth: Western Australia, p. 30.

<sup>328</sup> A more recent proposal is to use sale of property data from the Department of Land Information from the commencement of the 2006/2007 financial year.

youth (including school) enrolment programs and removing the names of deceased persons and prisoners.<sup>329</sup> In November 2011, Norman Moore, as Minister for Electoral Affairs, announced the launch of an electoral roll maintenance system, known as RMS. The RMS was to include over two million individual elector and residential address records for the current State Electoral Roll. In addition to producing rolls for State and local government elections the data base is used to provide the Sherriff's Office with jury lists and various other clients for purposes ranging to medical research to law enforcement. Members of Parliament also receive access to the electoral roll though this system,<sup>330</sup> which nowadays (since 2009) incorporates an elector's date of birth as part of the prescribed information.

In 1983 Western Australia had co-operated with the Commonwealth to permit persons 17 years of age to provisionally enrol, before being automatically registered at 18 years of age. Later, the challenge of keeping accurate rolls was arguably made more difficult when the Federal government introduced a new enrolment procedure on 16 April 2007, as from that date Australian citizens were required to prove their identity when enrolling or updating their enrolment for Federal elections. The main method of identification was expected to be a driver's license or passport, but there was a requirement for a citizen to have two enrolled persons who have known them for at least one month to confirm their identity. Such identification amendments were not made to the Western Australian *Electoral Act 1907*, meaning that the one stop shop for Federal, State and local government had by 2012 meant that there was a 12,000 differential in enrolments between the Federal and State totals of electors. In 2012 the Western Australian Parliament amended the *Electoral Act 1907* to overcome what Greens WA MLC, Alison Xamon had agreed was 'incredibly important' to rectify the discrepancy to enable people living in the State to elect their representatives in the WA Parliament.<sup>331</sup>

At the same time when amendments were being made to facilitate the enrolment of electors in 2012 the 'Alliance' government with the long serving Hon. Norman Moore as Electoral Affairs Minister, did not move to adopt what has been called 'automatic enrolment'. Following legislation in New South Wales and Victoria, the Commonwealth Government had introduced legislation from July 2012 to permit 'automatic enrolment' of the estimated 1.5 million people in Australia who were deemed eligible to vote, but had failed to enrol. The legislation, introduced by Labor Special Minister of State Gary Gray, enabled the Australian Electoral Commission to use 'trusted sources' such as driver's licence data bases or school lever records to identify eligible voters and enrol them. Signalling some doubt

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<sup>329</sup> Annual Report 2005–2006, Western Australian Electoral Commission, Perth: Western Australia, pp. 22–31.

<sup>330</sup> Parliamentary Debates, Legislative Council, 23 November 2011, p. 9607.

<sup>331</sup> See Parliamentary Debates, Legislative Council, 23 October 2012, p. 7321.

about the future of ‘automatic enrolment’ Opposition counterpart Bronwyn Bishop was critical of the measure which she contended would help Labor and the Greens. Analysis by Professor Ian McAllister, the co-director of the regular authoritative Australian Electoral Study, was reported as suggesting that the main beneficiary of direct enrolling would be the Greens as its first preference could rise by about 0.6 of a point, while Labor vote would increase very marginally.<sup>332</sup> At this time Minister Gray in a Ministerial Statement said ‘these reforms are not concerned with how people vote but are aimed at ensuring that citizens who are eligible to vote are able to exercise that important right’. He quoted the Australian Electoral Commissioner Ed Killesteyn who had plans for over two or three electoral cycles (6-9 years) that about 500,000 to 600,000 additional citizens might be enrolled to exercise their ‘compulsory vote’.<sup>333</sup>

## Compulsory Voting

Interest in compulsory voting had been associated with its adoption in Queensland in 1914 by a Liberal Party government ‘on the slide’ and its application in some European countries. As a general rule, early advocates of the institution believed it would serve as ‘a conservative insurance’, a tendency which would be exacerbated with women being granted the vote. Compulsory voting would help ensure that the reflecting and moderate elements of the community (who tended not to vote) would have their voice heard as the franchise became universal.<sup>334</sup> In Western Australia in 1911 the Parliament discussed compulsory voting and made the distribution of preferences compulsory for the alternative vote in the Legislative Assembly.<sup>335</sup> Ernst Stenberg had included a section on compulsory voting (as well as compulsory enrolment) in his treatise on electoral systems and noted how the extension of the franchise and the facilities for enrolment and voting had not been accompanied by a corresponding increase in elections.

One theory promulgated was that in Australia the ‘spoon-feeding’ of electors, whereby the vote had been of such easy access, had led to low levels of political interest, while in some quarters it was thought that compulsory voting would force people to take an interest in public affairs and have an educative impact. In Stenberg’s view there were weighty arguments both for and against compulsory voting but his conclusion was that:

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<sup>332</sup> See Tom Dusevic (2012), ‘Automatic enrolment puts Coalition seats at risk’, *The Australian*, 10 December 2012.

<sup>333</sup> Hon Gary Gray, ‘Statement in response to ‘Automatic enrolment puts Coalition seats at risk’, 11 December 2012.

<sup>334</sup> See Harry Phillips (2001), *Compulsory Voting: The Australian Experiment*, Perth: Western Australian Electoral Commission, p. 11.

<sup>335</sup> See Parliamentary Debates, Legislative Council, 26 October 1910, pp. 1169–1170.

*Compulsory voting would also impose upon the Government, the duty of providing enormously increased polling facilities, the cost of which would disproportionately increase the already high cost of elections, probably out of proportion to the value of the result that could be expected from such increased cost.*<sup>336</sup>

In the light of considerable international agitation for compulsory voting, and adoption in several countries,<sup>337</sup> the topic was debated at the State Labor Party Congress in Perth in 1916.<sup>338</sup> A motion in support of the principle was passed at the Congress but there were no immediate attempts to introduce compulsory voting in the Parliament.

One of the most notable attempts in Western Australia to raise the compulsory voting issue was undertaken by Edith Cowan, the first woman elected to an Australian Parliament. In her maiden speech in 1921 to the Legislative Assembly Cowan said:

*It seems to me an absolute farce to make people place their names on the roll and not to follow it up by making voting compulsory.*<sup>339</sup>

Cowan thought that compulsory voting would encourage much greater interest in elections and that fining non-voters would encourage citizens to 'value' their votes. Following the 1922 Federal election Cowan asked a parliamentary question about the application in other countries, with Premier James Mitchell providing details of higher turnouts in compulsory voting jurisdictions for Queensland, Belgium, Austria, Spain and five cantons in Switzerland.<sup>340</sup> Nevertheless, Edith Cowan was not immediately successful in her quest for compulsory voting.

In 1925 the Collier Labor Government attempted to legislate for compulsory voting.<sup>341</sup> One year earlier legislation to make voting compulsory at a federal level passed through all stages in the Senate in less than 90 minutes, and a few days later needed only 52 minutes in the House of Representatives.<sup>342</sup> Despite the brevity of the debate, with no Minister speaking to the rare Private Member's Bill, many of the apparent advantages and disadvantages of the measure contained in the literature

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<sup>336</sup> Ernst Stenberg (1911), Report on the Principal Electoral Systems for the Election of the Legislatures in Self-Governing Countries, Votes and Proceedings, Legislative Assembly, 1910–1911, Vol. 2, p. 21.

<sup>337</sup> See Harry Phillips (2002), *Compulsory Voting: The Australian Experiment*, Perth: Western Australian Electoral Commission, Chapter Two 'The International Agitation for the Compulsory Vote', pp. 7–18.

<sup>338</sup> Report of Proceedings Australian Labor Party Division: Ninth Labor Congress, Agenda Item VI.

<sup>339</sup> Parliamentary Debates, Legislative Assembly, 28 July 1921, p. 16.

<sup>340</sup> Parliamentary Debates, Legislative Assembly, 9 January 1923, p. 2453.

<sup>341</sup> Parliamentary Debates, Legislative Assembly, 10 September 1925, p. 835.

<sup>342</sup> L.F. Crisp (1950), 'Compulsory Voting in Australia, *Parliamentary Affairs*, Vol. 4, p. 95.

were mentioned.<sup>343</sup> Back in Western Australia, Opposition Leader James Mitchell conceded he did ‘not like compulsion, but [found] it very difficult to contend that compulsory voting is wrong’.<sup>344</sup> However, the Bill perished in the Legislative Council on a technicality that there had been no certification received from the Assembly that the Bill had been supported by an absolute majority of that House, as required for such Bills.

The eventual adoption of compulsory voting in Western Australia took an unusual path when in December 1932, the Western Australian Parliament passed legislation compelling electors to vote on two specific questions relating to the State seceding from the Commonwealth of Australia. Although compulsory voting had been temporarily introduced for the referendum, it did not extend to general elections. In fact, with the referendum held concurrently with the State election in 1933, the turnout was 91 per cent,<sup>345</sup> and the turnout in 1936 of just 70 per cent for the Assembly, produced a move to introduce compulsory voting. By that time the Commonwealth and States, apart from South Australia, had adopted compulsory voting,<sup>346</sup> and there were references in the debates of the need for Western Australia to be in accord with the other jurisdictions. Generally, the limited references to compulsory voting in *Hansard* were favourable towards its introduction, although one Assembly member was concerned about giving electoral department officers the authority to prosecute non-voters. Perhaps as a concession to the loss of momentum for secession in Western Australia, the practical advantage of having similar State and Commonwealth provisions for compulsory voting was recognised. Moreover, the report of a Joint Parliamentary Select Committee (which had become a Royal Commission and reported in 1935) into the *Electoral Act 1907*, had recommended compulsory voting.<sup>347</sup>

Compulsory voting was not to apply to Legislative Council provinces, which were elected with franchise restrictions. Moreover, the *Electoral (War Time) Act 1943* which related to the exercise of the franchise by members of the Forces, specified that those entitled to vote by virtue of that Act were not be found guilty of an offence by reason of failing to vote.<sup>348</sup> It was not until 1964 that enrolment and voting were made compulsory for the Council, at which time property qualifications were also abolished.

<sup>343</sup> See Senate Debates, 17 July 1924, pp. 2127–2188 and House of Representative Debates, 24 July 1924, pp. 2446–2452.

<sup>344</sup> Parliamentary Debates, Legislative Assembly, 10 September 1925, p. 837.

<sup>345</sup> G.S Reid (1979), ‘Western Australia and the Federation’, in Ralph Pervan and Campbell Sharman (eds), *Essays on Western Australian Politics*, Nedlands: University of Western Australian Press, p. 6. Compulsory voting at referendums had been passed in 1915 by the Commonwealth Parliament. However, the planned referendum at that stage did not take place.

<sup>346</sup> Introduction of compulsory voting: Queensland (1914), Commonwealth (1924), Victoria (1926), New South Wales (1928) and South Australia (1942).

<sup>347</sup> Report of the Royal Commission on the *Electoral Act, 1907–1921* and other Relative Matters, Perth Government Printer, p. vii.

<sup>348</sup> See Electoral (War Time) Act 1943, Section 27.

However, universal obligatory enrolment and voting for both Houses had not yet been achieved. While it will be recalled that it was as late as 1962 Aboriginal people were *permitted* to enrol and vote, it was not until 1984 that Aboriginal people became *required* to vote.

Although compulsory voting has been widely regarded as one of the most distinctive aspects of the Australian polity it remains the case that compulsion has not been universally applied for the third tier of government, namely Local Government. Low turnouts in many local government jurisdictions have often led for calls for the adoption of compulsory voting, and while some States (and Territories) have swung between voluntary and compulsory systems, even within States the degree of compulsion has varied.

By 2012 Western Australia stands only with South Australia and Tasmania in not providing for compulsory voting in local government (and the only State currently utilising first past the post counting system). In 1990 a committee proposing changes to the Local Government Act sought the introduction of compulsory voting to alleviate low voter turnout figures.<sup>349</sup> In 2012 compulsory voting was again recommended for adoption by the Metropolitan Local Government Review, chaired by former University Vice Chancellor Alan Robson.<sup>350</sup>

### **COG and Public Support for Compulsory Voting**

In the latter stages of the twentieth century the issue of compulsory voting for Western Australian Parliamentary elections was back on the public agenda. In New South Wales compulsory voting had been constitutionally entrenched by the Wran Labor Government in 1979 after the Constitution had been amended to require an affirmation by referendum to repeal compulsory voting. In 1994 in South Australia, a Coalition Government presented a Bill to remove compulsory voting from the statute books but the attempt was narrowly defeated by one vote in the Upper House. Some federal parliamentarians such as Senator Nick Minchin, Allan Rocher,<sup>351</sup> and at times John Howard,<sup>352</sup> had floated a return to voluntary voting.

In 1993 Senator Minchin, Liberal Party colleagues David Connolly and Senator John Tierney and National Party member Michael Cobb, prepared a minority report which proposed that 'compulsory voting be abolished so the

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<sup>349</sup> Proposals for a New Local Government Act, Elections, Department of Local Government (1990). See also another report 'Ensuring the Future Sustainability of Communities' (2006), Local Government Structural and Electoral Reform in Western Australia, Local Government Advisory Board, p. 163. The latter preferred the maintenance of voluntary voting 'at the present time'.

<sup>350</sup> Metropolitan Local Government Review (2012), Alan Robson, Chairman, p. 14, pp. 145–158.

<sup>351</sup> Allan Rocher (1990), 'A Case for Voluntary Voting in Federal Elections', unpublished paper, p. 5.

<sup>352</sup> Harry Phillips (1990), 'Compulsory Voting Revisited', *Journal of the Australian Association of Parliamentary and Citizenship Education*, p. 20.

franchise again becomes the valued right of the free citizen in an open society,<sup>353</sup> and in 1997 the Joint Standing Committee on Electoral Matters recommended the abolition of compulsory voting with the retention of compulsory enrolment.<sup>354</sup> The Coalition Federal Government of the day did not support the recommendation, and it is of interest in this context that the 1997 election of delegates to the 1998 Constitutional Convention required a non-compulsory postal ballot, and resulted in a 47 per cent response rate. During the passage of the *Constitutional Convention (Election) Act 1997*, Parliament was divided on the issue of compulsory voting and debate was extensive.<sup>355</sup>

The Commission on Government of 1995 heard evidence from both the advocates and opponents of compulsory voting. In COG's assessment compulsory voting diminished opportunities for the exercise of corrupt, illegal or improper practices during elections. COG quoted from Labor MLC (and future President) John Cowdell's submission, that 'there can be no doubt that compulsory voting has an educative role and contributes in this way to our civic culture'.<sup>356</sup> Also from this perspective, scholar Lisa Hill argued that compulsory voting 'appears to provide protection against social and economic marginality and may prevent the poor and disadvantaged from becoming worse off'.<sup>357</sup> Hill believes 'it serves and upholds a number of important democratic ideals such as representativeness, political equality and minimisation of elite power'.<sup>358</sup> For Hill, 'compulsion brings with it a complex raft of measures designed to ensure that all the obstacles normally experienced by abstainers in voluntary systems are removed so that every Australian, regardless of circumstance, restrictions and contingent status, is entitled to vote'.<sup>359</sup>

Support for compulsory voting across Australia has remained high since the late twentieth century. In the mid-nineties opinion polls on compulsory voting showed some 70 per cent of Western Australian electors in favour.<sup>360</sup>

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<sup>353</sup> Joint Standing Committee on Electoral Matters (1994), *Report of Inquiry into the Conduct of the 1993 Federal Election and Matters Related Thereto*, Canberra: Australian Government Publishing Service, p. 153.

<sup>354</sup> Joint Standing Committee on Electoral Matters (1997), *Report of Inquiry into the Conduct of the 1993 Federal Election and Matters Related Thereto*, Canberra: Australian Government Publishing Service, p. 26.

<sup>355</sup> See 'Compulsory Voting' (1998), Electoral Backgrounder No. 8, Canberra: Australian Electoral Commission.

<sup>356</sup> Commission on Government: Report No. 1, August 1995, p. 318.

<sup>357</sup> Lisa Hill (2002), 'Compulsory Voting: Residual Problems and Potential Solutions', *Australian Journal of Political Science*, Vol. 37, No. 3, p. 348.

<sup>358</sup> Lisa Hill (2001), 'A great leveler: Compulsory Voting', in Marian Sawer (ed) (2001), *Elections Full, Free and Fair*, Annandale, The Federation Press, p. 129.

<sup>359</sup> Lisa Hill (2002), 'Compulsory Voting: Residual Problems and Potential Solutions', *Australian Journal of Political Science*, Vol. 37, No. 3, p. 348.

<sup>360</sup> See Harry Phillips (2001), *Compulsory Voting: The Australian Experiment*, Perth: Western Australian Electoral Commission, p. 71.

After the 1996 Federal Election, the Australian Electoral Study was showing 74 per cent support, a Morgan Poll in 2005 showed 71 per cent support, and an Ipsos-Mackay Study, also in 2005, showed 74 per cent support.<sup>361</sup> A *Newspoll* conducted for the Institute of Public Administration in 2010 found that 70 per cent of respondents backed compulsory voting. The support was shared evenly between men and women, but older voters were less likely to support voluntary voting than younger voters. Three quarters of Labor voters supported compulsion while 68 percent of Coalition supporters favoured compulsory voting.<sup>362</sup> Mindful of a history of public opinion support for the institution, COG recommended that the system of compulsory voting should be retained'.<sup>363</sup> At the same time it did not advocate any proposal for genuine conscientious objectors to apply for exemptions provided they meet certain conditions. The introduction of such a clause would prevent some citizens being placed in jail for failing to provide 'a valid and sufficient reason' for failing to vote and then subsequently paying the fine (maximum \$50 in 2012) imposed by the Court of Disputed Returns.<sup>364</sup> Legislative amendments and changes to regulations in 1997 altered the notification process by which the Chief Psychiatrist must advise the Electoral Commissioner upon the capacity of certain enrolled persons to make judgments for the purpose of complying with the provisions of the *Electoral Act 1907* on compulsory voting.<sup>365</sup>

Compulsory voting has been upheld by a number of legal decisions although only one is a specific Western Australian case, that of *Mather v McDaniel* (1964). Mather, the Chief Electoral Officer had refused to accept McDaniel's explanation for not voting in the Nedlands electorate for the 1962 election as a 'valid and sufficient reason'. McDaniel had been called away from his district for an 'emergency business reason' to Jurien Bay, then an isolated spot 100 kilometres from the nearest voting centre, with no direct mail facilities. In one unusual case in 2010 a citizen Stuart McDonald who also happened to be lawyer, was one of about 170,000 citizens on the State electoral roll who failed to vote in the 2009 Daylight Saving Referendum. McDonald was one of some 32,000 non-voters which the WAEC decided to pursue for failing to provide a 'valid and sufficient reason' for not voting. However, when the case came before Magistrate Jerry Packington on 25 October 2010, the Magistrate found that the prosecution was deficient because the required enforcement certificate

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<sup>361</sup> Tim Evans (2006), 'Compulsory Voting in Australia', Canberra: Australian Electoral Commission, p. 9.

<sup>362</sup> Matthew Franklin (2010), 'Majority in favour of forced vote,' *Australian*, 12 October 2010.

<sup>363</sup> Commission on Government: Report No. 1, August 1995, p. 317.

<sup>364</sup> See Jane Seymour (1995), 'Vote protest makes me a criminal', *The West Australian*, 24 March 1995, p. 3. A 47 year old Willagee woman spent four days of a six day sentence in Bandyup Prison in August 1994 for not voting in the 1993 State Election. Note suggestions for a 'none of the above' option specified on each ballot paper.

<sup>365</sup> See Annual Report 1997–98, Western Australian Electoral Commission, p. 8.

didn't identify the alleged offender, the alleged offence or the date on which the infringement notice was issued.<sup>366</sup> Subsequently an amendment was made in 2012 to the *Electoral Act* 1907 so that the provisions that relate to non-voters were consistent with the requirements of the *Fines, Penalties and Infringements Notices Enforcement Act*.<sup>367</sup>

To date (2013) the constitutional validity of compulsory voting has been upheld by the High Court and State and Territory Supreme Courts with the key cases listed by the Australian Electoral Commission as follows:

- High Court 1926 – *Judd v McKeon* (1926) 38 CLR 380;
- Supreme Court of Victoria 1970 – *Lubcke v Little* (1970) VR 807;
- High Court 1971 – *Federson v Bridger* (1971) 126 CLR 271;
- Supreme Court of Queensland 1974 – *Kronsch v Springbell; ex parte Kronsch* [1974] QdR 107; and
- ACT Supreme Court 1981 – *O'Brien v Warden* (1981) 37 ACTR 13.<sup>368</sup>

Recently though, questions have been raised about the constitutionality of Australia's compulsory voting system. A review published in 2012 contended that several High Court decisions in the last two decades have raised questions. It was suggested that compulsory voting infringes the implied freedom of political communication which the High Court has recognised since 1992. Moreover, it was argued that compulsory voting is inconsistent with the right to vote recognised by the High Court as being implicit in s7 and s24 of the Australian Constitution. On this basis citizens entitled to vote should have the freedom not to do so, as is the case in many other representative democracies in which voting is voluntary.<sup>369</sup>

The speculation about the constitutionality of compulsory voting was put to the test in April 2013 when South Australian elector Anders Holmdahl, took his challenge to the High Court after the loss of his case in the South Australian Supreme Court. At stake was whether the Australian Constitution gave electors the right to make their choice to vote fully, unforced and freely.

It should be noted that in Western Australia, apart from general elections and by-elections, compulsory voting has been administered for state-wide referendums (see Appendix 8). With the key objective of achieving a

<sup>366</sup> See Paul Murray (2011), 'Verdict Exposes a Case of Double Standards', *The West Australian*, 12 January 2011. See also WA Electoral Commission v Morton Stuart MacDonald, Magistrates Court, 12 October 2010.

<sup>367</sup> See Parliamentary Debates, Legislative Assembly, 15 August 2012, p. 5010 and Legislative Council, 23 October 2012, p. 2012.

<sup>368</sup> See 'Compulsory Voting' (2007) Electoral Backgrounder Number 17, Australian Electoral Commission. The outcome of the Holmdahl Case was not known at publication date.

<sup>369</sup> See Anthony Gray (2012), 'The Constitutionality of Australia's Compulsory Voting System', *Australian Journal of Politics and History*, Vol. 58, No. 4, pp. 591–608.

reflection of the total electorate's view, it was first applied for the widely debated 1933 Secession Referendum. It was further maintained for the four daylight saving referendums (1975, 1984, 1992 and 2009) and the 2005 shopping hours referendum questions (week-night and Sunday shopping). Invariably though, the referendums were held in conjunction with general elections or by-elections.

## Saturday Voting and Voting Hours

While other nations have institutionalised different voting days (such as Tuesday in the United States of America, Monday in Canada and Thursday in the United Kingdom), Saturday has become the established day in Australia, but this was not always the case. The 1903 Federal election, the first conducted under *Commonwealth Electoral Act 1902*, was held on a Wednesday, with booths open between 8 am to 7 pm. From 1911 Saturday became the specified Federal election-day. Several of the States had already adopted Saturday for general elections and from 1921 the pattern in Western Australia was also for Saturday polls, an exception being 1930 with Wednesday being chosen in that year. In fact the *Electoral Act 1907* did not specify the day for elections or by-elections.

With the tendency in Western Australia to conduct general elections in late summer or early autumn, the 1959 amendment to the *Electoral Act 1907* eventually provided that 'the day fixed for the polling shall be a Saturday, other than Easter Saturday or the Saturday immediately preceding or succeeding Easter Saturday'.

The hours of polling for decades were 8 am to 8 pm, until 1987, when it was decided that the State should bring itself into line with other jurisdictions, with the Labor Minister for Parliamentary and Electoral Reform, Hon. Mal Bryce advising the Assembly:

*It is proposed that polls close at 6.00 pm instead of the present 8.00 pm... If the present 8.00 pm close polls in State elections is retained, this could disfranchise some electors who mistakenly turn up late for Commonwealth or local government election.*<sup>370</sup>

However, Metropolitan Liberal Party MLC Phillip Pental disputed the case presented for the Government and questioned the motives for making the change. As Pental put it:

*The subject of this clause has been discussed previously by this Chamber on three or four occasions and the arguments for and against it are well known. I think it is a contradiction in terms for the Government to suggest that it introduced this Bill to improve the services available to voters and to include a clause that reduces the voting time by two hours. The reason the Leader of the House gave for this provision is that, because officials had to*

<sup>370</sup> Parliamentary Debates, Legislative Assembly, 27 October 1987, p. 5179.

*spend that extra two hours on duty, the day was made terribly long for them. The other lame excuse for reducing the hours for voters was that we obtain an earlier result. Is it more important to get an early result or provide full service for voters? Not the slightest evidence has been put forward in any Parliament of Australia to suggest that it is not a bad thing for voters to be able to vote until 8.00 pm. I have no doubt that this provision will be popular among how-to-vote officials. However, I oppose it.*<sup>371</sup>

Nevertheless, from 1987 the standard polling hours for State, as well as for Commonwealth and local government, became 8 am to 6 pm. Progressively the early polling regulations together with absent and postal voting became more convenient for electors. As compulsory voting had been established in the courts and public opinion, another legislative step has helped to cement the institution of compulsory voting. The introduction of public funding for political parties clearly meant that a move to voluntary voting would reduce the flow of public funding to political parties. The next chapter examines public funding as well as political party donations and party registration.

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<sup>371</sup> Parliamentary Debates, Legislative Assembly, 20 October 1987, pp. 4661–4662.

## Political Party Donations, Registration and Public Funding

Legislation concerning donations to and public funding of political parties, and the expenses incurred by such parties, are invariably problematic in a democratic polity. Transparency of funding and expenditures of political parties is difficult to achieve, especially in the modern era of costly television advertising and marketing campaigns. Legislation was passed in Western Australia in 1904 to limit the expenditures of candidates, rather than parties, although that was widely regarded as in-effective. Eventually in 1992 a major amendment to the *Electoral Act 1907* was passed to provide for the documentation of donations and gifts to political parties but the amendment was not proclaimed. In a domain complicated by Federal legislation amendments were eventually proclaimed in 1996 which covered disclosure of donations and electoral expenditures. In 2000, legislation for the registration of political parties was enacted and six years later political parties were, under certain conditions, given access to public funding, a most controversial move by the Labor Government of the day.

### Electoral Expenses

The *Electoral Act 1904* limited electoral expenses incurred or authorised by a candidate for the Legislative Council to a maximum of five hundred pounds, and by a candidate for the Assembly to one hundred pounds. The larger sum for the Council was perhaps partly explained by the greater geographic expanse of the three member provinces in comparison to the single member Assembly districts. There was an attempt to specify the expenses permitted<sup>372</sup> but the cost of electoral rolls, stationary, postages, rent of halls, and the personal and reasonable living and travelling expenses of the candidate were not included in the tabulation. Although candidates were required to verify their electoral expenses, the legislation did not cover political parties and was largely ineffective despite the fact that any contravention of the provisions was supposed to be an illegal practice.

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<sup>372</sup> The 'legitimate' expenses included printing, advertising, publishing, committee room costs and those for public meetings and halls, scrutineers and election agents.

Much later in 1978 the Coalition Government, led by Sir Charles Court, appointed Justice Arthur Kay to inquire into and report on various aspects of the *Electoral Act 1907*, including:

- what changes if any, are desirable in the existing provisions relating to electoral expenses; and
- whether the existing provisions are adequate or whether they should be totally or partially repealed’.

By this time the prescribed limit for electoral expenses incurred by a candidate or his/her agent was 2,000 dollars for the Legislative Council and 1,000 dollars for the Legislative Assembly, last adjusted in 1951 and 1964 respectively. It was also noted that the Electoral Acts of New South Wales, South Australia, Queensland and the Australian Capital Territory had no provisions limiting electoral expenses. However, after reviewing the various submissions Justice Kay reached the following conclusion:

*The provisions for the limiting of electoral expenses serve no useful purpose, they are not supervised nor do most candidates observe [the appropriate section] of the Act. The provisions of any Act which are not supervised or policed should not remain on the Statute Book. Suggestions were put forward mainly as substitutes or extensions of the present provisions requiring political parties to disclose sources of funds received by them. This is diving into the realms of Government policy and is outside the terms of reference of this Inquiry.*<sup>373</sup>

Justice Kay recommended that the part of the Act concerned with election expenses ‘should be repealed’, and the Government moved quickly to pass such legislation. Although that recommendation received no resistance, several of Kay’s other recommendations were contentious, particularly with respect to Aboriginal voters, and were keenly debated.<sup>374</sup> The Kay Commission floated the possibility of political parties being required to table their expenses and even public funding of political parties, moves that were seen as political. After a delay of more than a decade both issues were firmly back on the political agenda.

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<sup>373</sup> Report of the Committee of Inquiry Appointed to ‘inquire into and report on various aspects of the Electoral Act of Western Australia 1907–1976 (1978) (Justice Kay), p. 55.

<sup>374</sup> Refer to Parliamentary Debates, Legislative Assembly, 30 August 1979, pp. 2447–2449.

## Political Donations

‘The Parliamentary system will malfunction if it allows for significant, but undisclosed, political donations’.<sup>375</sup> This was the opening sentence of the WA Inc. Royal Commission under the sub-heading of political finance. It then added:

*The need for substantial donations is due in no small part to the ever-escalating expenditure in mounting political and election campaigns. The phenomenon has lead inexorably to an increased involvement of politicians, including Premiers and ministers, in fund raising activities.*<sup>376</sup>

In fact in 1992 the Lawrence Labor Government had passed the *Electoral Amendment (Political Finance) Act* which required the disclosure of political donations and contributions. This was to be viewed in concert with the *Commonwealth Electoral Act 1918*, which required disclosures by political parties registered with the Australian Electoral Commission, purportedly due to problems associated with government advertising.<sup>377</sup> This gave the Royal Commission, and subsequently the Commission on Government, the opportunity to both criticise and suggest amendments<sup>378</sup> to the 1992 Act. Given this extensive body of literature the Government, by then led in Coalition by Richard Court, passed the 1996 political finance legislation in Part VI of the *Electoral Act 1907*. In summary the legislation required the disclosure of donations and electoral expenditure by political parties and their associated entities, candidates, groups and other persons who had incurred expenditure for political purposes during the disclosure period for an election. Political parties and their associates were required to lodge annual returns and information required for the disclosure of gifts included the total amount or value of all gifts, including money, the number of persons from whom gifts were received and the relevant details of each gift for amounts of 1,500 dollars or more. Political parties, individual candidates, non-party groups and ‘other persons’ were to appoint an agent or to accept responsibility for compliance with the Act. It was not considered necessary to provide relevant details if the amount of value was below 1,500 dollars, unless the sum amount or value of *all* the gifts made by one person exceeded the specified amount. The 1,500 dollar threshold was raised to 1,600 dollars after the 2001 State election and increased to 1,800 dollars after 1 July 2005 but then lowered to 1,000 dollars in 2008, before being raised to \$2,100 dollars for the 2013 election. Details of

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<sup>375</sup> Report of the Royal Commission into Commercial Activities of Government and Other Matters, Part II (1992), Perth: Western Australia, pp. 5–17.

<sup>376</sup> Report of the Royal Commission into Commercial Activities of Government and Other Matters, Part II (1992), Perth: Western Australia, pp. 5–17 and Commission on Government: Report No. 1, August 1995, Chapter 11, 12, 13 and 14, pp. 272–362.

<sup>377</sup> Commission on Government, Discussion Paper No. 7, Perth: Western Australia, p. 5.

<sup>378</sup> See Report of the Royal Commission into Commercial Activities of Government and Other Matters, Part II (1992), Perth: Western Australia, pp. 5–17.

donations accepted from unidentified persons or sources beyond the threshold were also to be included. Given that compliance with the law has sometimes been complicated the WAEC for both 2008 and 2013 elections produced a set of guidelines for ‘Funding and Disclosure in Western Australia’.<sup>379</sup>

The Annual Political Finance Report, prepared by the Western Australian Electoral Commission usually creates media interest, particularly the summaries of gifts and other income received by each political party and the accompanying list of individual and organisational donors. Initial Reports typically contained recommendations which aimed to improve the Act (particularly with respect to political party registration), which must be administered in concert with federal legislation. However, gifts and income received by a political party in the federal sphere do not have to be declared again under the State provisions. Significantly, in 2006, the Federal Government passed a key amendment which lifted its donation and gift threshold to 10,000 dollars which was indexed to the Consumer Price Index.

A different perspective to the funding question of political parties emanated from Alison Xamon, a Greens MLC. In October 2012 she moved an amendment to the *Electoral Act 1907* which was designed to prevent promotion of functions, gatherings or events aimed at raising funds for a particular political party on the basis or suggestion that attendees will thereby gain access to government minister. In her view ‘it should go without saying that selling access to ministers for the purpose of political fund raising is a fundamental breach of democratic principles’.<sup>380</sup> According to the Bill a person who promoted a political fund raising event in that way would be deemed to commit an offence and be liable to a fine not exceeding \$10,000 dollars. However, the debate was adjourned and lapsed in the Legislative Council on the prorogation of the 38<sup>th</sup> Parliament. Another proposed *Electoral Act 1907* amendment which suffered the same fate was moved by Ben Wyatt, the Labor Party Shadow Treasurer. The purpose of the Bill was to implement a ban on publicly funded advertising in the three months prior to a general election.<sup>381</sup>

## Party Registration

Since 1996 it had been possible for a political party to exist within the definition of s175 of the *Electoral Act 1907*, but not be identified for political finance purposes. In the first Annual Report of the political finance (Part VI) section of the Act in 1997, the Commissioner stated:

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<sup>379</sup> See ‘Election 2013: Funding and Disclosure in Western Australia’, Perth: Western Australian Electoral Commission.

<sup>380</sup> Parliamentary Debates, Legislative Council, 18 October 2012, p. 7178.

<sup>381</sup> Parliamentary Debates, Legislative Assembly, 15 August 2012, p. 5049

*An official list of political parties would facilitate the implementation of political finance legislation. Registration bodies could be required to maintain up-to-date records of party and agent contact details. As a result of this process political parties would be more accountable because there would be a decided advantage in registering well before an election is due to protect the party name. Conversely, the threat of loss of party registration would provide strong incentive for political parties to comply with political finance legislation.*<sup>382</sup>

Subsequently, a range of amendments were enacted in 2000, including the establishment of a formal process for the registration of political parties in Western Australia, some 16 years after similar legislation had passed the Commonwealth Parliament.<sup>383</sup> In 1965 Labor MLA Arthur Bickerton unsuccessfully sought to introduce the registration of political parties in the Legislative Assembly. Bickerton proposed that party designation would be printed on the ballot paper, with a consequent prohibition on the issuing of ‘How to Vote’ cards at polling booths.<sup>384</sup> Later, in 1979, another prominent Labor frontbencher, Colin Jamieson, sought to add party designations to the ballot papers.<sup>385</sup> However, during these years the Coalition was opposed to the registration of political parties, as it was thought it could lead to government interference over essentially voluntary organisations.<sup>386</sup> It was Richard Court’s Coalition government which moved that existing political parties with at least one member in the Legislative Assembly or Legislative Council on 14 June 2000 were automatically eligible for registration. Other political parties were required to have at least 500 members (including names and addresses) who were eligible to be electors. By the deadline for the 2001 election, five parliamentary parties had been registered (Australian Democrats, ALP, National Party, Greens (WA) and Liberal Party). In addition two other parties, namely Pauline Hanson’s One Nation and the Christian Democratic Party WA had successfully met all the criteria for registration.

Before the issue of the writs for the 2001 election, after which the Electoral Commission was prevented by the law to take any action for registration, the Commissioner refused to permit the registration of four parties with impediments such as a lack of sufficient members who were correctly enrolled or objections to the proposed name.<sup>387</sup> In particular some controversy surrounded the refusal to register an emergent party known as

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<sup>382</sup> Political Finance Report 1997, Perth: Western Australian Electoral Commission, p. 8.

<sup>383</sup> The constitutional reference to political parties within Commonwealth jurisdictions had not occurred until the 1977 referendum over the filling of casual Senate vacancies.

<sup>384</sup> Parliamentary Debates, Legislative Assembly, 25 August 1965, p. 507.

<sup>385</sup> Parliamentary Debates, Legislative Assembly, 22 August 1979, pp. 2108–2110.

<sup>386</sup> Parliamentary Debates, Legislative Assembly, 25 August 1979, p.507.

<sup>387</sup> Election Report, 2001 Western State General Election, Perth: Western Australian Electoral Commission, p. 5.

‘liberals for forests’. This was largely on the basis that the proposed name may cause confusion with the historic Liberal Party. As such the self-proclaimed ‘liberals for forests’ candidates in the 2001 State election ran as Independents, with one, Dr Janet Woollard, securing a narrow win in the seat of Alfred Cove.

The Commissioner was given the power to cancel registration of political parties not represented in Parliament, or have fewer than 500 members. For some this membership threshold was regarded as too high because it could penalise emerging parties. Matters such as failing to contest a seat at a general election, or failing to provide the required returns after a 12 month period could lead to de-registration, although the right to appeal the Commissioner’s decision in the Supreme Court was included. It has been the practice of the Electoral Commissioner to conduct a regular audit to ensure that the political parties satisfy the criteria for registration. Public inspection of the political party register is available without fee at the office of the Electoral Commissioner.

One measure which in early years acted as a brake on new political parties entering the Western Australian Parliament, has been the deposit required to accompany nomination. In the *Electoral Act 1907* (as in 1899 and 1904) the deposit was set at a substantial £25 pounds, which was returned upon a candidate receiving more than 20 per cent of the number of votes received by the successful candidate in two-cornered contests. If there were more than two candidates, the candidate with the smallest number of votes forfeited their deposit to the ‘King’. When decimal currency came in 1966 the £25 pounds merely became \$50 dollars but the deposit was then returned subject to achieving 20 per cent of vote. In 1973 the deposit was increased to \$100 dollars and then to \$250 dollars in 1996 with the return of the deposit subject to 10 per cent of the primary vote in the Legislative Assembly or five per cent of the primary vote for groups or individuals in the Legislative Council. Then in 2006 the threshold for the return of the deposit was lowered to 4 per cent of the primary vote in both Houses. The 2006 legislation also specified 4 per cent of the first preference vote as the relevant percentage for the receipt of public funds for electoral expenses.

## **Public Funding**

Formal political party registration was necessary for the later implementation of public funding for political parties. It had been regularly debated since its introduction at the federal level since 1984. In a surprise move in October 2004, Electoral Affairs Minister Jim McGinty MLA announced that public funding would be introduced for the next State election scheduled for early 2005. Parties would be entitled to claim \$1.28 (adjusted annually for inflation) per valid primary vote if a party obtained 4 per cent for a district in the Legislative Assembly and 4 per cent of the primary vote for group candidates or independents in the Legislative

Council. Independent MLAs Phillip Pandal, Elizabeth Constable, Janet Woollard and Larry Graham immediately attacked the proposal and the circumstances surrounding its development. National Party Leader, Max Trenorden, who had not been privy to the earlier negotiations, was critical of the move, and *The West Australian* immediately carried the front page headline ‘Snouts in the Trough’ and editorially condemned the political parties involved.<sup>388</sup> An analysis of the issue by the COG in 1995 had recommended ‘that Western Australia should not adopt a direct public funding scheme’ and instead stated ‘taxation incentives should be put in place to encourage individuals to participate in the political process’.<sup>389</sup>

Initially the Government, with Greens’ support, was confident it could ride out the storm, partly because of the Liberal Party’s actions in earlier negotiations. Consensus had reportedly been reached to provide passage through the Parliament at a meeting between the Minister, the Leader and Deputy Leader of the Opposition, and lay party executives in May 2003. However, fallout emerged as a major problem for Liberal Leader, Colin Barnett and he agreed to bring forward a party meeting to justify the role he played in the affair. In the meantime, Liberal backbencher Rod Sweetman launched a scathing public attack on his leader, claiming Barnett had lost the trust of the public and his colleagues through his handling of the public funding issue. Eventually though, as the Liberal Party decided not to support public funding, the matter was then shelved.<sup>390</sup>

The public funding issue again came to the fore in October 2006 when Minister McGinty introduced a range of amendments to the *Electoral Act 1907*, including public funding provisions which again provoked intense debate. On this occasion, however, the legislation was passed. Set at \$1.39 per valid primary vote the amount was to be adjusted for inflation but could only be claimed for electoral expenditures if 4 per cent of the constituency vote was achieved. Once again there was Liberal Party dissent with MLAs Dan Sullivan, Sue Walker, Graham Jacobs and Rob Johnson, together with MLC Anthony Fels voting against the Bill. Independent MLA Elizabeth Constable opposed the move as she had done three years earlier, arguing in part that the guaranteed source of funds would make political parties even less responsive to community concerns. She rejected the claim often associated with public funding that it would help ensure ‘a level playing field’ for candidates contesting elections. To help achieve such an objective the Greens floated, albeit unsuccessfully, the notion of a Democracy Fund, whereby the proceeds would be allocated to political parties in accordance with their electoral success. The Greens (WA) argued that this would generally enhance the

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<sup>388</sup> *The West Australian*, 31 October 2003, p. 1.

<sup>389</sup> Commission on Government, Report No. 2, Part II, Perth: Western Australia, p. 362.

<sup>390</sup> See Harry Phillips and Liz Kerr (2004), ‘Political Chronicle for Western Australian: July to December 2003’, *Australian Journal of Politics and History*, Vol. 50, No. 2, June, pp. 280–281.

political system and cater for businesses or corporations that claim their donations are not aimed at buying influence.<sup>391</sup>

As mentioned earlier, an important dimension of public funding for elections in Western Australia was the need for applicants to produce receipts of outlays before funding would be made available. This was to overcome an apparent flaw in the provision of the Federal legislation which did not require evidence of electoral expenditure. Normally party expenditures greatly outweigh the income available from public funding, but as the Federal parliamentary report on the 2004 election recorded, Pauline Hanson had spent \$35,426 on her unsuccessful campaign for a Queensland Senate seat yet received \$199,886 of public funding. Although described as ‘a nice earner in anyone’s language’,<sup>392</sup> such a return would not be possible under the public funding provisions in Western Australia.

A by-election on 3 February 2007 for the District of Peel in the Legislative Assembly was the first occasion that public funding was distributed to the political parties for Western Australian elections. The funding was to be administered by the WAEC, which also took the opportunity to research aspects of voter participation, including enrolment practices and attitudes towards compulsory voting. This followed earlier research for the 2005 Victoria Park by-election, occasioned by the resignation of Premier Geoff Gallop.

The conduct of by-elections and referendums have historically been an important function of the earlier Electoral Department and the expanded WAEC. Both subjects will be examined in the next chapter, together with the recent change to a fixed election date which carried with it some constitutional complexities. Thereafter the role played by the Courts in the interpretation of the *Electoral Act 1907* and constitutional documents will be examined.

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<sup>391</sup> Greens (WA) Position Paper: Electoral Funding and Campaign Finance Reform (2006), p. 14.

<sup>392</sup> Laurie Oakes (2007), ‘Hip pocket nerve’, *The Bulletin*, 27 March, p. 14.

## 8

# Referendums, Term of Parliament and By-Elections

This overview of the electoral law in Western Australia is based on the assumption that elections fulfil certain functions in the polity of the State. Elections are held periodically to: provide representation; form government; influence policy; educate voters; build legitimacy; and to enable citizens to express their discontent through the ballot box. By-elections in the Legislative Assembly are conducted upon a member's resignation or death and ensure the maintenance of the representational seat requirements, while unexpected Legislative Council vacancies are normally filled by a casual vacancy process which does not require a separate election. The term of parliament is significant for determining the dates of elections. In 2011, the Western Australian Parliament modified the electoral law to set State general elections on the second Saturday in March every four years. Referendums have been part of the history of Western Australia's electoral law, providing for expressions of public opinion on issues. To provide constitutional certainty for a fixed term for both Houses of the Western Australian Parliament it would have been necessary to seek the electorate's approval by way of a referendum, which had become necessary through a 1978 constitutional change.

### Referendums

As the literature suggests 'referendums, as a means of making government decisions or giving legitimacy to them, have a history that is almost as old as democracy'.<sup>393</sup> The referendum procedure was widely used in the path to federation in Australia, and following the 1897–8 Convention a fresh draft of the proposed Constitution was drawn up. The Colonial Governments of New South Wales, Victoria, South Australia and Tasmania referred it to their electorates, where referendum majorities were gained in each of the Colonies except New South Wales, where the prescribed minimum 60 per cent affirmative vote was not achieved. At the 1899 Premiers Conference concessions were made to help accommodate the views of the New South Wales Government and a second round of referenda was held with Queensland voting on that occasion. All five Colonies (with an average 'Yes' vote of 72.41 per cent) accepted the revised Constitutional Draft with

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<sup>393</sup> David Butler and Austin Ranney (1978), *Referendums: A Comparative Study of Practice and Theory*, Washington: American Enterprise Institute for Public Policy, p. 3.

a delegation then journeying to London to seek enactment by the Imperial Parliament, which sought some modifications.

Following ‘persuasive pressure’<sup>394</sup> on the Western Australian Government by the British Colonial Secretary Joseph Chamberlain, the people of Western Australia were given a referendum vote, which took place on 31 July 1900. The then Premier John Forrest had sought to ensure that Western Australia, with some final concessions, entered the Federation as an original State. Soon after, in a letter to Alfred Deakin, Forrest wrote:

I have had great difficulty over this matter – no one knows how difficult. In the Assembly I have had a majority of about 26 to 17 and out of that 26, I have had only two Federalists... However, although I have suffered very much, the Cause is won, and that is my consolation.<sup>395</sup>

The overwhelming support of 92.79 per cent of voters in the Goldfields helped ensure a ‘yes’ vote for federation, but even without this region there remained a small Colony wide majority in favour. Western Australians had voted for a Constitution which could not be formally amended without a proposition being initiated and supported by the Commonwealth Parliament and then endorsed in a nation-wide referendum, with a yes vote in a majority of the States (four of the six). At that stage there was no referendum provision in Western Australia’s constitutional documents, but this did not preclude the use of referendums to provide policy guidance concerning the views of the public to both the Government and Parliament. In fact in the next half century a number of Local Option (Liquor Licence) referendums and two Prohibition Referendums (1921 and 1950) were conducted. In 1921 it was specified that to achieve prohibition 60 per cent of the formal vote cast was required, with 30 per cent of the total number of voters on the roll. The scale of the defeats indicated of the breadth of opposition to prohibition legislation.<sup>396</sup>

### **Secession Referendum (s) 1933**

Arguably one of the most famous referendums in Western Australia resulted from the *Secession Referendum Act 1932*. In 1930, the conservative Premier James (later Sir James) Mitchell, announced support for secession and indicated the proposal would be put to a referendum. Its broad purpose was to obtain the opinion of Western Australians prior to seeking approval from the Imperial Parliament at Westminster for Western Australia to secede from the Commonwealth of Australia and alternatively to secure the holding of a Convention to seek alterations to the Constitution of the

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<sup>394</sup> See account by L.F. Crisp (1983), *Australian National Government*, fifth edition, Melbourne: Longman Cheshire, p. 12.

<sup>395</sup> Cited in Frank Crowley (2000), *Big John Forrest 1847–1918: A Founding Father of the Commonwealth of Australia*, Nedlands: University of Western Australia Press, p. 299

<sup>396</sup> See Appendix 8, *State Referendums in Western Australia*.

Commonwealth. The first question has a substantial literature which will not be examined in this historical overview but before presentation of the referendum statistics it should be recognised that compulsory voting applied for voting at the referendum but was not required of citizens for the Legislative Assembly which was held concurrently on the same day. Compulsory voting legislation, as discussed, was Federal law from 1924 for both the House of Representatives and Senate and for referendums, but was not enacted for the Legislative Assembly until 1936. In the midst of the Great Depression, one problem was the likely cost. The solution was to conduct the referendum on the same day as the General Election for the Legislative Assembly, which was 8 April 1933.

Almost two thirds of electors voted for secession (see Appendix 8). Ironically, Mitchell lost his seat and the election, and was succeeded by Labor's Philip Collier who, although anti-secessionist, petitioned the Imperial Parliament to amend the Commonwealth Constitution to excise Western Australia from the Federation. By May 1935 a Joint Select Committee of the Imperial Parliament reported that it would not amend the Commonwealth Constitution, without the consent of the Commonwealth. It meant that despite the result of the referendum, the State's secession quest was doomed.

### **Other Referendum Proposals**

Some proposals for State-wide referendums have not gained passage through the Parliament. One motion, in 1910, by former Speaker Mathieson Jacoby (1904–1905) was for 'a referendum to ascertain whether the payment of members of the Legislative Assembly should be increased to £300 per annum.'<sup>397</sup> The motion in the House was rejected but it is to be wondered what would have been the fate of parliamentarians' salaries if the precedent had been set for the conduct of a referendum to ratify regular salary rises. Nevertheless, one productive outcome of the debate was passage of an allowance for the position of the Leader of the Opposition.

Another referendum proposal debated at length was a proposal to abolish the Legislative Council in Western Australia. In late 1945, the Minister for Justice Emil Nulsen, introduced the Legislative Council Referendum Bill to allow for a referendum with two questions. The first question read, 'Are you in favour of the abolition of the Legislative Council as a constituent part of the Parliament of the State?' The second question read 'are you in favour of the franchise for the election of members of the Legislative Council being the same as the franchise for the election of the members of the Legislative Assembly?'<sup>398</sup> Nulsen regarded the members in the other place 'as an example of gerontocracy'.<sup>399</sup> He complained that the Legislative Council as

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<sup>397</sup> Parliamentary Debates, Legislative Assembly, 19 October 1910, p. 1040.

<sup>398</sup> Parliamentary Debates, Legislative Assembly, 5 December 1945, p. 2451.

<sup>399</sup> Parliamentary Debates, Legislative Assembly, 5 December 1945, p. 2451.

it was constituted ‘is a contradiction that everything that democracy stands for’.<sup>400</sup>

Nulsen said that ‘Bills similar to this have been before the House on many occasions, and I feel that everyone is fully acquainted with the meaning of the contents of the measure’. He added ‘I do not intend to spend too much time on it, because I consider that it provides for a referendum and decision to be given by the people of this State, and there should be no opposition to it.’<sup>401</sup> To abolish the Legislative Council in 1945 required an absolute majority of the full membership of both the Legislative Assembly and Legislative Council, but did not necessitate a referendum. On this basis the Legislative Council, which was of a different political complexion to the Labor dominated lower House, found a loop-hole and Sir John Kirwan, the President of the Legislative Council, ruled that the Bill had not been passed in the Legislative Assembly for the second and third readings by an absolute majority.<sup>402</sup>

Despite an opinion from the Solicitor General that it would have been legally and constitutionally in order for the Legislative Council to pass the Bill<sup>403</sup> the Government made a decision some nine months later in September 1946, to reintroduce a Bill of the same character. On that occasion it was ensured that the absolute majority criterion was satisfied in the Legislative Assembly. While abolishing the Legislative Council and extending the franchise for the upper House did not require approval by a referendum, the Government had obviously judged that this approach would help to provide democratic legitimacy to the previously unsuccessful 20 or 30 occasions to readjust the relationships between the two Houses of Parliament.<sup>404</sup> Eventually though, the Legislative Council defeated the Bill by a vote of 7 Ayes and 16 Noes.<sup>405</sup>

With the abolition of the Legislative Council still a plank in the Labor platform, coupled with proposals for a republic following the 1975 federal ‘constitutional crisis’, Sir Charles Court’s government took steps in 1978 to strengthen the existing constitutional fabric of Western Australia. Section 73 of the *Constitution Act 1889* was amended requiring both an absolute parliamentary majority in each House and a popular majority by referendum for certain changes (indicated below). Known as ‘double entrenching’ this gave additional status to a constitutional statute as compared with ordinary legislation. A referendum is now required where constitutional changes are proposed that expressly or implicitly provide for:

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<sup>400</sup> Parliamentary Debates, Legislative Assembly, 5 December 1945, p.2453.

<sup>401</sup> Parliamentary Debates, Legislative Assembly, 5 December 1945, p. 2450.

<sup>402</sup> Parliamentary Debates, Legislative Assembly, 11 December 1945, p. 2643.

<sup>403</sup> Parliamentary Debates, Legislative Assembly, 12 December 1945, pp. 2734–2736.

<sup>404</sup> Parliamentary Debates, Legislative Assembly, 13 August 1946, p. 251.

<sup>405</sup> Parliamentary Debates, Legislative Council, 15 October 1946, p. 1271.

- abolition or alteration of the powers of the office of Governor;
- abolition of the Legislative Council or of the Legislative Assembly;
- the Legislative Council or the Legislative Assembly to be composed of members other than members directly chosen by the people;
- a reduction in the numbers of the members of the Legislative Council or Legislative Assembly; and
- matters affecting certain other sections of the Constitution including section 73 itself.

To date no referendums have been held by any government to determine public opinion on any of the above mentioned topics, but the constitutional provisions were in the background during the debates of the 1980s, particularly when the Labor Party sought to reduce the membership of the Legislative Council. This was linked to plans for a proportional representation voting system on a state-wide basis, which would have the outcome of reducing vote weighting in the Legislative Council. As indicated under the heading of 'Fixed Terms', the provisions were a relevant consideration when that change was enacted in 2011. Nevertheless Section 73 was not relevant for the conduct of referendums held to determine public opinion on policy issues. Such referendums can be advisory and not binding on the government. This was the case with four daylight saving referendums in 1975, 1984, 1992 and 2009, together with the extension of retail shopping hours referendum in 2005.

### **Daylight Saving Referendums**

Western Australia has certainly gained some notoriety for the conduct of four daylight referendums over just longer than a quarter of a century. And although detailed statistical reports of the referendums have been produced, some broad features can be observed. Conducted in the first half of the year after specified periods of daylight saving 'trials,' the results on all four occasions yielded a remarkable symmetry in terms of the aggregate rejection of daylight saving, with the no vote being very close to 54 per cent. The overwhelming rejection of the proposition outside the metropolitan area was common to each referendum. Some districts in the Agricultural region had recorded no votes above 80 per cent with this opposition becoming stronger on each occasion. The metropolitan vote was finely balanced for each referendum. The 'Western Suburbs', closer to the beachfronts and located in the North Metropolitan Region, have generally been stronger in their support of daylight saving.

Each referendum has required the WAEC (and its predecessor) to plan and conduct the poll on a state-wide basis separate if necessary from a general election, although the 2009 poll was held conjointly with a by-election for the seat of Fremantle. Moreover, the 1992 daylight saving referendum was held in conjunction with the Ashburton by-election. The 2009 daylight

saving referendum was conducted only seven months after the 2008 General Election, with that administrative exercise embracing all the planning processes and infrastructure as would be required for a general election. Although no candidates were standing, the preparation of yes and no arguments required political involvement, with varied views within political parties. The turnout figures for each of the four referendums were comparable, with 86 per cent being the mode. It is perhaps surprising that each referendum was accompanied by an informal vote, although this had only barely reached 1 per cent on one occasion. In 2009 the informal votes totalled only 4,650 or 0.40 per cent of all of the 519,599 State-wide ballot papers.<sup>406</sup>

In 2009 the informal vote matter was given a public airing with the rules being clarified by the Electoral Commissioner Warwick Gately. A referendum ballot paper was deemed formal if the square was marked with words 'Yes' or 'No'. If the ballot paper was not marked in this way but, in the opinion of the Returning Officer clearly indicated the voter's intention with respect to the question asked, the ballot paper was considered formal. A cross was not regarded as a sufficient indication of belief (either support or opposition). It has been indicated that the use of words or phrases which have unarguable 'yes' or 'no' definitions such as 'negative', 'affirmative', 'agree', disagree, 'in favour', can be interpreted as formal 'yes' or 'no' votes. The use of words which have ambiguous meanings, such as 'no worries', 'no sweat' or 'unsure' cannot be interpreted as 'yes' or 'no' and would make the ballot paper informal. Moreover, the use of number '1' cannot be seen as clearly indicating a 'yes' vote, in fact the use of any number is ambiguous and therefore considered informal.<sup>407</sup>

One widely misunderstood feature of referendums is the process of developing arguments to support or reject a referendum proposition. For the State tier of government, this is currently prescribed in section 9(3) of the *Referendum Act 1983*, which in conjunction with the *Electoral Act 1907* is the basis for referenda governance in Western Australia. The 'for and against' cases for the question are disseminated by the Electoral Commission and then published in the State's newspapers. Although it is widely believed to be the role of the Electoral Commission to prepare the materials, under the legislation it is an obligation, in the first instance, for Members of Parliament to develop the arguments. If they do not provide their arguments it is then necessary for the Electoral Commissioner to approach an appropriate body to fill the void. There is no statutory power

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<sup>406</sup> 2009 Western Australian Referendum on Daylight Saving Report: Perth, Western Australian Electoral Commission, p. 29.

<sup>407</sup> 2009 Western Australian Referendum on Daylight Saving Report: Perth, Western Australian Electoral Commission, p. 103.

for the Electoral Commissioner to alter the arguments presented or to question the partiality of the authors of the two arguments.<sup>408</sup>

To help overcome the problem of delays for the 2009 Daylight Saving Referendum, the Electoral Commissioner was able to gain Government support to have 38 days, rather than 31 days, between the issue of the writ and polling day. Additionally, in early 2009 the Electoral Commissioner provided advice to both the President of the Legislative Council and the Speaker of the Legislative Assembly on the role of members in developing arguments on a referendum question. Nevertheless, the position of the ‘No’ argument was complicated for the 2009 referendum as two ‘no cases were received, one from five National Party members and one from a Labor MLA as an authorising Member of Parliament, and supported by 14 additional members. In such instances the legislation provides that the argument authorised by the greatest number of Members of Parliament should be advertised.<sup>409</sup>

### **Retail Trading Hours Referendum**

On 9 November 2004 the Government announced in a media statement that a Retail Trading Hours Referendum would be held in conjunction with the State General Election to be held on 25 February 2005. While the election had been expected, there was some surprise at the referendum announcement. The only other occasion a state-wide referendum had been held in conjunction with a general election was the Secession Referendum on 8 April 1933, when two questions were also placed before the electors.

For the shopping hours poll it meant that much of the planning process which applied to the general election could also be applied to the referenda. For example voter eligibility was the same as for compulsory voting. The allocation and management of polling places was common to both processes as were the provisions for absent and early voting. Preparation for the general election was in the final phase, but additional issues needed to be addressed by the Commission including statutory advertisements and publications including the ‘yes’ and ‘no’ cases, public education, ballot paper production and the implementation of systems to record the results.<sup>410</sup> One feature of the advertising campaign, for both the election and the referendum, was the targeting of young people in the 20–25 age group.<sup>411</sup>

There was considerable conjecture about the form of the shopping hours questions which read as follows:

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<sup>408</sup> 2009 Western Australian Referendum on Daylight Saving Report: Perth, Western Australian Electoral Commission, p.10.

<sup>409</sup> 2009 Western Australian Referendum on Daylight Saving Report: Perth, Western Australian Electoral Commission, p.10.

<sup>410</sup> 2005 Western Australian Referendum on Retail Trading Hours Report, Perth: Western Australian Electoral Commission, p. 4.

<sup>411</sup> 2005 Western Australian Referendum on Retail Trading Hours Report, Perth: Western Australian Electoral Commission, p. 8.

Question 1. *Do you believe that the Western Australian community would benefit if trading hours in the Perth Metropolitan Area were extended to allow general retail shops to trade until 9pm Monday to Friday?*

Question 2. *Do you believe that the Western Australian community would benefit if trading hours in the Perth Metropolitan Area were extended to allow general retail shops to trade for 6 hours on Sunday?*

The referenda pertained to retail trading hours in the metropolitan area, but voters throughout Western Australia were required to vote on the questions. The no vote for both questions prevailed for electoral regions in Western Australia, except in the Mining and Pastoral Region where a very narrow approval was gained for both weekday and Sunday trading. The most profound no vote for both questions was registered in the Agricultural Region.

An unusual aspect was the break from the normal pattern of merely asking a voter whether or not they supported a proposition. Both shopping hours questions asked voters whether they believed the Western Australian community would benefit from the extension of retail trading hours. While some voters may give weight to the community benefits aspect when casting their vote, in this instance they were explicitly asked to do so. The original draft of the questions did not include the reference to the community perspective.<sup>412</sup> The rationale for this approach was presented to the Legislative Council by Dee Margetts, a Greens (WA) member, who suggested that the public was merely being asked to give an opinion about a National Competition Council Review which was seeking to deregulate trading hours in Western Australia. The participants in the Review had mainly been industrial community groups and suppliers as well as large corporate super markets and the Property Council of Australia. Margetts argued that the push for extended retail shopping hours did not come from the community and it was this perspective which needed to be sought in what she preferred to call a plebiscite rather than a referendum.<sup>413</sup> Not surprisingly the 'No' case for presentation to the public was presented by a member of the Greens, while the 'Yes' was presented by a member of the ruling Labor Party.

In any event, the outcome did not curtail the political debate on shopping hours. In some circles the validity of the outcome was challenged on the basis of the inclusion of the 'community interest' clause. As Premier Colin Barnett told the Legislative Assembly when tabling the Retail Trading Hours Amendment Bill 2009 to extend shopping hours:

The former Labor Government did not address the issue of retail trading hours. Instead of making a decision, it instigated a

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<sup>412</sup> Parliamentary Debates, Legislative Council, 12 November 2004, p. 8130.

<sup>413</sup> Parliamentary Debates, Legislative Council, 23 November 2004, p. 8391–8394.

referendum on the matter that included an obscure question relating to the benefits to the Western Australian community of excluding retail trading hours...<sup>414</sup>

The Premier's position was in concert with campaign promises made by the Liberal Party for the September 2008 election. It did mean that the referendum result was being cast aside. Then when Mark McGowan became Leader of the Opposition in early 2012 he quickly indicated that if his Labor Party was to win government he would move to extend Sunday trading hours which was being widely debated in the community. Those who based their opposition to Sunday trading on the results of the 2005 referendum had seemingly lost the debate. This was confirmed when new legislation for extended shopping hours for week nights and Sundays, effective from 26 August 2012, was passed by the Parliament. Soon, too, Colin Barnett was able to gain a parliamentary consensus to introduce a fixed four year term of parliament. To facilitate that legislation a decision was made to avoid a referendum as a means of changing the constitutional documents.

### **Term of Parliament**

One of the features of the Westminster constitutional model, as translated to Western Australia, had been the capacity of the Premier to advise the Governor as to election date for the Legislative Assembly within the provisions for the maximum length of each term of parliament. Originally, in 1890 the maximum term for the Assembly was three years, then it was changed to four-year terms between 1894 and 1899. After a long period of three-year terms, a range of constitutional amendments in 1987 resulted in four-year maximum terms for the Legislative Assembly, and fixed four-year terms for the Legislative Council.

The general pattern in Western Australia was for the Legislative Assembly to complete its full term of three (or four) years. Premier Richard Court effected a minor deviation from tradition and called an election for 14 December 1996, when the 34<sup>th</sup> Parliament would have expired in the following February. This meant the newly elected Legislative Council members would not take their seats until 22 May 1997. Around this time there were moves in other States and Territories, as well as Western Australia, to deny Premiers (or Chief Ministers) the flexibility of nominating an election date.

Fixed-terms had been implemented in New South Wales, Victoria, South Australia, the Northern Territory and Australian Capital Territory when in 2003 the Electoral Affairs Minister in the Gallop Labor Government Jim McGinty moved for a fixed-term for Western Australia. McGinty contended it would 'provide certainty to electors in knowing that ordinarily, the Premier of the day cannot make political mileage out of calling an election

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<sup>414</sup> Parliamentary Debates, Legislative Assembly, 17 June 2009, p. 5160.

merely to suit the convenience of the Government of day'.<sup>415</sup> The changes were to set the date for elections as the third Saturday in February every four years and changing the expiry date of the Legislative Council to 21 March each election year. This would minimise the gap between the election, and members of the Council taking up their seats. The provisions were also to require the elections for the Council to be held on the same date as the Assembly, unless it was earlier dissolved by the Governor.

When progress was stalled on the fixed-term proposal, as it was part of a range of other provisions designed to make the conduct of elections more efficient and timely, an Independent member Larry Graham introduced a Private Member's Bill on the matter. Graham's Bill was not progressed despite the fact that he felt that the current election speculation in October 2004 was having a 'debilitating effect'<sup>416</sup> on the State.

When Premier Alan Carpenter called an early election for September 2008, ahead of an expected February 2009 date, he was widely condemned for taking advantage of the constitutional scope for a snap poll. The Liberal Party then went to the 2008 election with a fixed-term as part of its platform for its first 100 days in government. Following his electoral victory, the Liberal Party Leader Colin Barnett, who had formed an Alliance Government with the National Party, introduced a fixed-term proposal to the Parliament in 2011.

The decision to consult with other parties, plus the realisation that some constitutional conundrums had to be addressed, delayed the changes. The Minister for Electoral Affairs Norman Moore, when introducing Electoral and Constitutional Amendment Bill 2011, reminded members that fixed-terms prevailed in New South Wales, Victoria and South Australia, as well as the Northern Territory and Australian Capital Territory. In his opinion:

Fixed-term elections will provide certainty for electors; facilitate better enrolment of citizens who are disadvantaged by the calling of snap elections; provide the business community with certainty; provide certainty in planning for electoral administrators, and therefore cost efficiency; offer more effective planning in the parliamentary and policy process; and to remove the partisan political advantage of governments in manipulating election dates.<sup>417</sup>

Moore's initial draft was based upon the window of February – March being the period in which the election could be held. In seeking feedback from the political parties there was some support from Labor for a November date or even the third Saturday in February.<sup>418</sup> Greens (WA) MLC Alison Xamon

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<sup>415</sup> Parliamentary Debates, Legislative Assembly, 20 November 2003, p. 13496.

<sup>416</sup> Parliamentary Debates, Legislative Assembly, 20 October 2004, p. 6973.

<sup>417</sup> Parliamentary Debates, Legislative Assembly, 16 March 2011, p. 1397.

<sup>418</sup> Parliamentary Debates, Legislative Council, 14 April 2011, p. 3051.

was strongly supportive claiming the ‘electorate does not want premature elections’.<sup>419</sup> It would also contribute to good election planning, particularly for the WAEC, enabling it to target voters who may not be seeking to vote at a given election.

Eventually the government chose to fix the date for a four-year term of government as the second Saturday in March, beginning on 9 March 2013. The date for Legislative Council general elections was also fixed for the second Saturday in March every four years, and provided for a conjoint election to occur when the Assembly was dissolved or expired after the 1<sup>st</sup> of November in the year prior to a Legislative Council election. ‘Due to constitutional complexities’, it was indicated by the Electoral Affairs Minister, ‘that, any attempt to fix a date for a Legislative Assembly election would require an absolute majority of both Houses of Parliament and a state-wide referendum’.<sup>420</sup> Nevertheless it was judged that in practical terms a fixed date had been encouraged for both Houses although there was a provision for a deferment which, for instance, may be occasioned by a federal election. In summary though, the traditional expectation of parliaments serving their full terms, obviously broken in 2008, had been restored. Nevertheless, by-elections which have been an integral part of Western Australian electoral law were still going to be necessary.

### **By-elections**

Vacancies are bound to occur during the tenure of a parliament. They cannot be left unfilled without denying a constituency representation and possibly affecting the balance of power in the legislature. By-elections occur at unpredictable intervals between general elections although they have been deemed to be among the desirable criteria for a representative system as it ‘has the advantage of giving some indication of the current state of opinion’.<sup>421</sup> For instance, in colonial times it is sometimes recalled that the conduct of a three by-elections in the late 1880s confirmed public support for the seeking of the important step towards responsible government.

Since responsible government in 1890, in the Legislative Assembly there have been 161 by-elections (until the end of the 39<sup>th</sup> Parliament).<sup>422</sup> The number has been influenced by a constitutional provision, which until 1947 required any member appointed as a Minister to again contest a by-election if opposed by a candidate.<sup>423</sup> This occurred on 19 occasions although only on four occasions has it been recorded that an appointed Minister then lost

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<sup>419</sup> Parliamentary Debates, Legislative Council, 14 April 2011, p. 3054.

<sup>420</sup> Parliamentary Debates, Legislative Council, 16 March 2011, p.1397.

<sup>421</sup> Mackenzie (1967), *Free Elections*, pp.69–71.

<sup>422</sup> See Appendix 6, ‘Legislative Assembly: By-Elections.’

<sup>423</sup> See Parliamentary Debates, Legislative Assembly, 4 September 1947, pp. 571–573.

their seat.<sup>424</sup> Death has accounted for 52 by-elections (a figure much lower in modern parliaments), but the greatest number of 80 by-elections have been due to resignation, often during a period of political party instability such as the fourth parliament between 1901 and 1904, as well as the 1914 to 1917 war-time parliament.

There was another spate of resignations between 1986 and 1993 during the so-called 'WA Inc' period. This resulted in the Commission on Government (COG) considering the matter. Public submissions were presented to COG about the cost of 'premature' vacancies, and in an age of cost recovery, COG investigated how difficult it would be to prove a member was resigning without good reason. However, in a climate of widespread criticism of the scale of superannuation entitlements for politicians (thought to have contributed to some members resignations), COG recommended:

that legislation should be introduced to impose a financial penalty on members of parliament who resign without just cause. This penalty should be taken from a member's superannuation fund or other entitlements.<sup>425</sup>

The COG recommendation was not implemented. It became apparent that it would be difficult to prove that a member was resigning without good reason. Nevertheless there was a decrease in the incidence of by-elections. One feature of modern by-elections is the publicity that usually accompanies such contests, which can provide an immediate profile for the victors. It is probably not without co-incidence that three of the last four Premiers in Western Australia, namely Richard Court, Geoff Gallop and Colin Barnett, and several leading ministers, entered Parliament with by-election victories.

The nomination of the three future Premiers mentioned above, was undertaken with a realisation that they were contesting 'safe seats'. However, even in safe seats it is contended that there is often a swing against the incumbent government. As Western Australian electoral expert Jeremy Buxton once noted:

it is popularly assumed that "by-elections go against governments" because they provide an obvious means of chastising the ruling party in a Westminster system without usually imperilling its hold on Office; moreover, there is often an emphasis on local issues and

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<sup>424</sup> Ministers who lost their seats with ministerial by-elections were Frank Wilson, MLA on 21 November 1901; Matthew Moss, MLC, on 6 December 1901; Frederick Morehead, MLA, 10 December 1901; and John Scaddan, MLA on 28 June 1917.

<sup>425</sup> Report No. 1, Commission on Government, Perth: Western Australia, p. 322. The superannuation benefits were later reduced.

deficiencies for which electors are more likely to blame a government than an opposition.<sup>426</sup>

As a general proposition there is some support for the claim ‘that by-elections go against governments’ but the calibre of the candidates and regional factors are also important, particularly in recent years. Another by-election feature has been the decline of turnout despite the fact that the compulsory voting law prevails for registered voters in the district in the same manner as for a general election. One interesting feature of the history of by-elections in Western Australia arises from the fact that several have been required by the Court of Disputed Returns. The next chapter is focussed upon the Court of Disputes Returns and Higher Court decisions and electoral law.

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<sup>426</sup> Jeremy Buxton (1977), ‘Western Australian Electoral Politics in the 1960s: Being an Analysis of Voting Figures and Parliamentary Debates through the years 1959 to 1971’, p. 155.

## Court of Disputed Returns and Higher Courts

In 1899 an Act was passed to consolidate and amend the law relating to Parliamentary Elections. The quest for greater purity of elections has led to a plethora of amendments to the electoral law of Western Australia and while the changes are not fully discussed here, this chapter focuses on challenges to electoral results by way of cases before the Court of Disputed Returns, and some important State Supreme Court and High Court Cases.

There are few specialist practitioners in electoral law, with some commenting that 'it would be impossible to earn a living from a discipline so intermittent and episodic'.<sup>427</sup> To assist electoral officials in the task of responding to challenges to the electoral outcomes, the WAEC commenced (in 1988) the compilation of a legal opinions register. This had involved abstracting and indexing the 107 opinions and 9 judgments on the administration of the Electoral Act given by the Crown Law Departments or Courts of Disputed Returns respectively since 1914 to that date.

This chapter concentrates on the main recorded Courts of Disputed Returns decisions as well as the key State Supreme Court and High Court decisions from 1901 onwards. It does not, however, encompass the scores of legal opinions that have necessarily been sought by the Electoral Department or WAEC to assist in the administration of the State's electoral laws.

### The Court of Disputed Returns

The *Electoral Act 1899* created a Court of Disputed Returns. That Court consisted of two judges of the Supreme Court, until the 1904 Act conferred a Court of Disputed Returns before a *single* Judge. The limited number of cases coming before the Court of Disputed Returns is partly attributable to the hurdles which have to be overcome in bringing such a case. Petitioners (usually losing candidates) disputing the validity of any election must lodge the action within 40 days of the return of the writ, must set out the facts relied on to invalidate the election, pay a deposit and also risk that costs be awarded against them. The judgments have not always been accompanied by clearly outlined reasons, but some provided a detailed resume of the

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<sup>427</sup> Stephen Gagler (2003), 'The Practice of Disputed Returns for Commonwealth Elections', in Graeme Orr, Bryan Mercurio and George Williams (2003), *Realizing Democracy: Electoral Law in Australia*, Annandale: Federation Press, p. 186.

circumstances of the void elections. Where possible, a brief coverage of the highlights of important recorded cases is presented below.

### **1905/1906: Holmes/Angwin**

At the 1904 election Labor's William Angwin defeated the sitting Ministerialist member Joseph Holmes by a majority of 141 votes for the seat of East Fremantle. Just one year later Holmes reversed the result to claim victory by a mere 20 votes. Angwin petitioned against the result to the Court of Disputed Returns, which in its judgment on 24 October 1906, declared the result void and ordered a by-election for 13 November 1906.

Subsequently Angwin won easily against a new Ministerialist candidate, Thomas Smith. On that occasion Angwin won convincingly by 882 votes before going on to be un-opposed at the 1908 election.

A major development accompanied the *Angwin v Holmes* decision when an appeal was made to the High Court and heard by Justices Griffiths, Barton and Higgins. The Justices, however, were unanimous in declaring that such a case was not within their jurisdiction, largely due to their interpretation of section 73 of the Australian Constitution, which gave the High Court power over 'judgments, decrees, orders and sentences...of the Supreme Court of any State'. The main basis of the rejection of the claim was that while the Court of Disputed Returns consisted of a judge of the Supreme Court of Western Australia, it was not the Supreme Court. It was also observed that section 167 of the Act stated that 'all decisions of the court shall be final and conclusive without appeal and shall not be questioned in any way'.

The Justices concluded that they had no jurisdiction to entertain such an appeal and that it 'should be dismissed'.<sup>428</sup> Indeed, from its early foundation the High Court regularly avoided hearing appeals from the various States and perhaps expectedly, no appeals have since gone to the High Court from the Court of Disputed Returns in Western Australia.

### **1906: Brown/Carson**

At the October 1905 election, Ministerialist Henry Carson narrowly won the seat of Geraldton by 25 votes after receiving 577 votes against his opponent, Thomas Brown, an ALP candidate. However, a petition against the return of Carson was upheld by the Court of Disputed Returns, where it was proved that certain electors enrolled on the Geraldton roll had voted, but were in fact residing in the Greenough District. The seat was declared vacant with a by-election scheduled over a year later in November 1906, with Brown and Carson again the candidates. On this occasion Brown was the victor by only 19 votes but when the pair nominated again in 1908, with the addition of another Ministerialist, Carson won with the comfort margin of 47 votes.

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<sup>428</sup> Holmes v Angwin (1906), 4CLR, pp. 297–306.

### **1908: Carson/O'Brien**

At the 13 May 1908 Central Province election sitting MLC Bartholomew O'Brien and his opponent Henry Carson achieved the same number of formal votes (564). As a result of the returning officer's casting vote, the incumbent O'Brien was declared elected. However, when the result went before the Court of Disputed Returns, Justice Parker dismissed the petition contending that the ten votes brought before him to assess their validity could not be allocated to Carson as they were in effect invalid (largely because voters used both crosses and numerals under the new preference voting laws). So, despite the tied vote and the role of the returning officer, the Court did not declare the vote as void<sup>429</sup> and O'Brien took up his position in the Parliament.

### **1908: Gregory/Buzacott**

Ministerialist candidate Henry Gregory was elected as the inaugural member for Menzies in 1901. He had narrowly held the seat, except for a comfortable win in a Ministerial by-election in 1905. Gregory's regular opponent was Labor's Richard Buzacott. Eventually, at the 1908 election Buzacott broke through to win by only 7 votes. However, Gregory petitioned the Court of Disputed Returns and the election was declared void on 2 November 1908. A few weeks later on 28 November Henry Gregory was again successful with a 56 vote majority, but was to eventually suffer a comparatively heavy loss in the Labor landslide of 1911 to John Mullany.

### **1916: Hamersley/McCabe**

The periodic Legislative Council elections had rarely occasioned the need to establish a Court of Disputed Returns. The high rate of members being elected unopposed suggested that the electoral environment in the Upper House was often not as competitive as in the Lower House. However, at the May 1916 election for the Legislative Council, the Liberal Party's Vernon Hamersley tied for East Province with the new Country Party candidate, Michael McCabe, on 1651 votes. The returning officer gave the casting vote to the incumbent Hamersley, but the Court of Disputed Returns declared the election void. Later, in a by-election on 2 September 1916, Hamersley comfortably defeated his rival.

From 1921 Vernon Hamersley became the Father of the Legislative Council, a title he was to hold until his retirement in 1946, giving him the (still unbroken) record term of 42 years, 2 months and 19 days. The Court of Disputed Returns was important in retaining Hamersley's long continuous tenure in the province, but in fact the decision was subject to further legal action as McCabe petitioned the Supreme Court with an appeal. However, following the 1906 precedent set in the High Court's *Holmes v Angwin*, the Supreme Court ruled out the appeal.<sup>430</sup>

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<sup>429</sup> See State Electoral Department: Legal Opinions, Carson and O'Brien, 29<sup>th</sup> July 1908.

<sup>430</sup> See State Supreme Court, 'Hamersley v McCabe', 17 July 1916.

### **1934: Franklin/George**

The contest for the Legislative Council's Metropolitan Province in May 1934 was bitterly fought, and was accompanied by several reports of irregular practices. On the first count both the sitting member James Franklin and his main challenger James George, with both standing for the Nationalist Party, received 1,991 votes each. After the distribution of another candidate's 1,093 votes (Labor's Joseph Levy) the majority for George was 315. Franklin had previously failed in three quests to enter the Assembly, but had an extensive record of electoral success in Local Government, particularly as Mayor of Perth and as the sitting member for Metropolitan Province. Nevertheless, the result heralded a change of fortune for George, a perennial candidate for both State and Federal politics. In a bitter twist, George took his seat in the Council and delivered his Maiden Speech, before the Court of Disputed Returns declared Franklin the winner, with costs declared against George and his solicitor.

In petitioning the Court of Disputed Returns Franklin claimed that two postal vote officers, conspiring with George's electoral agent, took between them 377 postal votes, all of which were in favour of George. Of these, 144 were said to be forgeries and 200 more were 'irregular'. As this election had not been declared void there was no subsequent by-election to test the electoral results of the Province or the decision of the Court of Disputed Returns<sup>431</sup>

### **1944: Boyle/Telfer**

The November 1943 election for the seat of Avon resulted in a narrow 15 vote win for Labor's sitting member Bill Telfer against the Country Party member Ignatius Boyle. In a brief decision dated 24 May 1944 Justice Dwyer ordered the election void.<sup>432</sup> The main thrust of that decision was the invalidity of 40 postal votes and a further 31 votes by reason that they were the votes of members of the armed forces, who were not normally residents of the Avon district. Further, Boyle's claim that 251 out of 256 votes polled by members of the forces were invalid because they had not complied with an age declaration requirement of the *Electoral (War Time) Act 1943* was dismissed by the Court. When the necessary by-election was held on 1 July 1944, Telfer increased his majority to 298 votes.

### **1947: Taplin/Hegney**

In another brief decision Justice Wolff declared the 1947 election of Labor's William (Bill) Hegney for the District of Pilbara to be void. Hegney and his opponent Leonard Taplin (standing as an Independent), had both remarkably obtained 234 valid votes after 12 votes had been set aside as informal. As the tied vote required the casting vote of the returning officer the decision was made in favour of the incumbent member Hegney who was

<sup>431</sup> See Court of Disputed Returns (CJ Northmore) 21 November 1934.

<sup>432</sup> Court of Disputed Returns (Justice Dwyer) (1944), Ignatius Boyle/William Telfer.

first elected in 1939. In a by-election on 2 August 1947, Hegney won with a majority of 31 votes. Interestingly, the turnout at the by-election (at which there were only three informal votes) was higher at 78.26 per cent compared with the March 1947 General Election of 73.62 per cent. It appears that Hegney then opted for a safer district, as at the 1950 General Election he comfortably won the metropolitan seat of Mount Hawthorn and became a Minister in Bert Hawke's Labor Government in 1953.

### **1962: Owen/Dunn/Metcalf**

The Court of Disputed Returns again convened after Liberal Keith Dunn had won the seat of Darling Range at the 1962 general election by a majority of 986 votes. Although this majority appeared to be very comfortable the first count had resulted in Dunn receiving 1890 votes, with ALP revival Jack Metcalf receiving 1969 votes and Country Party candidate Ray Owen with 1889 first preferences. Owen was successful in his bid to obtain a ruling that because the electoral roll used for the election was inaccurate the result was void. In a brief judgment Justice Francis Burt ordered a by-election subsequent to necessary amendments to the electoral roll.<sup>433</sup> The fresh election, conducted on 22 June 1962, with the same three candidates, resulted in victory for Dunn. Again the first preference count was close but the final majority for Dunn was narrowed to 534 votes.

### **1977: Bridge/Ridge/Rees**

One of the State's most controversial Court of Disputed Returns decisions followed the February 1977 General Election result for the seat of Kimberley. Coalition Health Minister Alan Ridge had secured a narrow 93 vote victory over the ALP's Ernie Bridge after the primary votes had been cast. There was keen interest in the performance of the popular Bridge who was seeking to become the first Aboriginal person to be elected to the Western Australian Parliament.<sup>434</sup> Objections to the result, totalling 13 in all, were lodged by Bridge, although the matters fell broadly into four categories of allegations, specifically the:

- irregularities arising out of acts of commission or omission on the part of electoral officials at seven of the 21 polling stations within the district;
- failure of the Chief Electoral Officer to provide sufficient polling stations and electoral staff and to instruct adequately and in a uniform

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<sup>433</sup> Court of Disputed Returns (Justice Burt) (1962), Raymond Owen, Kenneth Dunn, Jack Metcalf.

<sup>434</sup> Other legal sagas also took place. Ernie Bridge was awarded damages against *The West Australian*. John Tozer, a Liberal MLC was also required to make a public apology to an ALP party worker who had sued for libel. See Ted Watt (1979), 'Western Australia', *Australian Journal of Politics and History*, Vol. 25, No. 1, p. 105. See Court of Disputed Returns (Justice Smith), (1971), Ernest Francis Bridge, Keith Alan Ridge and Allan Robert Louis Rees.

manner the electoral officials at seven nominated polling stations as to the performance of their duties;

- illegal practice by persons purporting to act as scrutineers for Alan Ridge at two polling stations; and
- unlawful interference at the Kununurra Polling Station by a member of the Police Force.<sup>435</sup>

With many sittings the hearings were given wide publicity with much focus upon the Liberal Party's electoral tactics for the Kimberley seat.<sup>436</sup> Justice Smith canvassed what he regarded as some of the common law principles of elections and citizenship and eventually, in early November 1977, the Court ordered the election void with a by-election soon called for 17 December. Once again Ridge was narrowly victorious and he was soon re-instated to the Ministry. However, at the 1980 General Election Ernie Bridge reversed the result with a defeat over Ridge.

Some of the issues aired at the Court of Disputed Returns had been kept in the public mind when Sir Charles Court's government was accused of controversially challenging the settled policy of universal franchise for all adults. A Bill, tabled on 9 November 1977,<sup>437</sup> and 'guillotined' through the Assembly, limited the capacity of voters deemed to be illiterate, or with certain physical conditions, to cast a vote and was in some quarters viewed as a measure to effectively limit the franchise of Aboriginal voters. The Government of the day was accused of bad sportsmanship and even 'racism'<sup>438</sup> until the Bill was finally defeated in the Legislative Assembly on the casting vote of Speaker Ian Thompson. On that occasion, four National Country Party members and all the Labor Members voted against it, with one Liberal abstaining. Thompson expressed hope that the Government would soon do something to clarify its position with respect to illiterate voters as both parties had engaged in what he termed 'manipulation'.<sup>439</sup> Nevertheless, much was done by the Electoral Department during both the by-election and the General Election to help alleviate the problems which had emerged in the parliamentary debates and Court of Disputed Returns.

### **1983: Herzfeld/Troy/Coates**

The next Court of Disputed Returns case heard before Justice Brinsden concerned a challenge by Tom Herzfeld, who had been the MLA for Mundaring from 1977. The reference to Coates emanates from the fact that

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<sup>435</sup> Court of Disputed Returns: Justice Smith (1977), Ernest Francis Bridge, Keith Alan Ridge and Allan Robert Louis Rees, p. 3.

<sup>436</sup> See Ted Watt (1978), 'Western Australia', *Australian Journal of Politics and History*, Vol. 24, No. 1, pp. 109–110.

<sup>437</sup> Parliamentary Debates, Legislative Assembly, 9 November 1977, pp. 3488–3490.

<sup>438</sup> Ted Watt (1978), 'Western Australia', *Australian Journal of Politics and History*, Vol. 24, No. 1, p. 109.

<sup>439</sup> Parliamentary Debates, Legislative Assembly, 15 November 1977, p. 3520.

he (Doug Coates) was the Chief Electoral Officer for the 1983 election. After the distribution of preferences at the 1983 election the ALP candidate Gavan Troy was elected to the seat of Mundaring with a narrow majority of 16 votes. Justice Brisden sought to make it clear that his decision was ‘in no way dependent upon any findings adverse to the credit of either Herzfeld or Troy’ as the decision was based on a consequence of errors by officers of the State Electoral Department, permanent or temporary’. The election was declared void for that seat, and Brisden hoped ‘that the accuracy of the count in the future would not be sacrificed to speed’. The subsequent by-election was again close, but with two additional candidates Troy achieved an absolute majority of 45 votes to hold the seat.

**1989: J Clifford (Whitford); JB Read (Mandurah); BJ Hodge Melville); EA Ridgway (Swan Hills); BD McLean (Murray); F Harrop (Whitford); BA Cooper (Wanneroo); ONB Oliver (Swan Hills); KD Hames (Perth); TJ Tyzack (Dianella)**

There was a marked jump in petitions to the Court of Disputed Returns after the 1989 State General Election, arguably related to the 1987 amendments to legislation, including the establishment of the Western Australian Electoral Commission as a new statutory authority, or perhaps as a reflection of a more litigious society. Ten petitions were lodged on 12 April in respect of eight districts in the Legislative Assembly. Although the grounds on which the petitions were made included some 25 grounds in the conduct of the poll, no results were declared void.<sup>440</sup>

The most publicised of the petitions were those relating to the seat of Whitfords won by Pam Beggs and the seat Wanneroo won by Jacqueline Watkins. In these petitions, the unsuccessful candidates alleged that Beggs and Watkins, both ALP candidates, committed ‘bribery’ by offering free food and beverages to the public at what was called the Australia Day ‘Free Family Sausage Sizzle’, held on 28 January 1989. It was claimed at that time that the only known case of bribery in parliamentary elections in Western Australia had dated back to 1872.

Delays over the production of documents took place in the Whitfords and Wanneroo cases involving Beggs and Watkins and at one stage there was the prospect of criminal prosecution before a magistrate in the criminal jurisdiction of the Court of Petty Sessions. This had been the subject of various public press statements in August 1989 and January 1990, although no criminal prosecution eventuated, with the election results for Beggs and Watkins being finally confirmed by Justice Pigeon.<sup>441</sup> Perhaps wisely, the

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<sup>440</sup> See Annual Report (1990): Western Australian Electoral Commission, Perth: Western Australia, Appendix D ‘Summary of Petitions’, pp. 52–57.

<sup>441</sup> See Annual Report (1991): Western Australian Electoral Commission, Perth: Western Australia, Opinion of J. Pigeon (Court of Disputed Returns), pp. 49–50.

dispute did not move to either full State Supreme Court or High Court jurisdiction.

## Higher Courts

Although the Court of Disputed Returns has been the jurisdiction to determine the validity of election results, other decisions of the Supreme Court and the High Court of Australia have been important in the evolution of electoral law in Western Australia. The essence of some of the most significant decisions are mentioned below although most were closely bound to the concerted quest to win ‘one vote one value’ in the State, with some reference already made to these in Chapter Three. In fact, the cases of *Wilsmore v Western Australia* (1979–1982) temporarily threatened the very foundation of electoral law in Western Australia.

### McKinlay v The Commonwealth (1975)

Supporters of the ‘one vote one value’ cause had drawn much of their inspiration from a series of landmark Supreme Court cases in the United States of America which had forced legislators to reduce rural vote weighting. Given that Section 24 of the Commonwealth Constitution, which read as ‘directly chosen by the people’, was based on the United States Constitution phrase ‘chosen by the people’, it is perhaps not surprising that ‘one vote one value’ advocates were prompted to consider that the equity of voting may also receive support in Australian courts.

The term ‘directly chosen by the people’ came before the High Court of Australia in 1975 in the *McKinlay v The Commonwealth* case when it was contended that Section 19 of the *Commonwealth Electoral Act 1918* (which permitted a variation of 10 per cent above and below a set quota for divisions in each State) was invalid as it did not provide that the value of an elector’s vote should be as nearly as practical equal to a vote in another electoral division. The High Court rejected the argument that the Commonwealth law was inconsistent with the meaning of ‘directly chosen by the people’ and although the judges thought ‘something approaching numerical equality was important, it was not something that was necessarily found in the Constitution as a guarantee of representative democracy’.

Later, an analysis of the decision by constitutional lawyer Peter Johnston indicated ‘that there were five [out of seven] Justices... prepared to countenance the possibility that malapportionment could, in extreme circumstances, constitute a basis for invalidity’. In relation to normal electorates though, the operation of a 10 per cent margin above or below a population quota was not regarded as infringing any implied constitutional guarantee.<sup>442</sup>

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<sup>442</sup> Peter Johnston (1991), ‘Freeing the Colonial Shackles: The First Century of Western Australia’s Constitution’, in David Black (ed). *The House on the Hill: A History of the Parliament of Western Australia, 1832–1990*, p. 327.

## Wilsmore versus Western Australia 1979–1982

In 1979 the *Electoral Act 1907*, had been amended in a number of respects. One amendment was that persons detained in custody (under section 653) of the Criminal Code 1913, who had previously been entitled to vote if they could prove they were sane, were henceforth disqualified from being entitled to vote in State elections. Peter Johnston has comprehensively covered the case of a Fremantle prisoner, Peter Wilsmore, which briefly threatened ‘to shake the constitutional foundation of the State’.<sup>443</sup> Wilsmore had established his right to vote in Federal elections by satisfying a magistrate that he was *no longer* of unsound mind, and then sought to enrol for State elections but was beaten to the punch by the amendment, which led to the Supreme Court challenge. Remarkably Wilsmore’s first move was to seek an interlocutory injunction to prevent the 1980 election, but after a short hearing before Chief Justice Sir Francis Burt, that discretionary relief was denied.

When the substantive hearing came before Justice Brisden, counsel for Wilsmore argued that the amendment affected the constitution of both Houses and according to section 73(1) of the *Constitution Act 1889* such a change required an absolute majority of elected Members in each House. As an absolute majority had not been achieved with *Electoral Act Amendment Act 1979*, a decision was made in Wilsmore’s favour. In fact, there had been no declaration of an absolute majority for the 1970 Act, which granted the vote to 18 year olds, nor the 1973 legislation which made 18 to 21 year olds eligible for election to Parliament. This led to speculation concerning the validity of laws passed after these constitutional amendments, and possibly a great number of those which had preceded them.

There was an appeal to the Full Supreme Court, and then an appeal to the Privy Council was declared incompetent, until finally, in April 1982 the High Court ended more than two years of uncertainty when it unanimously upheld the Government’s appeal, insisting that only amendments to the actual *Constitution Act 1889* should be subject to the absolute majority criterion. Although there was a judicial resolution in the Wilsmore case, the constitutional section 73 absolute majority criterion again came to bedevil the Government, when under Premier Gallop the Labor Government attempted to legislate for its cherished ‘one vote one value’ platform.

## Burke v Western Australia (1982)

The pronouncements of the Justices in the McKinlay case, and an amendment to the Western Australian Constitutional documents in 1978 to include the phrase ‘directly chosen by the people’, tempted the Labor Party

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<sup>443</sup> See Peter Johnston (1991), ‘Freeing the Colonial Shackles: The First Century of Western Australia’s Constitution’, in David Black (ed). *The House on the Hill: A History of the Parliament of Western Australia, 1832–1990*, p. 320. See pp. 318–325.

to seek ‘one vote one value’ by judicial review. In 1982 the Leader of the Opposition, Brian Burke, challenged vote weighting in the Supreme Court of Western Australia. In the ALP’s view, malapportionment in Western Australia was of such magnitude that the Supreme Court would certainly decide that the notion of ‘direct choice by the people’ was infringed. However, the Full Court of the Supreme Court rejected this perspective, and as stated by the Chief Justice:

*It may well be that the distribution of electors in the geographical area will be so unequal as to offend one’s notion of fairness or to offend one’s understanding of the idea conveyed by the words ‘representative democracy’, but that is not to say that it offends against the idea of the sub-section conveyed by the words used which to me simply is that members be chosen and that they be chosen directly and that they be chosen directly by the people, that is to say in the context of an adult universal suffrage by the people qualified to vote within the member’s electorate.<sup>444</sup>*

The Chief Justice was contending that, provided members of each House were elected directly and did not win their parliamentary seats by virtue of an indirect collegiate system such as that used to elect the President of the United States, or were appointed like members of the House of Lords, the marked variations of electors between provinces and districts following successive redistributions did not contravene being chosen directly by the people. Offending a notion of representative democracy was not a sufficient condition to rule a redistribution *ultra-vires*. In taking this approach constitutional lawyer Peter Johnston observed how:

*The Chief Justice probably came closest to the reality of the matter by pointing out that from the outset in 1889 the Constitution Act had countenanced electoral malapportionment and ever since in Western Australia it had been a persistent feature of the State parliamentary system. It would have been extraordinary, then, if in 1978, a concept of direct choice by the people requiring some measure of electoral equality, had been introduced into the Constitution Act, but the Parliament had not seen the need for consequential adjustments in the prevailing electoral system to comply with the change.<sup>445</sup>*

### **McGinty & Ors v State of Western Australia (1996)**

Despite these apparent setbacks, the desire to achieve ‘one vote one value’ remained a high priority in sections of the ALP. One vehicle to achieve the quest was the so-called McGinty Case in which the plaintiffs were Labor

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<sup>444</sup> Peter Johnston (1991), ‘Freeing the Colonial Shackles: The First Century of Western Australia’s Constitution’, in David Black (ed). *The House on the Hill: A History of the Parliament of Western Australia, 1832–1990*, p. 323.

<sup>445</sup> Peter Johnston (1991), ‘Freeing the Colonial Shackles: The First Century of Western Australia’s Constitution’, in David Black (ed). *The House on the Hill: A History of the Parliament of Western Australia, 1832–1990*, pp. 327–328.

members of the Legislative Assembly and Legislative Council of the Western Australian Parliament. The basic premise of the challenge was the disparity between the number of enrolled voters in the metropolitan districts compared to the number of enrolled voters in the country districts. The *Acts Amendment (Electoral Reform) Act 1987* had unevenly divided electorates and culminated in a situation where at the 1993 election one North Metropolitan electorate had 34,161 voters, compared to a Mining and Pastoral electorate which had 9,097 voters.

Encouraged by the views expressed by some of the Justices in the aforementioned *McKinley v The Commonwealth* case and in the *Stephens v Western Australian Newspapers (1992)* case, whereby the majority of the full court held that the concept of representative democracy was embodied in the Commonwealth Constitution, it was contended there was an implied freedom of communication about political matters. This led the plaintiffs in the McGinty Case to postulate that the concept of equality of voting power (one vote one value) must also be implied, since State constitutions were, by virtue of section 106 of the Commonwealth Constitution, made subject to the latter Constitution, and any implied limitation arising from it must bind the State Legislatures.

However, the High Court, much to the chagrin of, and cost to the Labor Party, reversed the trend of finding implied rights and held by a majority of 4:2 that the Constitution(s) did not imply that one vote must mean one value. Chief Justice Brennan found that the Commonwealth Constitution did not contain any implication ‘affecting disparities of voting power among the holders of the franchise for the election of members of a State Parliament’.<sup>446</sup> Justice Dawson noted in fact that sections 7 and 24 (dealing respectively with the election of Senators and Members) when read together, contradicted the notion of equality, while Justice McHugh found the principle of representative democracy was not contained in the Constitution. Justice Gummow opined that the Constitution ‘did not entrench the secret ballot, compulsory voting, preferential or proportional voting, or universal adult franchise’, nor was there any provision to monitor numbers in electoral divisions within States or Territories. With shades of the McKinlay judgment, Justice Gummow did accept there could be situations where the disparity between electors could be so ‘grossly disproportionate as to deny ultimate control by popular election’<sup>447</sup> although

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<sup>446</sup> Susan Dowling (1996), ‘One Vote One Value-an Implied Right Too Far?’, The High Court Decision in *McGinty & Ors v State of Western Australia* (1996), Parliament of Australia, Parliamentary Library, Research Note 38, 1995–1996, p. 2. See also Gerard Carney (2003), ‘The High Court and the Constitutionalism of Electoral Law’, in Graeme Orr, Bryan Mercurio and George Williams (2003), *Realizing Democracy: Electoral Law in Australia*, Annandale: The Federation Press, pp. 170–185.

<sup>447</sup> Susan Dowling (1996), ‘One Vote One Value-an Implied Right Too Far? The High Court Decision in *McGinty & Ors v State of Western Australia* (1996), Parliament of Australia, Parliamentary Library, Research Note 38, 1995–1996, p. 2.

he did not believe the vote weighting in Western Australia was sufficient to deny representative government. Justice Gaudron, however, in her minority opinion, felt that malapportionment of voters in metropolitan and non-metropolitan areas was so great as ‘...to be distinctly at odds with democratic standards revealed in the electoral laws of the Commonwealth and the other Australian states...’<sup>448</sup>

### **Marquet v Attorney General of Western Australia (2002)**

In 2002, the Clerk of Parliaments Laurie Marquet (also Clerk of the Legislative Council) commenced proceedings in the Supreme Court for the determination of whether it was lawful of him to present to the Governor for Royal Assent the Electoral Distribution Repeal Bill (2001) (the repeal Bill) and the Electoral Amendment Bill 2001 (the amendment Bill) (refer also to Chapter Three). In October 2002 the Supreme Court ruled that the Bills could not be presented to the Governor for Royal Assent as although they had been passed by an absolute majority in the Legislative Assembly, they had only passed the 34 member Legislative Council by a simple majority.<sup>449</sup> Chief Justice David Malcolm and Justices Kevin Parker, Robert Anderson and Christopher Steytler found that Labor’s bid to introduce the electoral changes by circumventing an absolute majority requirement in the *Electoral Distribution Act 1947* was invalid. In contrast, dissenting Justice Christine Wheeler, considered that the 1947 Act had been validly repealed and the enabling legislation could be presented for assent.

The outcome was regarded as a victory for the Country Alliance, a conservative grouping made up of Liberal, National and One Nation parties, the Pastoralists and Graziers Association, the WA Farmers Association and regional shire councils. However, celebrations were soon put on hold when McGinty, who held both the Attorney General and Electoral Affairs portfolios, announced a constitutional plan to facilitate the achievement of an absolute majority by giving the President of the Legislative Council a deliberate, rather than a casting vote. After careful consideration Greens (WA) announced its members of Parliament would not be party to that strategy, which led McGinty, on behalf of the Labor Government, to lodge a challenge to the Supreme Court decision in the High Court.

### **Attorney-General (McGinty) v Marquet (2003)**

Given the significance of the case, High Court Justice Mary Gaudron agreed to expedite the McGinty challenge. At the referral hearing in April it was agreed the High Court would hear the matter in August 2002 and, indicative of the keen political party interest in the outcome, the Labor governments of

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<sup>448</sup> Susan Dowling (1996), ‘One Vote One Value-an Implied Right Too Far?’, The High Court Decision in *McGinty & Ors v State of Western Australia* (1996), Parliament of Australia, Parliamentary Library, Research Note 38, 1995–1996, pp. 2–3.

<sup>449</sup> See Peter Johnston (2004), ‘Method or madness: constitutional perturbations and Marquet’s case’, *Constitutional Law and Policy Review*, Vol. 7, No. 2, p. 27.

Queensland and New South Wales agreed to intervene on behalf of the Gallop government, with Daryl Williams, the Federal Attorney General (a Western Australian Liberal Party member), to argue against electoral reform. The judgment, delivered on 13 November 2003, upheld the decision of the Western Australian Supreme Court, by a five to one majority. The judgement was broadly on the same ground that 'The Bills' had not been passed by an absolute majority of members of the Legislative Council. As with the Supreme Court case, the judgment considered the 'manner and form' provisions of the Commonwealth Constitution, the Western Australian *Electoral Distribution Act 1947*, and the *Australia Act 1986 (Cth)*. The significance of the distinction between 'amend' and 'repeal' also involved an examination of the *Acts Amendment (Constitution) Act 1978*, while another consideration was the practice and procedure of prorogation as 'The Bills' passed by both Houses were yet to receive royal assent due to prorogation of the Parliament. In summary it meant that 'one vote one value', could only be achieved by legislation that satisfied the absolute majority criterion of the membership of both the Assembly and Council, and as indicated in Chapter Three, this 'milestone' was eventually achieved in 2005.

### **Some Recent Decisions: Roach (2007) and Rowe (2010), and Fels v Davies (2009)**

In a narrow 4-3 decision in *Roach* (2007), the High Court delivered a significant decision dealing with the validity of Commonwealth legislation enacted in 2006 that prevented all prisoners from voting. Western Australia initially moved to be in concert with the Commonwealth and limit the voting right of prisoners, but following the *Roach* decision it limited the restriction upon the right of a prisoner to vote to those with a sentence of one year. On the other hand the Commonwealth law was changed to prevent prisoners voting for those serving a sentence of three years or greater. The main significance of the *Roach* decision was the contention that the right to vote was constitutionally protected by ss.7 and ss.24 of the Constitution, which deal with the words of representatives being 'directly chosen by the people'. What was unresolved was the extent to which the right to vote could be removed for serious misconduct.

The High Court's decision in *Rowe* (2010) did not have an immediate impact on Western Australia, but helped to signal new parameters for the closing of the rolls for elections and referendums. In 2006 the Howard federal government had legislated to close the electoral roll significantly earlier once an election was announced. It meant that once an election was called new voters had only until 8pm on the day the electoral writ was issued to complete enrolment. The unexpected victory in the High Court, after interest group 'GetUp' named Shannen Rowe in a test case, resulted in the opportunity of an extra 100,000 people to being given seven days grace to organise their enrolment to vote in the 21 August 2010 federal election.

The political effect of the numbers though, was not as significant as the High Court ruling that the amendments to the enrolment procedure were held to exceed the limits imposed by the ‘constitutional mandate’ in s7 and s24 of the Constitution which, as mentioned, concern the significance of words ‘directly chosen by the person’ in a representative government.

Meanwhile, in the *Fels v Davies* Case, the Court of Disputed Returns in Western Australia delayed until 20 May 2009 a decision in favour of National Party member Mia Davies to assume her Agricultural Region seat two days later.<sup>450</sup> This case resulted from a challenge by rival Family First candidate, Anthony Fels. The latter claimed that 5,405 ballot papers within the Central Wheatbelt were delivered in unsealed ballot boxes, and that Davies’ candidature was variously in breach of the *Constitution Acts Amendment Acts 1899*, and the *Electoral Act 1907*. Significantly, this was the first Court of Disputed Returns decision pertaining to the Legislative Council since the introduction of proportional representation for the 1989 election. If upheld it may have required a by-election for the six region seats or just a reversal of the order of election for Fels ahead of Davies.

Although very few members of the legal profession specialise in electoral law, the Electoral Commissioners have regularly sought legal and constitutional advice to administer the *Electoral Act 1907*. This Act now runs for some 300 pages and must be read in conjunction with the constitutional documents of both the Commonwealth and State. The practices and precedents that have evolved in Western Australia, and elsewhere, are important in understanding the impact of the electoral system. Another important aspect of electoral history in Western Australia has been the administrative framework established by respective governments.

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<sup>450</sup> See Petition, Anthony Fels, *Government Gazette*, WA, 20 January 2009, pp. 137–138.

# 10

## Electoral Administration: Past and Present

In 1906 the *Government Gazette*, under the heading ‘Disposition of Departments’, specified an Electoral Department under the responsibility of the Attorney General. The Department’s history though has sometimes been designated as commencing from the passage of the *Electoral Act 1904*. Since that period reports prepared by the Department concentrated heavily on election and referendum results. A major legislative change took place in 1987 with the creation of an independent Western Australian Electoral Commission (WAEC) headed by the Electoral Commissioner. Apart from the key functions of the conduct of General Elections for the State Parliament and the administration of redistributions, the Commission’s responsibilities have expanded to incorporate local government elections as well as other government bodies, trade unions and associations. The Commission is also charged with research and educational responsibilities and an important challenge has been the co-operation with and co-ordination of activities with its federal counterpart, created just three years earlier. This Chapter provides a short coverage of the evolution of the Electoral Department and the Commission by means of mentioning the occupants of the post of Chief Electoral Officer and Electoral Commissioner.

### **Octavius Burt (to 1906)**

The civil service officer who steered the administration of elections during the transition from Colony to State was Octavius Burt (1849–1940). Burt was the brother of leading Forrest Government Minister Septimus Burt (1847–1919) and shared with Forrest and his brother an education at Bishop Hale’s School. Burt (like his brother) also held several prominent roles in the Church of England. In 1869 Octavius Burt joined the civil service as a Clerk before moving to the National Bank. By 1872 he was back in the civil service and from 1877 to 1880 was the clerk and keeper of records in the Survey Office. When self-government was inaugurated in 1890 Burt became Western Australia’s principal civil servant as Under-Secretary for the Colony. From April to October in 1898 Burt was secretary in the Agent General’s Office in London before returning to fulfil numerous roles including that of ‘being generally in charge of electoral matters’. Significantly Burt conducted the Federation referendum of 1900, the first

federal election in 1901 and the early Assembly and Council elections from 1901 to 1905.<sup>451</sup> Burt was also responsible for the conduct of a host of by-elections, most of which were either due to the death of a member or as a result of the ministerial appointment process.

In the early post-federation years, and as part of his electoral administration responsibilities, Octavius Burt held the office of Parliamentary Inspector of Rolls. At the time this was considered to be an important position as the compilation of rolls was a major administrative exercise fraught with accusations of inaccuracy and sometimes corruption. Despite Burt's vast experience and wide scope of influence, the opportunity to effectively re-organise the administration of electoral law was, however, lost with a plethora of over-lapping amendments to the *Electoral Act (1904)*, changes to the constitutional documents and the creation of the *Redistribution of Seats Act (1904)*. The latter Act required a constitutional majority in each House before a redistribution of electorates could take place. In the same year plural voting was abolished for the Legislative Assembly. In 1906 the Parliamentary Inspector of Rolls post was abolished. However, Burt did not retire from the public service until 1912, holding the positions of Sheriff and Comptroller of Prisons and serving as a deputy marshal of the High Court of Australia. In summary, Octavius Burt had been a key figure in the conduct of elections in the State of Western Australia but the post had been fulfilled in association with other roles. This was soon to change.

### **Ernst Gottfried Stenberg JP (1906–1923)**

Records suggest that one of the most influential figures in Western Australian electoral law history has been Ernst Gottfried Stenberg. Although little is known about Stenberg's formal education he first appeared in February 1896 in the civil service 'Blue Book' for his appointment to the Register General's Department. By July of 1898 Stenberg was the Chief Compiler in the Government Statistician's Office and from 1 July 1906 was appointed Chief Electoral Officer in the Department of Crown Law. This meant Stenberg was responsible to the Attorney General for his administration of the Electoral Department. The new arrangements had clarified the direct responsibility of Stenberg, deemed necessary after the problems with the 1904 election conducted under the *Electoral Act 1904*. Immediately upon the assumption of office Stenberg undertook the re-organisation of the Department and abolished the Office of Parliamentary Inspector of Rolls. Under Stenberg's guidance the machinery for elections was substantially altered in the revamped *Electoral Act 1907*, which has subsequently been the foundation stone of the administration of parliamentary elections in Western Australia.

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<sup>451</sup> Brian de Garis and Tom Stannage, 'Septimus Burt', *Australian Dictionary of Biography*, Vol. 7: 1891–1939, A–Ch, Melbourne: Melbourne University Press, p. 496.

The introduction of the alternative (preference) vote in 1907 for the Legislative Assembly will be recalled from Chapter Four. However, there was also to be the introduction of a new form of ballot paper, numerous alterations to enrolment procedures (including the issue of quarterly supplementary rolls for the Assembly and Council) as well as a reduction in the prices of the rolls. Provision was made for the issue of joint rolls with the Commonwealth, a keen focus for Stenberg, and under his guidance a Clerk and Deputy Clerk of Writs were appointed, voting by post was made more stringent, and provisions made for the keeping of sound electoral statistics. Stenberg also endeavoured to perfect the procedures for limitations on electoral expenses, and changes were made to the qualification and disqualification of electors.

Stenberg was demonstrably interested in the scholarly aspects of the laws and practice of electoral matters elsewhere, and took a keen interest in keeping abreast of developments in the field. Although he took the necessary steps to establish a Departmental Reference Library in conjunction with attempts to improve office accommodation, to this day the Electoral Department (or Commission) has never had a permanent home. Stenberg purchased leading works on electoral law and related matters and communicated with nearly all countries in the civilised world to obtain copies of their electoral laws, regulations and forms. Stenberg regularly provided information to the Parliament and governments, particularly noteworthy are his submissions to Select Committee deliberations and the compilation of Electoral Department reports. In 1914 Stenberg published a book with a full title *Report upon the Principal Electoral Systems for the Election of Members of the Legislatures in Self-Governing Countries: Together with A Draft Scheme for the Establishment of an Electoral System of Proportional Representation in Western Australia*.<sup>452</sup> Some of the material included in the book had been presented to the 1907 Select Committee on the Electoral Bill and also in a further report to Attorney General John Nanson in 1910. Clearly, Stenberg's book should be regarded as a seminal work in the history of electoral law literature.

Another two long lasting developments from Stenberg's tenure were zonal weighting and the creation of an Electoral Commission. As Buxton suggests, the Mitchell Government's *Electoral Districts Act 1922*:

...served to formalize the existing disproportion in electorate size by instituting a zonal system that came to enjoy bipartisan acceptance, even though it was opposed by the Labor Opposition at that time.<sup>453</sup>

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<sup>452</sup> Ernst Stenberg (1914), *Report Upon the Principal Electoral Systems for the Election of Members of the Legislatures in Self-Governing Countries*, Perth: Law Book Co of WA.

<sup>453</sup> Jeremy Buxton (1979), 'Electoral Politics Past and Present in Western Australia', in Ralph Pervan and Campbell Sharman (eds), *Essays on Western Australian Politics*, Perth: University of Western Australia Press, p. 41.

Boundaries were drawn by the Electoral Commission, which consisted of a Supreme Court Judge, the Surveyor General and the Chief Electoral Officer, guided by the criteria of community interest, means of communication and distance from the capital, physical features, and existing boundaries in addition to zonal weighting. However, as redistributions were still regarded as Acts of Parliament it was necessary for them to be passed by both the Assembly and Council and in fact no immediate distribution occurred after the 1922 legislation as the Bill lapsed due to dissention within Mitchell's Coalition. Nevertheless, the Chief Electoral Officers for the future were to be integral to the drawing of electoral boundaries.

One particular aspect of electoral law which Stenberg strove to improve was the compilation of the electoral rolls, especially the degree of co-operation with the Commonwealth. Following the reaffirmation of a 1905 resolution to move towards uniformity to facilitate joint rolls, Stenberg met in Perth with R.C. Oldham, the Commonwealth's Chief Electoral Officer. Although future co-operation with common forms and the appointment of one Registrar for the purpose of enrolment were proposed, many difficulties were made apparent. The electorates in the two jurisdictions were drawn on different criteria, there were differences in residency requirements, and the franchise laws and witnessing of signature requirements were not the same. Ultimately it was resolved that the adoption of a Joint Roll under the existing legislative provisions would lead to 'a grave danger of confusion on the part of the Electoral Registrars',<sup>454</sup> Some encouragement was derived, however, from an agreement to conduct a joint electoral census with shared costs. In 1919 Stenberg was to witness the passage of compulsory enrolment legislation for Western Australian elections, some eight years after the Federal Act. Nevertheless, joint rolls had not been achieved when the formidable Stenberg retired at 62 years of age in 1923.

### **Theodore Ernest de Landre Cook (1923–1929)**

In 1923, Theodore Cook (56), who had served in the Electoral Department for twelve years, succeeded Stenberg as the Chief Electoral Officer. Cook was an experienced official before his promotion. Initially a clerk with responsibility for card indexes, Cook then exercised the additional responsibility as an Electoral Registrar before his promotion to the top post. During his six year term Cook was prepared to seek legal opinions from the Solicitor General about some of the more technical features of the *Electoral Act 1907* and the *Constitution Amendment Act 1899*. In particular, the franchise requirements for the Legislative Council proved 'a headache' for Cook. Other matters considered by the Solicitor General throughout Cook's tenure included: the definition of British subjects and people from other counties; whether inmates of reformatories were excluded from the vote; the

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<sup>454</sup> First Report of the Chief Electoral Officer for the Period 1 July 1906, to 31 October 1908, p. 75.

scope of the compulsory enrolment provisions; and the commencement date for electoral expenses.<sup>455</sup>

Cook can be remembered as the first Chief Electoral Officer to have an official hand in drawing the electoral boundaries. The 1930 boundaries prevailed until after the 1947 election, due to the failure of the 1937 redistribution to gain constitutional passage.

### **Harold Richard Gordon JP (1929–1935)**

Harold Gordon had been a public servant since 1895 and had moved from the Accounts Section of the Crown Law Department immediately before becoming Chief Electoral Officer. Gordon was charged with conducting the 1933 Secession Referendum, for which special compulsory voting rules prevailed, presumably to enhance the legitimacy of the outcome.

At the 1935 Joint Select Committee on Electoral Matters, later reconvened as a Royal Commission, he was called upon to provide extensive evidence. Gordon was critical of the ambiguous Legislative Council franchise laws, particularly some apparent contradictions with the constitutional documents and the Act, and while the Committee did recommend changes to the Council franchise, it also made a range of other amendments, most of which Gordon supported.

In late 1935 and towards the end of his term, Gordon sought to remain in his post and purportedly played a part in (unsuccessfully) seeking an amendment to the Act to give the head of the Electoral Department judicial status with a retirement age of 65 years<sup>456</sup>. The amendment was not passed and Gordon retired at the end of 1935 at sixty years of age.

### **Harold Benjamin Hayes (1935–1941)**

Harold Hayes had joined the public service in 1904 at 20 years of age and from 1927 had been a Clerk of Police Courts in Perth, before becoming Chief Electoral Officer on 24 September 1935. Hayes presided over the 1936 introduction of compulsory voting for Legislative Assembly elections. Changes to the law, exercised for the 1939 election and in keeping with the Commonwealth provisions, provided for a two pound fine for not voting unless ‘a valid and sufficient reason for such failure’ could be provided. This resulted in an increased turnout from 70.1 per cent in 1936 to 91.6 per cent in 1939, a factor that increased the work-load of the electoral office.

Hayes was to witness a diminution of co-operation between the Government and Opposition, which prevailed in 1928 and 1929, amidst disputes about the zonal weighting and a Labor member’s defection from the party. Tom ‘Diver’ Hughes, the East Perth MLA, crossed the floor and joined the Opposition in 1937 to deny the Bill the absolute majority required to pass

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<sup>455</sup> State Electoral Department, Legal Opinions, 1908 to 1960.

<sup>456</sup> Report of the Royal Commission on the Electoral Act, 1907–1921 and Other Relative Matters (1935), Perth: Parliament of Western Australia, p. 15.

the Legislative Assembly.<sup>457</sup> So although Hayes had overseen the redistribution in 1937 as required by legislation, it was never put into effect because it failed to gain the necessary constitutional majority in the Parliament. Hayes did not retire following his service as the Chief Electoral Officer, but moved on to be Under Secretary for Law.

### **Charles B. Marshall (1941–1947)**

Charles Marshall joined the Public Service at the age of 16 years just before federation in 1898, and was a Clerk of the Local Court in the Crown Law section prior to becoming the Chief Electoral Officer in 1941. During World War Two the State Parliament passed legislation to ensure that members of the armed forces, including those below 21 years of age who were serving overseas, would be able to exercise the franchise.

No electoral redistribution took place during Marshall's tenure but it was likely that he played a role in the preparation for the new *Electoral Districts Act 1947* in which the necessity of a by-election for those appointed as a Minister of State was abolished. Also of particular significance during this period was the decision of the Government to extend the life of the Parliament during World War Two from 1942 to 1943 due to war time exigencies. An election had been conducted for the Legislative Assembly on 18 March 1939, but the next election was not held until 20 November 1943.

Of particular significance was the Parliament's decision to ensure that electoral distribution determinations were independent of Government and Parliament, save the specified seats in the State's far north. Whether Marshall had an opinion on the adoption of the so-called 'two-for-one rule', whereby two metropolitan voters were reckoned as one in the agricultural, mining and pastoral zone is not clear, but the administration of the new law entrenched with the requirement of an absolute majority of members in both the Assembly and Council, was to fall to Marshall's successor namely, George Mather.

### **George F. Mather (1947–1963)**

Records indicate that George Frederick Mather's service as Chief Electoral Officer spanned the years 1946 to 1963. His term included six Legislative Assembly elections, eight Legislative Council biennial elections, three re-distributions of electoral boundaries, a Prohibition Poll (in 1950) and numerous by-elections. Mather began his career in the Public Service in 1914, as a junior clerk in the Lands and Surveys Department at age 16 on a salary of 60 pounds per annum. He then transferred to the Crown Law Department, was a Clerk of Courts in various country towns and served in the First World War before commencing his 17 years as Chief Electoral Officer. Mather built a reputation for a tolerant yet direct and decisive approach, and was thought to be 'two jumps ahead of anyone else'.

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<sup>457</sup> Parliamentary Debates, Legislative Assembly, 14 December 1937, p. 2612.

As the scale of the Department's responsibilities expanded Mather occasionally applied for his classification (and hence salary) to be improved. In 1949 he argued that amendments to the Act, with respect to absent and postal voting, provisional voting regulations and the administration of compulsory voting penalties, warranted a salary review. It was also argued that large scale immigration, including the influx of displaced persons following the war, had imposed strains on his department, and that voting days required many hours of un-paid overtime. Mather also played a role in community life, such as assisting the Baseball League in drawing boundaries for the League Clubs. Although he was unsuccessful in improving the classification of his office, in 1955 the Public Service Commissioner accepted that Mather's responsibilities had increased. Nevertheless, as Mather had become a paid Chairman of the Superannuation Board, his position would not be recommended for a reclassification.

In one important respect Mather's documentation of the increased role of his office did pay dividends. In 1959 the Governor in Executive Council approved the establishment of the Electoral Department as a separate department for the purposes of the *Public Service Act 1904–1956*.<sup>458</sup> Mather had made a submission in May 1959 that various sections of the *Electoral Act 1907* envisaged the creation of a separate department. Moreover channelling payments through Crown Law often resulted in unacceptable delays and Mather successfully called for the creation of an Assistant Chief Electoral Officer, particularly required during the period of the redistribution of districts and provinces. In the same year the *Juries Act 1959*, which required the compilation of lists for the Draft Jury roll to be submitted to the Sheriff, increased the load of the office. Finally, with the establishment of the Department, a clear list of duties for both the Chief Electoral Officer and the Assistant Chief Electoral Officer was formulated.

### **Stan Wheeler (1963–1973)**

For the last four years of Mather's term Stan Wheeler had been the Assistant Chief Electoral Officer. Even as Deputy, Wheeler's service file reveals how work pressures made it difficult to take normal holidays and long service leave. Wheeler had begun his career in 1924, armed with a Junior Certificate, in the Companies Office of the Public Service as a temporary Junior Clerk. Within months he was a Junior Clerk within the Crown Law Department and his service there incorporated many roles including Clerk of Courts, Mining Registrar, and Clerk in the Solicitor General's Office and later of the Industrial Court. Wheeler was also Chief Clerk in the Electoral Department, before becoming the Assistant Chief Electoral Officer and then Chief Electoral Officer in October 1963. Upon retirement on 21 November 1973 Wheeler accepted a position as Judge's Associate in the Perth District

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<sup>458</sup> *Government Gazette*, 31 July 1959, p. 1977.

Court. Shortly thereafter and following over 50 years in Public Service, Wheeler tendered his resignation as a Justice of the Peace.

One initiative closely identified with Wheeler was a proposal to produce a publication which summarised the electoral law of Western Australia. This followed the Commonwealth Electoral Department's 1966 production of an 'Explanation of the Commonwealth Electoral Law' booklet and a similar Victorian publication. In 1970 Wheeler advised the Minister for Justice that the estimated cost for 1,000 copies of the proposed booklet was \$440 dollars, but the project was deferred and soon after Wheeler's retirement the proposed print run was cancelled.

### **John F. McIntyre (1973–1977)**

John McIntyre, Stan Wheeler's successor, held the Chief Electoral Officer's position from March 1973 until November 1977 although he had begun his service in January 1928 as a messenger in the Electoral (Sub) Department (with a salary of one pound per week). McIntyre had a long and dedicated service in the Crown Law Department. From 1963 to 1973 McIntyre had been the Assistant Chief Electoral Officer to Stan Wheeler and his duties file indicates that, like many of his colleagues, the demands of the electoral cycle often made it difficult to have holidays and long service leave on the due date. Upon retirement he was only two weeks short of achieving 50 years of employment in the Public Service, although this included more than three years of war-service.

An important development during McIntyre's tenure, as both the Assistant and Chief Electoral Officer, was the increase of in-service training and the conduct of inter-state conferences for electoral officers. In June 1976 McIntyre attended what was 'The First Electoral Seminar' on Queensland's Gold Coast. One of the key-note speakers was Dr Colin Hughes, the eminent author of many electoral law publications and later the Australian Electoral Commissioner. McIntyre presented a paper 'Postal Charges and Surcharges' which had become a matter of concern as a consequence of the passage of the Federal *Postal Services Act 1975*, and of particular concern at that time was that the unstamped ordinary mail rate was cancelled, and a double rate of postage became payable. Some concessions had been granted for bulk mails sorted into postcodes, but as an indication of the limited budget allowed for postage, the office attempted to minimise costs by asking electors to 'affix' a postage stamp. According to McIntyre some two-thirds of those citizens seeking enrolment paid the return postage with the figure for postal votes being even higher.<sup>459</sup>

### **Eric G. Foreman (1977–1980)**

Eric Foreman was appointed as the Chief Electoral Officer on 20 December 1977 and soon went to Sydney as a member of the February 1978 Steering

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<sup>459</sup> John McIntyre, 'Postal Charges and Surcharges', First Electoral Seminar, 24<sup>th</sup> June 1976.

Team for the next Electoral Seminar in 1980. Foreman delivered a paper titled *The Integrity of the Ballot-Costs: Are Two per Table always Necessary?* in which he expressed concern about proposals, which had been trialled at the 1975 Daylight Saving Referendum, to reduce the number of officers at polling places. Foreman did not oppose the use of a single officer to handle the typical 125 to 150 ‘absent votes’ cast at a polling booth on an electoral day, but believed the integrity of the poll would be put at risk if two officers were not maintained for ‘ordinary voters’. Foreman listed the duties of assistant presiding officers and the poll clerk, and was also concerned about exposing the Department to ‘grave criticism’.<sup>460</sup> At the same Steering Committee deliberations Foreman gave an address on *Postal Voting – Other Forms of Application*, in which he questioned the requirement for postal voters to attend before a Magistrate or a postal vote officer appointed by the Minister.

Foreman’s long career had begun as a messenger boy in the Harbour and Light Department in March 1931 and was interrupted by five years of war service with the R.A.A.F. One feature of his working life was his willingness late in his career to study for a Diploma of Public Administration at the Perth Technical College. Foreman had completed a junior certificate before commencing employment at 16 years of age but had felt the pressure to gain qualifications to progress satisfactorily in the Public Service. While his study was largely conducted on a part-time basis, he managed to gain a range of distinctions and credits. Like his immediate predecessors, Foreman struggled to take leave from his office and noted in correspondence that 1977 was featured by a general election, a Court of Disputed Returns (*Bridge v Ridge*) and subsequent by-election as well as the Judicial Inquiry into the Electoral Act (the Kay Report 1978). This reportedly impacted on his health and Foreman was forced to take sick leave which he carried to his date of retirement on 19 October 1980.

### **Douglas Arnold Coates (1981–1984) (then Dr Denis Rumley)**

The Chief Electoral Officer who officially succeeded Eric Foreman on 6 February 1981 was Doug Coates, with Ray Shaw gaining the post in 1985. Coates was to hold office during a time of highly contentious agitation for electoral reform around ‘one vote one value’. Compulsory enrolment and compulsory voting for Aboriginal people had passed the Parliament and for the first time adult universal franchise for both Houses had been achieved. A year later universal suffrage was made law for Local Government and on 20 October 1983 an important joint roll arrangement with the Australian Electoral Commission was signed under Coates. On 20 October 1985, a second agreement dealing with silent enrolment was also signed, but by this date Coates had retired from office.

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<sup>460</sup> Eric Foreman (1978), ‘The Integrity of the Ballot-Costs: Are Two per Table Always Necessary?’

Upon his retirement Coates told the press ‘a most important undertaking was the creation of an independent electoral commission. The Government made no attempt to introduce this reform despite an Opposition indication of agreement’.<sup>461</sup> This was an interesting observation as an independent electoral commission was part of the Labor Party platform. However, the argument later presented by Minister Arthur Tonkin was that he did not wish to have an electoral commission presiding over a corrupt electoral system and in his view the Opposition ‘wanted the respectability of a commission and the dishonesty of those electoral laws’.<sup>462</sup> At same time Tonkin rejected another criticism by Coates that, against his advice, the Minister had forced him to appoint three additional field officers presumably to go into State Housing Commission areas to improve enrolment.<sup>463</sup>

The early 1985 appointment of Dr Denis Rumley as Coates’ successor was highly contentious and became the political ‘hot potato’ of that year. Rumley, a University of Western Australia (UWA) political geographer, was announced as the next Chief Electoral Officer, amidst claims that the Government was trying to change the system by parachuting Rumley into the position over several dedicated, capable public servants. It was certainly a break from the past because until then the post of Chief Electoral Officer had been held by long-serving public servants, mainly drawn from Crown Law. Then Leader of the Opposition Bill Hassell was appalled by the decision and regarded it as another attack by the Government on the public service.<sup>464</sup> In Canberra a similar shift occurred when political scientist and electoral system expert, Professor Colin Hughes, was appointed as the Australian Electoral Commissioner.

Rumley, who was only 37 at the time of his appointment, was born in County Durham England and gained his doctorate in Canada before coming to Western Australia some 10 years earlier. He had a scholarly record on electoral law but was eventually disappointed when UWA refused after numerous requests to grant him three years of leave to assume the post. Eventually, the Public Service Board specified that if the situation was not resolved by 1 February 1985 Dr Rumley’s appointment should be revoked. Soon after that date it was announced in the Legislative Assembly that the appointment had been annulled.<sup>465</sup>

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<sup>461</sup> Cited in Arthur Tonkin (1988), Oral Transcript with Ronda Jamieson, Parliament of Western Australia, p. 68.

<sup>462</sup> Arthur Tonkin (1988), Oral Transcript with Ronda Jamieson, Parliament of Western Australia, p. 368.

<sup>463</sup> Arthur Tonkin (1988), Oral Transcript with Ronda Jamieson, Parliament of Western Australia, p. 368.

<sup>464</sup> *The West Australian*, 22 September 1984, p. 9.

<sup>465</sup> Parliamentary Debates, Legislative Assembly, 19 February 1985, pp. 57–58.

### **Raymond Stanley Shaw (1985–1987)**

Ray Shaw, who had earlier as Acting Chief Electoral Officer had carriage of the 1980 General election and was holding the post until Doug Coates was formally appointed in February 1981. Later, the *Government Gazette* of May 3 1985 records the appointment of Raymond Stanley Shaw as Chief Electoral Officer. Under section 63 of the *Electoral Act, 1907* Shaw was to be the Clerk of the Writs, with Peter Ilich as Deputy Clerk of the Writs. A couple of months later Ilich was appointed as the Assistant Chief Electoral Officer. At an Electoral Seminar conducted in Adelaide in 1980, Ray Shaw addressed the seminar on Eric Foreman's behalf, and made specific reference to Justice Hay's 1978 inquiry into the *Electoral Act 1907*. That inquiry had recommended the extended use of mobile booths at special institutions and hospitals, as well as in remote areas. When amendments were made to the legislation in 1979 the mobile booths were to operate in such locations for a period of 14 days up to and including polling day. Shaw thought that mobile booth voting results at institutions and hospitals for the 1980 State election was a successful initiative, but the number of votes recorded in remote areas was disappointing. The latter outcome, in Shaw's view, was attributed to climatic conditions at the time of the election and also to the fact that electors who would normally have been located at the remote centres had moved into towns.<sup>466</sup>

Without doubt Shaw's own story of his role as both Chief Electoral Officer and Deputy Chief Electoral Officer would hold keen interest. He was in office during the mid-1980s when the Labor Party was seeking to make significant changes to the electoral laws and at the same time witnessed the move towards the creation of the Western Australian Electoral Commission as a statutory authority. Under Shaw's guidance the Electoral Department had begun to formulate performance indicators and made strides in computer technology, particularly in co-operation with the Australian Electoral Commission and the Department of Local Government in the preparation of electoral rolls.<sup>467</sup> The introduction of proportional representation with new regions in the Legislative Council during 1986 and 1987 had been tortuous. Before the 1986 General Election, the Burke Labor Government had floated the possibility of a new referendum to achieve the historic one vote one value objective. As events transpired, Shaw did not have to manage the referendum, but was on hand to (regularly) advise the Government on its range of electoral measures in the party's platform. Of course the final management of the plethora of eventual changes, even after being scaled back by the Council, was to be the responsibility of a new Commission and Commissioner.

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<sup>466</sup> Ray Shaw (1980), 'Notes on Mobile Polling Places Appointed or Declared Under Section 100 of the *Electoral Act, 1907–1979*', p. 4. Paper presented to Electoral Seminar, Adelaide, 29<sup>th</sup> and 30<sup>th</sup> April.

<sup>467</sup> See Annual Report of the State Electoral Department for the year ended 30 June 1987, Perth: Government Printer.

### **Les Smith (October 1987 – December 1995)**

Les Smith was the inaugural Electoral Commissioner when the WAEC was established by proclamation of the *Acts Amendment (Electoral Reform) Act 1987* on 30 October 1987. Under the Act the main functions of the Commissioner included: responsibility for the proper maintenance of electoral rolls and proper conduct of elections; reporting and providing advice to the Minister, Parliament, departments and authorities on electoral matters; promotion of public awareness and education programs, together with research and publications on electoral law. The Electoral Commissioner was to be one of the Commissioners, along with the Chief Justice (as Chairperson) and the Government Statistician, responsible for the redistribution of seats after every second State election. Smith was immediately thrust into a redistribution of seats and regions required under the 1987 Act and, despite the fact that the Commissioners were required for the first time to consider the criterion of trends of demographic change, the management of the exercise was remarkably smooth in an administrative sense. In this respect Smith's extensive public service experience, including service in the Department of Premier and Cabinet, came to the fore.

As by-elections for the seats of Ascot and Balga were set for 19 March 1988, Smith's new Commission was soon in an election mode. One of the 1987 legislative changes allowed for the option of ticket voting on the newly designed ballot papers for both Houses, and the by-elections provided an opportunity to assess the new provision. Given the Commission's new research function, Smith soon implemented a study of the outcomes, which observed a lower ticket voting compared with the 1987 Senate election in Western Australia, together with a higher informal vote than the previous State election for the seats of Ascot and Balga.<sup>468</sup> Following an extensive public information campaign a detailed study of informal voting was conducted for the 1989 State Election. His tenure was characterised by the regular publication of monographs and reports on relevant topics on electoral law. An Electoral Education Resource Centre was also established in Subiaco and opened on 15 May 1992 by civic education advocate, Dr Geoff Gallop, then Education Minister and Minister for Parliamentary and Electoral Reform. It had been Smith's responsibility to conduct the first State election in 1989 when the proportional representation voting system was being employed to elect the Legislative Council in six regions, and when a host of 10 petitions were lodged with the Court of Disputed Returns with respect to eight Legislative Assembly districts. No results were overturned, but the most publicised of the petitions relating to the previously discussed Whitfords and Wanneroo 'Sausage Sizzle' cases, which took many months to resolve.

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<sup>468</sup> See Analysis of New Ballot Paper Usage and Informal Votes: Ascot and Balga Elections, 19 March 1988, Perth: Western Australian.

During the Commission on Government (COG) deliberations, arising out of the so-called WA Inc. Royal Commission, Smith witnessed an external examination of the key features of the electoral law. Parliament had the opportunity to review the recommendations, but few major changes were made by the Government of the day. Nevertheless, it is fair to assume that Smith's Commission worked overtime to brief the Government.

Upon his retirement, Smith continued in public service and took on a role in administrative review. Smith examined the grievances of three superintendents acquitted of covering up an alleged attack on a Casuarina prisoner by the jail's riot squad some five years earlier. He also reviewed complaints by a former senior prison administrator John McColl, who had been charged with a breach of discipline after a falling out with the then Justice Ministry Director General David Grant. At the time possible breaches of the *Public Sector Management Act 1994* were being investigated, and the Anti-Corruption Commission was examining complaints of impropriety at the Justice Ministry.<sup>469</sup> In 1998 Les Smith was awarded with an AM for his public service.

### **Ken Evans (1997–2002)**

Dr Ken Evans, the first and to date only Commissioner to hold a PhD, was appointed as the Electoral Commissioner on 28 July 1997 after previously having held a senior position in the Education Department. The Commission's strategic direction, programs and organisational structure were quickly reviewed and a Strategic Plan and Operational Plans were produced. In 1998 the Commission developed a series of plans and policies including a: Disability Service Plan; Customer Service Charter; Code of Conduct; and Harassment Prevention Policy.

When the Western Australian Constitutional Centre was opened in West Perth at the 'Old Hale School' site in 1997, the Electoral Commission transferred its operations from its previous Subiaco location. Education staff developed a new 'enrolment awareness' program aimed at technical education and year 12 High School education students. The period saw improvements to the education program and the equipment at the Electoral Education Centre, with commercial sponsorship obtained for some of the interactive educational displays. The changes soon paid off with a substantial increase of more than 50 per cent in attendance recorded at the Centre.

During Evans' tenure there was also considerable development in enrolment procedures, with assistance from the Department of Land Administration and the Department of Transport. There was much co-operation for regular, jointly funded electoral roll reviews under the auspices of the Australian Joint Roll Council. The Commission was also charged with the

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<sup>469</sup> See Grace Meertens (1997), 'Probe to examine Justice Ministry', *The West Australian* newspaper, 27 February.

responsibility to conduct elections for a growing number of statutory authorities and a range of organizations under the *Industrial Relations Act 1997*.

The Commission expanded its website to provide statistical information and enrolment details and in 2000, legislative changes introduced party registration that gave the Commissioner some latitude in deciding whether a political party name satisfied certain criteria. It was not long before Evans was under scrutiny in this regard, firstly for his decision to reject the application for party status by the ‘Liberals for Forests’ and then for his approval of Pauline Hanson’s One Nation party. Perhaps more controversial was the Cabinet decision not to renew Ken Evans’ contract in late 2002, although it was reported that he was the first person recommended for the post.<sup>470</sup>

### **Lyn Auld (2002–2005)**

Lyn Auld was the Electoral Commissioner from July 2002 until her untimely death in August 2005, and also served as Deputy Electoral Commissioner from 1992 to 1998. During this period she had spent 18 months as Acting Electoral Commissioner, assuming responsibility for conducting the 1996 State general election and the inaugural Local Government postal elections. Born and educated in Dunedin, where she graduated from the city’s University of Otago with a Bachelor of Arts majoring in psychology, Auld studied law at both Notre Dame and the University of Western Australia. She began her career in Western Australia at the Public Service Board, spending seven years as an industrial advocate before becoming Director, Special Projects in the Ministry of the Premier and Cabinet and later held a senior post at the Office of the Auditor General. In 2003 Auld was an Electoral Distribution Commissioner for the re-distribution conducted during that year, and managed an organisational re-structure that formed the basis for the successful conduct of the 2005 State general election and referendum, and the 2005 Local Government elections.

As the first female Electoral Commissioner, and relatively young upon appointment at age 45, Auld never seemed to have it easy. Although aware that the old stepping stone from Deputy to Chief was not automatic she was disappointed in 1997 when told that her Deputy Position had been ‘axed’ in a restructure of the Commission’s senior levels, as Evans became the Commissioner.<sup>471</sup>

Auld was required to adjudicate in the so-called Terry Maller affair, which had many dimensions. In essence Maller complained that Lord Mayor Peter Nattrass had referred to his criminal record at a Council meeting in February

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<sup>470</sup> Steve Pennells, (2002) ‘Cabinet Dumps Election Chief’, *The Western Australian* newspaper, 28 June 2002, p. 11.

<sup>471</sup> Anne Burns (1997), ‘Poll Chief Axed’, *The West Australian*, 6 December, p. 8.

1999, when Maller had indicated his intention to run for a Council seat. In early April 2003, after a six month into probe into allegations, Auld announced her decision not to take any action against Lord Mayor Peter Nattrass and his Deputy Judy McEvoy. Neither Nattrass nor McEvoy had been interviewed, with the latter being prepared to challenge in court the validity of the inquiry. In justifying her final decision Auld said it was necessary ‘to prove beyond reasonable doubt’ that a statement was made and was intended to achieve a particular purpose (detriment) [but] in an analysis of that point it was decided there was not enough evidence to get over the threshold in a criminal prosecution’.<sup>472</sup>

### **Warwick Gately (2006–2013)**

Despite the apparent increase of legal matters as part of the pattern of an ever increasing range of duties, a law degree has not yet become a pre-requisite for a contemporary electoral commissioner. Nevertheless, Warwick Gately as Auld’s successor, held a Bachelor’s degree in Political Science and Government, as well as a Master’s degree in Defence Studies. Following his career in the Royal Australian Navy, Gately held senior appointments in the Department of Defence centred on strategic planning, defining the future employment of the Australian Defence Force (ADF) and developing the future Navy force structure. As late as 1999 Gately commanded the HMAS Adelaide during operations off East Timor for which he was awarded a Defence Force Commendation. In 1999 Gately was appointed a Member (AM) in the Military Division of the Order of Australia for exceptional service to the Australian Defence Force.

Gately’s first appointment at the Western Australian Electoral Commission was in 2003 as Deputy Electoral Commissioner, before being appointed as the Acting Electoral Commissioner in June 2004. When holding this office Gately was responsible for the 2005 State general election and referendum on shopping hours, in addition to the 2005 Local Government elections and in August 2006 was appointed as the Electoral Commissioner. This contract was renewed in 2011 before he accepted the post of the Electoral Commissioner for Victoria beginning in May 2013, at which point the experienced Chris Avent became the Acting Electoral Commissioner.

In February 2007, after the introduction of enabling legislation, Lyn Sirkett,<sup>473</sup> was made Deputy Electoral Commissioner previously having held the post of General Manager. Sirkett, a journalist for many years, was appointed in 2006 as the Manager, Communications and Corporate Strategy, which she was responsible the Commission’s communication and media activities. Upon her resignation in June 2011, Chris Avent was appointed Acting Deputy Commissioner. Avent was at the time on secondment from

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<sup>472</sup> Torrance Mendez (2003), ‘Poll Chief Stands by Maller no quiz probe’, *The West Australian*, 3 April.

<sup>473</sup> Previously Lyn McKay.

the Department of Finance, where he was Director of Strategic Sourcing. In October 2011 Chris Avent was officially appointed for a five year term as the Deputy Electoral Commissioner. He had the credentials of a degree in political science and diverse public sector background with substantial experience in the conduct of local, State and Federal Elections.

Electoral Commissioner, Warwick Gately, had overseen the expansion of electoral services for Union and fee for service elections. Services to Aboriginal and Torres Strait Islander electors as well as services to Disabled electors were improved. Significant changes to the State's electoral provisions had taken place when *Electoral Amendment Act and Repeal Act 2005* introduced the main elements of Labor's 'one vote one value' campaign for the Legislative Assembly. Constitutional changes had increased the membership of the Legislative Assembly from 57 to 59 members, and from 22 May 2009 the Legislative Council had its membership increased from 34 to 36 members.

The 'one vote one value' legislation required the redistribution of electoral boundaries for both Houses of the Western Australian Parliament. This formidable exercise took place throughout 2007, and drew heavily on the resources and expertise of the Commission. Moreover the introduction in 2006 of public funding for political parties had to be administered by the Commission. Its first application had been in February 2007, for the Peel by-election. This event had also been a catalyst for enrolment drives and studies on turnout and political participation following the low turnout at the Victoria Park by-election in March 2006. Turnout had also been a focus in local government elections which in 2007, for only one occasion, were characterised by preference (alternative) voting in single member wards and proportional representation for multi-member wards. Adjustments to the franchise for prisoner voting were introduced in the light of the High Court *Roach Case* (2007). Following a number of recent High Court decisions Western Australia as part of a number of amendments to the *Electoral Act 1907* brought itself in line with Commonwealth electoral legislation to remove the offence of electoral defamation without affecting the rights of candidates to seek redress under the *Defamation Act* or common law.

A range of amendments to the Act in 2012 improved a number of electoral services and processes, such as candidate nominations and deposits, early voting, party registration and political finance disclosure requirements. It was an indication that the Electoral Commission was keeping abreast of the developments of modern technology. Steps were taken to overcome the fact that some 15,000 Western Australian voters were on the Commonwealth electoral roll but had not registered to vote in Western Australian elections due to a difference in the procedures to provide identity. An issue for the future was whether to follow the New South Wales and then Commonwealth model of automatic enrolment. Moreover, in 2011 the Barnett Government introduced Constitutional changes which

effectively established four-year fixed-terms, an election campaign commitment in 2008 that encountered constitutional complications, which may have required a referendum. Nevertheless, the fixed date for an election called after 1 November did facilitate Electoral Commission planning, best illustrated by the publication of the booklet *2013 State General Election: Strategy and Service Commitments*.

The booklet, published in April 2012, contained several commitments which were implemented at the 9 March 2013 State General Election. Training was to be planned for over 8,000 casual and contract staff in addition to the some 50 permanent staff at the Commission. Many required training for only one day and others for a period of weeks or months. Service and target commitments were made for the staff, electors, candidates, registered political parties, parliament and the media. Commercial television reporter Nick Way, was contracted for the campaign period as the WAEC Media Manager. This initiative appeared successful in helping to combat a degree of community malaise towards the election process. There was an attempt to increase the percentage of eligible citizens on the State electoral roll to a target of 91 per cent. While 27,603 new electors (and 64,056 electors with changed details) were added to the State roll in the period 21 December 2012 until the close of roll on 14 February 2013, this amounted to only some 12 per cent of those eligible missing persons. However, there was some success in the 18–19 age group where enrolment numbers were improved by 37 per cent.

State-wide voter turnout (86.5 per cent in 2008) was targeted at 91 per cent, with the actual result being 89.22 per cent. This was a jump of 3 per cent on a state-wide basis with improvements of some 10 per cent and 6 per cent achieved in the Kimberley and Pilbara districts respectively. In 2008 the Kimberley turnout was only 62 per cent. The informality rate in the Legislative Assembly (5.32 per cent in 2008) was targeted at 4 per cent and was eventually 6 per cent. For the Legislative Council informal vote, which was 2.83 per cent in 2008, remained 2.83 in 2013, just short of the 2 per cent target.

Planning had become a key facet of the role of a contemporary State Electoral Commissioner. Apart from the strategic booklet for the 2013 General Election the Commission had published a *Strategic Plan 2010–2013* which entailed a reappraisal of the purpose of the Commission, the challenges it faced and the opportunities for future development.<sup>474</sup> Part of this exercise was to produce a ‘Reconciliation Action Plan 2011–2014’. As Warwick Gately was to say, ‘many Aboriginal and Torres Strait Islander citizens in Western Australia face practical challenges in engaging in electoral processes. Realities such as remoteness, awareness, mobility and health add to the struggle to participate’. Incorporated in the ‘vision for

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<sup>474</sup> Western Australian Electoral Commission, *Strategic Plan: 2010–2013*.

reconciliation’ was the statement that ‘the Commission is committed to achieving its strategies and focussing on electoral services that are likely to be relevant to Aboriginal and Torres Strait Islander electors including remote mobile polling, education and enrolment field trips.’<sup>475</sup>

In April 2013 Warwick Gately accepted the post of Electoral Commissioner of Victoria. He left a distinctive stamp on the administration of the Western Australian electoral system, similar to that of Ernst Stenberg a century earlier, although several other Chief Electoral Officers and Electoral Commissioners have made a mark. In 2009 he was a keynote Speaker at the 25<sup>th</sup> year Colloquium celebrating the establishment of the Australian Electoral Commission.<sup>476</sup> The previous year he had overseen recognition of the centenary of the consolidation of the Western Australian Electoral Act. Before his departure he was keen to witness another review of the Act and possibly the establishment of a Joint Standing Parliamentary Committee of Electoral Matters. This was part of his plan to ensure that Western Australia remained as one of the leaders of the nation in electoral law management and administration.

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<sup>475</sup> Western Australian Electoral Commission, *Reconciliation Action Plan, 2011–2014*, p. 1

<sup>476</sup> See Australian Electoral Commission Colloquium 09 Program. Author Harry Phillips also spoke at the Colloquium.

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## A Century of Electoral Law

When Western Australia became a State on 1 January 1901 the fundamental features of its electoral law and system of government had already been cast. As a nation, Australia was widely acknowledged for its experiments in democratic practices, including electoral laws. However, as a State with vast geographic expanse, communication and other difficulties, it was understandable that Western Australia developed some differences from the national model in electoral legislation. To the extent that the State's electoral laws have evolved to be measured as fair and democratic depends largely on the criteria employed for such an exercise. If measured against the ideals of the old Chartists and the formulas developed by modern leading commissions of inquiry, it can confidently be asserted that Western Australia has an electoral system that mostly satisfies the highest indices of democracy.

When in 1901 Western Australia transformed from a Colony to a State, the preponderance of Chartist principles had been achieved. The secret ballot had been established, manhood suffrage for the Legislative Assembly had been exceeded by the grant of votes to women, property qualifications for members of the Legislative Assembly had been abolished, and members of both Houses of Parliament received an income from 1900. The parliamentary term for the Legislative Assembly was reduced from four to three years in 1897 and there was an awareness of John Stuart Mill's view that parliamentary terms should be short to ensure that legislators do not grow apart from the public and keep their 'temper and character up to the right mark'.<sup>477</sup> In fact, some ninety years later the term of office for both Chambers reverted to four years. What had not gained constitutional passage by federation was the abolition of special qualifications for members of the Legislative Council and the restrictive franchise for the same House. Equal electoral districts had not gained parliamentary approval, which was on the federal, but not the Western Australian legislative horizon.

Following federation the boundaries of electoral districts continued to be prepared under Ministerial supervision as defined by the relevant Acts of Parliament. Once party lines became firmly established in the first decade of the twentieth century there were charges of 'gerrymandering' when

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<sup>477</sup> John Stuart Mill (1968), *On Liberty* [1859], *On Considerations of Representative Government* [1861], *The Subjection of Women* [1869], London: Oxford University Press, p. 321.

redistributions took place in 1904 and 1911. The Electoral Districts Bill 1913 provided for boundaries to be drawn by independent commissioners, but this did not pass through the Parliament. In 1922 the *Electoral Districts Act* revived the Electoral Commission proposal, which was to consist of the Surveyor General, the Chief Electoral Officer and a Supreme Court judge, who were to be guided by the criteria of community of interest, means of communication and distance from capital, physical features and existing boundaries. However, as the Commission's recommendations could only take effect by an Act of Parliament the process of electoral apportionment continued to be subject to partisan currents. Not until the *Electoral Districts Act 1947* was the proclamation of the final report of the Commissioners deemed independent of Cabinet and Parliament, as from that year the boundaries did not require parliamentary ratification and were to prevail for the next election.

The proclamation of the redistribution remained dependent on the Government and particularly posed problems in the years 1959 to 1961, when the Coalition Ministry cancelled the proclamation of its predecessor Labor Government and was later forced by Supreme Court Action to issue another.<sup>478</sup> Historically though, the independence of the Electoral Commissioners has been rarely questioned. At the same time research<sup>479</sup> has indicated that while electoral boundaries may have been delimited by non-partisan Commissioners, the consequences of their decisions in accordance with the legislation has sometimes given advantage to one party or another. Nevertheless, the deft approaches employed for redistributions by successive Commissions have probably minimised criticism as an absence of public criticism has been the rule rather than the exception. Departing from local government boundaries as little as possible in rural areas, and even preservation of existing boundaries to minimise overall advantages accruing to either Government or Opposition, have been discernible trends. Generally too, various Commissions have been reluctant to disturb the political bases of party leaders.

Of course the various redistribution Commissions may only determine boundaries in accordance with the relevant statutes, and the redistribution of 2007 posed an immense challenge. At the same time it should be recognised that 'equal electorates' are not universally regarded as milestones on the path towards a more democratic system. There is a school of thought which subscribes to a notion of 'effective representation' which has been a constant theme in many decisions in the Canadian Supreme Court. Australia wide, the tendency has been for the courts to keep out of the political

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<sup>478</sup> See Jeremy Buxton (1977), 'Western Australian Electoral Politics in the 1960s: Being an Analysis of Voting Figures and Parliamentary Debates Through the years 1959 to 1971. Unpublished Master of Arts Thesis, Nedlands: University of Western Australia, Chapter viii, pp. 175–194.

<sup>479</sup> Dennis Rumley (1985), 'The evaluation of electoral distributions: the case of Western Australia', *Australian Geographical Studies*, Vol. 23, April, p. 113.

thicket. The evolution of electoral laws, therefore, has been largely driven by the parliaments.

During 1963 and 1964 the franchise requirements and qualifications for Upper House members in terms of age and property were made equivalent to the Lower House although post World War Two inflation had effectively lowered the threshold of such restrictions. Aboriginal voting rights were long delayed but other States were also slow in this regard. Compared with the Commonwealth and other States, Western Australia was a laggard to make absent voting a permanent feature of its law, although it has always had flexible postal voting regulations. In contemporary times, early voting provisions have been devised to provide every opportunity for a citizen to vote if they cannot attend their local polling booth. Mobile voting has been made widely available in institutions and hospitals and expanded to use in regional and remote areas. For electors with a disability, provisions have been made to facilitate voting with wheelchair accessible locations and, in some polling places, drive-in arrangements for electors with limited mobility.

In 1964 the provision in the Act which had denied the franchise to persons who were dependent upon relief or charity was repealed. It had been on the statute books for the entire period of Statehood and perhaps the fact it had rarely been enforced explains how it hardly attracted attention. Limits on electoral expenses for State elections were another facet of the *Electoral Act 1907* which 'sat on the books' (between 1904 and 1979) without being rigidly enforced. Compulsory enrolment (from 1919) and later compulsory voting (from 1936) has been upheld. However, it has mostly been the approach of both the Electoral Department and the Electoral Commission to be reasonable in accepting 'valid and reasonable' explanations for non-voting, rather than through imposing draconian methods, such as a monetary fine (now at a modified \$20 dollars and maximum of \$50 dollars) or imprisonment.

Western Australia led the way with the introduction of the alternative (preference) vote in 1907, as amended in 1911, to ensure the distribution of preferences for all candidates. The Federal government adopted this law in 1918 with the other States, except Tasmania, following suit. As Australia is the only nation in the world to adopt the alternative (preference) vote in single member constituencies for such an extended period of years, the pioneer role with this voting system is significant, with a long-term impact on the Australian polity. Although such a voting system is not designed to register exact levels of party support, there has been a fair degree of 'proportionality' in nearly every general election (except 1989). The prevalence, at least until 1971, of a high number of uncontested seats, partly due to the substantial deposit required by candidates has made the arithmetic of proportionality difficult to quantify. With the alternative (preference) vote producing government majorities and viable oppositions it could be asserted

that the stability of the ‘Westminster’ system of government in Western Australia has been marked. Since 1905 no Parliament in Western Australia had suffered a premature election, but this convention was clearly broken by Premier Alan Carpenter in 2008.

Other changes over the last century have been, in historical terms, close to their acceptance in some but not necessarily all Australian jurisdictions. This can be said for compulsory enrolment (1919), proportional representation in the Legislative Council (1987), political donations legislation (1996), political party registration (2000) and public funding of political parties (2006). The introduction of the latter was way behind the Commonwealth and New South Wales, but it is worth considering that some States have still not yet passed such legislation. The creation of a Western Australia Electoral Commission in 1987 was not the ‘first cab off the rank’ but nor was it the last. One of the legislative responsibilities, to which the Commission has given priority, has been its educative role, and it has been a national leader with the establishment of an electoral education centre and the continuous promotion of electoral understanding.

To what extent then can Western Australia, at least for State politics, be said to have democratic electoral laws? A judgment on the question can depend on the criteria employed upon which there is a vast literature. Public surveys are rarely conducted on such questions, although there are findings which indicate that some aspects of the electoral law are not well understood. When the COG undertook consideration of the democratic elements of the electoral systems it circulated a discussion paper<sup>480</sup> on the matter. Its final report mentioned a range of desirable electoral law changes, including the bitterly fought ‘one vote one value’ for both Chambers. This was achieved for the Legislative Assembly in 2006 but vote weighting was retained for the Legislative Council. COG recommended a People’s Convention and suggested that ‘Electoral Rights’ be an item for debate. Of course the People’s Convention was never held but at the same time there was an implicit recognition that most of the major elements of the electoral law be retained.

Nevertheless it is now well over one hundred years since the last major revision and consolidation of the Electoral Act took place. Perhaps following a review the Electoral Act (including the need to modernise some of its terminology), a re-writing could be undertaken. It would not be an easy task as electoral legislation requires compliance with a host of other Acts of Parliament in administrative and operational matters.<sup>481</sup> A permanent consideration is the trend and often overlap of Commonwealth

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<sup>480</sup> ‘Electoral System-Legislative Council: Electoral System-Legislative Assembly’, Commission on Government, Discussion Paper, No. p. 22. Free, honest, regular and fair elections; adequate representation of a wide variety of interests; a simple voting system; fairness between political parties; effective government; and legitimacy.

<sup>481</sup> See Western Australian Electoral Commission, Annual Report, 2011–2012, p. 27.

legislation in electoral law. For consideration is whether, as has occurred at the Commonwealth, New South Wales and Victoria, a Parliamentary Standing Committee should be established to permanently inquire into the conduct of elections, by-elections and referendums. It was mentioned in parliamentary debate in 2011, then in September 2012 the Electoral Commissioner was invited to appear before the Legislative Assembly Community and Justice Standing Committee.

While it could be asserted that Western Australia has one of the most democratic and efficiently administered systems of electoral law in the Western world, the Electoral Commission faces challenges to uphold its purpose to provide quality electoral services through the conduct of impartial and independent elections and the promotion of public awareness of electoral matters, thereby fostering public confidence and participation in the electoral process.<sup>482</sup> It is a challenge to uphold, with technological advancements particularly electronic voting offering both prospects and problems.

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<sup>482</sup> Western Australian Electoral Commission Strategic Plan, 2010–2013, p. 3.

# APPENDIX 1

## Major Milestones in Western Australian Electoral Law 1900 to 2012

- **1904:** The *Redistribution of Seats Act 1904* defined four North West seat electoral boundaries. Changes to the boundaries were to satisfy the ‘manner and form’ provision whereby an absolute majority of the full membership of each House was required for electoral redistributions. Amendments to the *Electoral Act 1904* resulted in the abolition of plural voting for the Legislative Assembly, the repeal of absent voting and the imposition of limits on political party electoral expenses.
- **1907:** Passage of *Electoral Act 1907*. The Select Committee on the Electoral Act recommended the adoption of the alternative (preference) vote for the Legislative Assembly. The major consolidation of the Act included provisions for enrolment procedures and qualifications of electors as well as retention of the ‘manner and form’ provisions. The optional preference version of the alternative (preference) vote was introduced. The deposit for each candidate was £25 pound. Deposit to be refunded if one fifth of the first preference vote was acquired (same as provision in 1899).
- **1911:** *Constitution Acts Amendment Act 1911*. Modification of the franchise provisions for the Legislative Council required the possession of freehold worth at least fifty pounds and leasehold or householder qualifications of seventeen pounds annual value. The alternative vote was modified to require the compulsory distribution of preferences (for both Houses).
- **1912:** On 6 August, Douglas Gawler MLC (Liberal) moved for the adoption of proportional representation (Hare/Spence) for the Legislative Council, which was passed on the voices on 28 August 1912. In November, Jabez Dodd (Labor) introduced a proportional representation Bill for the Legislative Council. Dodd’s Bill passed the Legislative Council but was not introduced in the Legislative Assembly.
- **1917:** *Franchise Act 1916* preserved franchise for electors on active service.

- **1919:** Franchise refused for returned servicemen who did not satisfy property qualifications for the Legislative Council.
- **1919:** Introduction of compulsory enrolment for the Legislative Assembly.
- **1921:** Edith Cowan (in Maiden Speech) calls for the introduction of proportional representation and compulsory voting.
- **1922:** Independent Electoral Distribution Commissioners (Supreme Court Judge, Surveyor General and Chief Electoral Officer) to determine the boundaries of all districts, except the statutory seats in the North-West, although boundary decisions still required ratification by Parliament.
- **1933:** Compulsory voting temporarily employed for two secession referendum questions.
- **1936:** Introduction of Compulsory Voting for the Legislative Assembly.
- **1943:** (and 1946): Act provided for voting by members or discharged members of the armed forces who in some cases were under the age of 21 years (at that time the legal age for voting).
- **1947:** The requirement for Ministers to seek re-election on appointment to an office of profit under the Crown was removed. Commissioners were appointed to define new boundaries with different zonal arrangements including vote weighting for non-metropolitan seats. Reports of the Commissioners, based on the provisions of the Act, did not require parliamentary ratification, the first being promulgated on 21 December 1948.
- **1948:** The *Electoral Act Amendment 1907* re-introduced absent voting provisions. Absent voting had been provided for the referendum on secession in 1933 and was previously included in the *Electoral Act 1896*.
- **1959:** Under s.100 of the *Electoral Act 1907* provision was made for Mobile Ballot boxes. Use of Mobile Ballot boxes was extended to institutions in remote areas. Section 71 was amended to require the standard practice of conducting elections on a Saturday in accordance with Federal law.
- **1962:** Aboriginal people could now *choose* to enrol and vote for the Legislative Assembly, but enrolment was not compulsory.
- **1963:** The property franchise for the Legislative Council was repealed with the franchise provisions becoming identical in both Houses. Qualifications for membership of the Legislative Council brought into line with those for the Legislative Assembly with the lowering of the minimum age from 30 to 21 years, and the reduction

of the residential period within the State from two to one year. The basis of membership of the Legislative Council was changed from 10 provinces each representing three members to 15 provinces represented by two members.

- **1964:** Conjoint elections for the Legislative Assembly and Legislative Council; Enrolment and voting for the Council became compulsory. The disqualification provision in s.18 of the *Electoral Act 1907* regarding persons dependent upon relief from the State or from any charitable institution subsidised by the State was repealed.
- **1970:** Amendment to the *Electoral Act 1907* provided for ballot paper positions for both Houses to be drawn by lot. Previously this had been allocated in alphabetical order. The voting age was lowered to 18 years.
- **1973:** The minimum age for members of Parliament was reduced to 18 years of age. The deposit to nominate for election in both Houses was increased from \$50 dollars (changed from £25 pound to \$50 dollars in 1966) to \$100 dollars. The maximum penalty for failing to vote was increased from \$2 dollars to \$5 dollars.
- **1975:** An additional province was added to the Legislative Council, resulting in 16 dual member provinces for a total of 32 seats. The constitutional prohibition of ‘Members of Religion’ sitting in Parliament was lifted.
- **1979:** Limitations on party electoral expenses were repealed.
- **1981:** A further additional province was added to the Legislative Council bringing the total membership to 17 dual member provinces for a total of 34 seats.
- **1983:** Joint Roll Arrangement signed on 20 October 1983 for Federal, State and local government authorities; compulsory enrolment, as well as compulsory voting, for Aboriginal people.
- **1984:** The *Acts Amendment (Local Government Electoral Provisions) 1984* established the adult franchise for all local government authorities.
- **1985:** Joint Silent Roll Agreement for Federal, State and Local Government.
- **1987:** Acts Amendment (Electoral Reform Bill, introduced by Mal Bryce (Labor) on 9 June 1987. Legislative Council to be elected by proportional representation (STV) using the Inclusive Gregory Transfer of Votes Formula in six multi-member regions contiguous with the 57 Legislative Assembly districts with all MLCs retiring after four fixed terms. MLAs were to have four year maximum terms between elections. Country Regions were to be Agriculture (5 seats),

Mining and Pastoral (5 seats) and South West (7 seats). Metropolitan Regions were to be East Metropolitan (5 seats), South Metropolitan (5 seats) and North Metropolitan (7 seats). The metropolitan region was defined by the Metropolitan Region Scheme boundary. Political Party names were to appear on ballot papers with option ticket voting and a modified ballot paper format for the Legislative Council. Deposits for Legislative Council candidates was set at \$100 dollars. Return of deposits was to be made when the first preference votes polled in favour of a candidate or in favour of the members of the 'party' group was more than one twentieth (5 per cent) of the total number of first preference votes by all the candidates in the region. In the Legislative Assembly optional provisional voting was proposed but not adopted. Provisional enrolment was allowed for all persons aged 17 years. The deposit for each Legislative Assembly candidate was set at \$100 dollars. The deposit was to be returned when a candidate received one twentieth (5 per cent) of the total number of first preference votes of the first preference vote. The Western Australian Electoral Commission was established to conduct elections, and referendums, for Parliament and other bodies. It was to resource the redistribution of electorates. The Commission was given educative and research responsibilities. Returning Officers were to no longer give a casting vote in a tied election with this becoming a matter for the Court of Disputed Returns.

- **1988:** Brief experiment with ticket voting for three Legislative Assembly by-elections (Ascot, Balga and Dale) included in the Electoral Procedures Amendment Bill 1987, proclaimed on 16 February 1988, and was repealed in the same year.
- **1992:** Electoral Education Centre established in Subiaco.
- **1995:** Reversion to plurality (first-past-the-post) for Local Government elections. Municipalities were also given the option of postal voting for elections and referendums to be conducted by the WAEC as had been the case from 1994 for the new towns of Vincent, Cambridge and Victoria Park.
- **1996:** *The Electoral Amendment (Political Finance) Act 1992* (not proclaimed), as amended by the *Electoral Legislation Amendment Act 1996*, came into force on 9 November 1996. The Electoral (Political Finance) Regulations 1996 came into force on the same day.
- **1997:** Electoral Education Centre relocated at the Western Australian Constitutional Centre site at the old Hale School location in West Perth.

- **2000:** Registration of political parties; introduction of pre-poll in person voting in addition to the existing postal voting and absent voting provisions.
- **2004/2005:** Changes to disqualification provisions for members of Parliament. Disqualification to include persons convicted of a penalty specified by law including imprisonment for life and imprisonment for a period exceeding 5 years (previously 1 year).
- **2005:** Passage of the *Electoral Amendment and Repeal Act 2005* heralded the introduction of ‘one vote one value’ legislation in the Legislative Assembly, with a large district allowance for areas beyond 100,000 square kilometres. The *Constitution and Electoral Amendment Act 2005* increased the number of members in the Assembly from 57 to 59 and the membership of the Council from 34 to 36 members. Country Regions (18 seats) were to be: Agriculture (6 seats), Mining and Pastoral (6 seats) and South West (6 seats). Metropolitan Regions (18 seats) were to be East Metropolitan(6 seats), South Metropolitan (6 seats) and North Metropolitan(6seats)
- **2006:** Any person serving a sentence of one year was to be denied the vote but prisoners were to be eligible to enrol or to remain enrolled while serving their sentence. Public funding for political parties was introduced, based on share of the valid vote at General Elections and By-Elections. The transfer of vote regulations for PR-STV in the Legislative Council was changed from the ‘Inclusive Gregory’ to the ‘Weighted Inclusive Gregory’ method. Return of the nomination deposit of \$250 per candidate in both Houses was dependent upon a candidate receiving 4 per cent of the primary vote in the Legislative Assembly and party group in the Legislative Council.
- **2007:** Introduction of proportional representation for multi-member wards in Local Government based on the ‘Weighted Inclusive Gregory Method’ and the re-introduction of preference (alternative) vote for single member wards. Also in 2007, Federal legislation required citizens to give proof of identity for voter enrolment, representing the first alteration to the 1983 joint enrolment arrangements.
- **2008:** The introduction of the *Electoral Amendment Bill 2008* (14 May 2008) proposed that the Chair of the Electoral Distribution Commissioners for a term not exceeding 5 years, with opportunity for reappointment on one occasion, be filled by a retired judge or current member of the judiciary, rather than the Chief Justice. The *Electoral Amendment Legislation Bill (No.2) 2008* (14 May 2008) proposed that, consequent to the High Court *Roach* decision of 2007:

prisoners serving or sentenced to serve less than one year be permitted to vote; voting rights be granted to citizens of no fixed address; the political donation threshold be lowered from the existing \$1,800 dollars to \$1,000 dollars; overseas electors and prisoners be registered as general early voters; and changes also provided for rules for candidates distributing ‘how to vote cards’ and the appointment of agents for disclosure purposes (Assented to 21 May 2009).

- **2009:** Plurality (first past the post) voting was reinstated for local government elections with the repeal of proportional representation (PR) for multi-member wards and preference voting (alternative vote) for single member wards or electorates for mayoral vote.
- **2011:** *Electoral Amendment and Constitution Act 2011* provided for successive State General Elections to be held on the second Saturday in March every four years. In essence, this was a fixed election date to facilitate planning and uphold the tradition of full term Parliaments. Adoption of Electoral Roll Maintenance System (RMS). RMS includes over two million individual elector and residential address records for current State Electoral Roll. The data base is used to provide the Sherriff’s Office with jury lists. Members of Parliament also receive access to the roll through this system which includes the birthdates of electors.
- **2012:** *Electoral Amendment Act* made provisions for electoral enrolment to be consistent with the Commonwealth’s evidence of identity enrolment provisions. In line with Commonwealth Electoral legislation the offence of electoral defamation was removed from the Act. A number of electoral procedures such as candidate nominations and deposits, early voting, party registration and political disclosure requirements were modified to keep abreast of the developments of modern electronic technology. Provision for persons who are seriously ill or infirm or over the age of 70 to also apply to be a general early voter. Exemptions for candidates who are silent electors to not have their residential address publicly declared and published at the declaration of nominations. Amendments were made to ensure that provisions that relate to non-voters are consistent with the *Fines, Penalties and Infringement Notices Enforcement Act 1994*. Repeal of *Franchise Act 1916*. Private Member’s Bills to prevent political party funds being raised at functions based on access to Ministers, and implementing a ban on publicly funded advertising in the three months prior to an election, lapsed on prorogation.

# APPENDIX 2

## Major Electoral Formulas in Brief

### **Alternative (Preference) Vote**

The alternative (or preference vote) requires a candidate to obtain an absolute majority of the formal votes (i.e. 50 per cent plus one) in order to be elected to a vacancy in a single member constituency. Under a full preferential system, a voter is required to indicate a preference for each candidate on the ballot paper by using the numbers 1, 2, 3 and so on up to the total number of candidates. If, after all first preference votes have been counted, no candidate has obtained an absolute majority of all formal votes, then the candidate with the fewest number of first preference votes is excluded from the count. The excluded candidate's second preference votes are then distributed to the remaining candidates. If, after that exclusion, no candidate has obtained an absolute majority of formal votes, the next remaining candidate with the fewest votes is excluded and all of those votes (second preferences and those received from the previously excluded candidate) are distributed to the remaining candidates. This process is continued until one candidate is elected by obtaining an absolute majority of formal votes. Under the WA Electoral Act 1907, ballot papers with a valid first preference vote but with duplicate or broken sequences of preferences, can remain in the count as formal votes, but they exhaust their preferences before reaching one of the two final candidates in the contest. Ballot papers of this type are often called 'Langer' votes, a reference to the political activist who advocated voting in this manner when the same formality rules applied for Commonwealth elections.

### **Optional Preference Vote**

The optional preference vote version of the alternative vote allows the voter the option to show support to only one or more candidates, rather than requiring them to place a number by every candidate. This is thought to broaden the choice and make voting simpler. It is still necessary, however, for the winning candidate to obtain an absolute majority of formal votes, but this figure must be recalculated after every count to accommodate the exhausted votes (ballot papers which did not show a complete distribution of preferences). In practice optional preference voting can become a de-facto form of plurality (first-past-the post) if electors do not habitually cast their full range of preferences.

## **Contingent Vote**

Under the contingent vote, when no candidate receives a majority of valid votes all candidates are eliminated except the leading two candidates, with the eliminated candidates preferences distributed to ensure a majority winner. Under this method (in terms of primary votes) the third ranked candidate cannot be elected. This differs from the alternative vote, where there is a serial elimination of candidates and distribution of preferences from the bottom up. Queensland used the contingent vote from 1892 until 1942, the longest continuous use of this electoral system anywhere in the world.

## **Second or Double Ballot**

In order that a candidate may be declared duly elected as a result of the first ballot in a single-member constituency, it is necessary for a candidate to receive a number of votes constituting what is termed an ‘absolute majority’, which is more than half of all the valid votes cast. If no candidate obtains such a majority, a second ballot is held at a subsequent date, the interval between the first and second being usually fixed by law. At the second ballot convention stipulates that only the two candidates who received the highest number of votes in the first election are submitted to the electors for final choice.

## **Limited Vote**

The limited voting system provides for a ‘restricted voting power’, in so far as the elector is entitled to a number of votes less than the number of members to be returned for the constituency. The primary object of such a restriction is to prevent a party or group from carrying all the seats in a constituency, or in other words to enable a minority, if strong enough in the electorate, to obtain some share of representation. In the most usual form of this system, the constituency returns three members, and the elector is allowed two votes, which however, cannot be given to one candidate.

## **Mixed Member Proportional (MMP)**

The mixed member proportional system (MMP) is used for German national elections and for the New Zealand Parliament. It is a combination of majoritarian and proportional systems whereby half of the representatives are elected using single member districts with plurality (although it could be the alternative vote or optional preference vote), while the other half are elected from party lists according to a list system of proportional representation (again it could be according to another PR method). Consequently each voter is required to cast two votes on polling day. The first is for a candidate in a local constituency, while the second is for a political party with the party votes being aggregated for the whole nation.

### **Plurality (First Past the Post)**

Plurality forms the basis of the electoral system known as first-past-the-post. Plurality applies when the number of valid votes won by a candidate, is more than the number of valid votes won by any other candidate in the constituency. The term is usually applied when the number of votes won by the most popular candidate is less than an absolute majority, which is less than 50 per cent plus one of the total valid votes cast.

### **Proportional Representation (PR)**

Proportional Representation (widely known as PR) has over 300 versions but these are categorised into two main forms, namely a party list system in Europe and the single transferable vote (STV) version in Australia which is based on the achievement by a candidate of a quota. It is simple in principle but difficult to apply. PR is designed to produce a result which mirrors as accurately as possible the proportionate support given to candidates, usually grouped as political parties, in the multi-member electorate. Thus, broadly, in a six member regional electorate a third of the vote would yield two (or a third of the seats). Once a candidate has gained a quota, surplus votes are transferred to remaining candidates according to a formula. For the remaining quotas to be filled, the candidate (s) with the lowest number of votes are progressively excluded and their votes are distributed according to preferences to the remaining candidates. In recent years candidates with a very low percentage of first preference votes have sometimes been elected as the final candidate for some multi-member constituencies. This has brought into focus debate about the 'proportionality' of several Australian applications of the STV version of PR.

# APPENDIX 3

## Candidates for the Western Australian Legislative Assembly

### General Elections 1908–2013<sup>483</sup>

Electoral year	Number of electoral districts	Seats which required preference distribution to determine winning candidate		Seats in which the candidate with a plurality of first preference votes was defeated	
	N	N	%	N	%
1908	50	8	16.0	0	0.0
1911	50	8	16.0	3	6.0
1914	50	8	16.0	3	6.0
1917	50	12	24.0	9	18.0
1921	50	18	36.0	4	8.0
1924	50	16	32.0	5	10.0
1927	50	4	8.0	1	2.0
1930	50	13	26.0	6	12.0
1933	50	11	22.0	4	8.0
1936	50	8	16.0	4	8.0
1939	50	11	22.0	2	4.0
1943	50	6	12.0	3	6.0
1947	50	9	18.0	3	6.0
1950	50	7	14.0	3	6.0
1953	50	3	6.0	1	2.0
1956	50	6	12.0	2	4.0
1959	50	9	18.0	2	4.0
1962	50	6	12.0	3	6.0
1965	50	4	8.0	1	2.0
1968	51	8	15.7	1	2.0
1971	51	18	35.3	5	9.8
1974	51	11	21.6	5	9.8
1977	55	5	9.1	0	0.0
1980	55	7	12.7	0	0.0
1983	57	6	10.5	4	7.0
1986	57	7	12.3	2	3.5
1989	57	25	43.9	4	7.0
1993	57	26	55.6	3	5.3
1996	57	29	50.9	2	3.5
2001	57	43	75.4	6	10.5
2005	57	31	54.4	4	7.0
2008	59	44	74.5	4	6.7
2013	59	30	37.5	4	6.7

<sup>483</sup> See Vanessa Beckingham (2004) 'The Alternative Vote in Theory and Practice, unpublished Honours Thesis, Mt Lawley, Edith Cowan University.

# APPENDIX 4

## Legislative Assembly Election Results 1890–2013

Year	Premier	Seats Contested	Labor (%)	Ind/Other	N. Lab	Nationalist/Liberal United Party	C.P.
1890	Forrest, J	30(11)					
1894	Forrest, J	30(15)					
1897	Forrest, J	44(26)			7	37a	
1901	Throssell, G	50(41)	6(26%)	5		39b	
1904	James, W	50(40)	23(43%)	9		18c	
1905	Rason, C (Lib)	50(39)	15(35%)			35	
1908	Moore, N (Lib)	50(41)	22(38%)			28	
1911	Scaddan, J (Lab)	50(40)	34(42%)			16	
1914	Scaddan, J (Lab)	50(35)	26(42%)			16	8
1917	Lefroy, H (Lib)	50(40)	15(25%)	1	6	16	12
1921	Mitchell, J (N)	50(39)	17(38%)	3	4	10	16
1924	Collier, P (Lab)	50(38)	27(40%)	1		9	13d
1927	Collier, P (Lab)	50(41)	27(45%)			16	7
1930	Mitchell, J (N)	50(39)	23(38%)	1		16	10
1933	Collier, P (Lab)	50(41)	30(45%)	1		8	11
1936	Collier, P (Lab)	50(40)	26(41%)	3		8	13
1939	Willcock, J (Lab)	50(40)	27(45%)	4		7	12
1943	Willcock, J (Lab)	50(38)	30(43%)	3		7	10
1947	McLarty, R (LCP)	50(30)	23(37%)	2		13	12
1950	McLarty, R (LCP)	50(38)	23(42%)	3		15	9
1953	Hawke, A (Lab)	50(28)	26(50%)			15	9
1956	Hawke, A (Lab)	50(34)	29(45%)	2		11	8
1959	Brand, D (LCP)	50(39)	23(44%)	2		17	8
1962	Brand, D (LCP)	50(39)	24(44%)			18	8
1965	Brand, D (LCP)	50(39)	21(44%)			21	8
1968	Brand, D (LCP)	51(37)	23(45%)			19	9
1971	Tonkin, J (Lab)	51(51)	26(49%)			17	8
1974	Court, C (LCP)	51(50)	22(49%)			23	6e
1977	Court, C (LCP)	55(55)	22(44%)			27	6f
1980	Court, C (LCP)	55(54)	23(46%)			26	6g
1983	Burke, B (Lab)	57(57)	32(53%)			20	5h
1986	Burke, B (Lab)	57(57)	32(53%)			19	6i
1989	Dowding, (Lab)	57(57)	31(42%)			20	6i
1993	Court, R (Lib-Nat)	57(57)	24(37%)	1		26	6i
1996	Court, R (Lib-Nat)	57(57)	19(36%)	3		29	6i
2001	Gallop, G (Lab)	57(57)	32(37%)	4		16	5i
2005	Gallop, G (Lab)	57(57)	32(42%)	2		18	5i
2008	Barnett, C (Lib)	59(59)	28(36%)	3		24	4i
2013	Barnett, C (Lib)	59(59)	21(33%)			31	7i

Lib	Liberal	a	Ministerialists 29, Opposition 8
Lab	Labor	b	Ministerialists 19, Opposition 20
LCP	Liberal Country Party	c	Ministerialists 18
N	Nationalist	d	Majority Country Party 7, Executive Country Party 6
Nat	National Party	e	National Alliance
		f	National Country Party 3, National Party 3
		g	National Country Party 3, National Party 3
		h	National Country Party 3, National Party 2
		i	National Party of Australia

# APPENDIX 5

## Legislative Council Election Results 1901–2013

Year	Seats	Australian Labor Party	Nationalist Liberal	Country Party	Greens (WA)/Other
1890	15	-	-	-	-
1894	21	-	-	-	-
1896	21	-	-	-	-
1898	24	-	-	-	-
1900	24	-	-	-	-
1902	30	-	-	-	-
1904	30	-	-	-	-
1906	30	-	-	-	-
1908	30	-	-	-	-
1910	30	-	-	-	-
1912	30	6	24	-	-
1914	30	5	19	3	3
1916	30	7	15	6	2
1918	30	3	18	7	2
1920	30	5	17	5	3
1922	30	3	17	7	3
1924	30	6	14	7	3
1926	30	5	16	7	2
1928	30	6	14	8	2
1930	30	5	15	8	2
1932	30	7	14	7	2
1934	30	7	13	7	3
1936	30	8	13	7	2
1938	30	8	13	7	2
1940	30	8	12	7	3
1944	30	8	12	7	3
1946	30	8	13	7	2
1948	30	7	15	7	1
1950	30	8	14	8	-
1952	30	9	13	8	-
1954	30	13	9	8	-
1956	30	13	9	8	-
1958	30	13	9	8	-
1960	30	13	9	8	-
1962	30	13	9	8	-
1965	30	10	12	8	-
1968	30	10	12	8	-
1971	30	10	13	7	-
1974	30	9	18	3	-

<b>Year</b>	<b>Seats</b>	<b>Australian Labor Party</b>	<b>Nationalist Liberal</b>	<b>Country Party</b>	<b>Greens (WA)/Other</b>
1977	32	10	18	4	-
1980	32	9	19	3	1 NP
1983	34	13	19	1	1 NP
1986	34	16	14	4 NPA	-
1989	34	16	15	3 NPA	-
1993	34	14	15	3 NPA	1 IND 1 G
1996	34	12	14	3 NPA	3 G 2 AD
2001	34	13	12	1 NPA	5 G 3 ON
2005	34	16	15	1 NPA	2 G
2008	36	11	16	5NP4	4 G
2013	36	11	17	5NPA	2 G 1 SF

NPA National Party of Australia  
 NP National Party (of Western Australia)  
 AD Australian Democrats  
 ON Pauline Hanson's One Nation  
 G Greens (WA)  
 IND Independent  
 SF Shooters and Fishers

# APPENDIX 6

## Legislative Assembly: By-Elections<sup>484</sup>

Parliament	Years	Death	Resignation	Ministry Appoint/s	Disputed Return	Declared Vacant	Total
1st	1890–94	1	6				7
2nd	1894–97	1	3				4
3rd	1897–01	1	8				9
4th	1901–04	5	5	7			17
5th	1904–05	-	1	5			6
6th	1905–08	1	4	1	3		9
7th	1908–11	2	5	-	1	1	9
8th	1911–14	1	4	-	-	-	5
9th	1914–17	1	5	3	-	1	10
10th	1917–21	2	2	1	-	-	5
11th	1921–24	2	1	-	-	-	3
12th	1924–27	1	-	-	-	-	1
13th	1927–30	2	1	-	-	-	3
14th	1930–33	3	-	-	-	-	3
15th	1933–36	2	1		1	-	4
16th	1936–39	2	1	1	-	-	4
17th	1939–43	2	3	-	-	-	5
18th	1943–47	3	-	-	1	-	4
19th	1947–50	4	-	-	1	-	5

<sup>484</sup> See David Black (ed) (2009), *The Western Australian Parliamentary Handbook*, 22<sup>nd</sup> edition, Perth: Parliament of Western Australia, p. 389

<b>Parliament</b>	<b>Years</b>	<b>Death</b>	<b>Resignation</b>	<b>Ministry Appoint/s</b>	<b>Disputed Return</b>	<b>Declared Vacant</b>	<b>Total</b>
20th	1950–53	4	2	-	-	-	6
21st	1953–56	2	-	-	-	-	2
22nd	1956–59	2	1	-	-	-	3
23rd	1959–62	2	-	-	-	-	2
24th	1962–65	1	1	-	1	-	3
25th	1965–68	1	2	-	-	-	3
26th	1968–71	-	1	-	-	-	1
27th	1971–74	1	3	-	-	-	4
28th	1974–77	-	1	-	-	-	1
29th	1977–80	-	-	-	1	-	1
30th	1980–83	1	2	-	-	-	3
31st	1983–86	-	2	-	1	-	3
32nd	1986–89	2	8	-	-	-	10
33rd	1989–93	-	6	-	-	-	6
34th	1993–96	-	3	-	-	-	3
35th	1996–01	-	-	-	-	-	0
36th	2001–05	-	2	-	-	-	2
37th	2005–08	1	2	-	-	-	3
38th	2008–13	-	3	-	-	-	3
		52	80	18	9	2	161

# APPENDIX 7

## Legislative Assembly: Turnout and Informal Votes

### 1890–2013

Date	Turnout %	Informal %	Seats	No-contest
5 Dec 1890	78.33	0.01	30	19
14 Jun 1894	61.08	7.43	33	18
21 Apr 1897	52.68	3.09	44	18
24 Apr 1901	46.05	2.04	50	9
28 Jun 1904	48.28	1.09	50	10
27 Oct 1905	51.86	1.01	50	11
11 Sep 1908	66.49	1.22	50	9
3 Oct 1911	74.88	1.41	50	10
21 Oct 1914	57.32	1.17	50	14
29 Sep 1917	62.15	1.69	50	10
12 Mar 1921	67.32	1.64	50	6
22 Mar 1924	62.37	1.16	50	12
27 Mar 1927	73.42	1.40	50	9
12 Apr 1930	74.45	1.14	50	11
8 Apr 1933	90.60	2.25	50	9
15 Feb 1936	70.13	1.11	50	15
18 Mar 1939	91.59	1.75	50	10
20 Nov 1943	86.54	2.47	50	12
15 Mar 1947	85.91	2.05	50	20
25 Mar 1950	91.03	1.98	50	12
14 Feb 1953	93.47	2.62	50	22
7 Apr 1956	92.18	2.83	50	16

<b>Date</b>	<b>Turnout %</b>	<b>Informal %</b>	<b>Seats</b>	<b>No-contest</b>
31 Mar 1962	93.09	1.79	50	11
20 Feb 1965	92.33	3.11	50	11
23 Mar 1968	92.09	3.12	51	14
20 Feb 1971	91.31	3.85	51	0
20 Mar 1974	90.13	4.08	51	1
19 Feb 1977	95.08	3.18	55	0
23 Feb 1980	88.44	3.52	55	2
19 Feb 1983	89.02	2.83	57	1
8 Feb 1986	91.44	2.63	57	0
4 Feb 1989	90.73	7.35	57	0
6 Feb 1993	93.50	4.13	57	0
14 Dec 1996	89.99	4.39	57	0
10 Feb 2001	90.56	4.54	57	0
26 Feb 2005	89.84	5.24	57	0
6 Sep 2008	86.48	5.36	59	0
9 March 2013	89.21	6.00	59	0

# APPENDIX 8

## State Referendums in Western Australia

### Popular Referendum on Australian Federation 1900<sup>485</sup>

Polling Date (Turnout-Informal)	Subject	Outcome
31 July 1900 (67.69%-0.83%)	Popular Referendum on Australian Federation	Yes: 44,800-69.47% No:19,691-30.53%

### Licensing (and Prohibition) Referendums (Summary)<sup>486</sup>

Polling Date (Turnout-Informal)	Subject	Outcome
26 April 1911	Local Option Vote 1911 (liquor controls)	Number of licences should not increase 17,623 to 4554 Districts (Yes) – 1 Districts (No) – 41 New Publicans to hold licenses? Yes – 27,007 No – 14,378 State should manage liquor licensing? Yes – 26,631 No – 14,944
30 April 1921	Local Option Referendum 1921 (liquor controls)	No district achieved the necessary vote for Prohibition
4 April 1925 (59% – 0.55%)	First Prohibition Referendum	Proposal defeated: Yes (41,362) – 34.91% No (77,113) – 65.09%
9 December 1950 (90.07% – 2.49%)	Second Prohibition Referendum	Proposal defeated: Yes (73,361) – 26.45% No (203,953) – 73.55%

<sup>485</sup> See David Black (ed) (2009), *The Western Australian Parliamentary Handbook*, twenty second edition, Perth: Parliament of Western Australia, p. 389.

<sup>486</sup> See David Black (ed) (2009), *The Western Australian Parliamentary Handbook*, twenty second edition, Perth: Parliament of Western Australia, p. 390–394.

## Secession Referendum(s) 1933<sup>487</sup>

Polling Date	Subject	Outcome
8 April 1933 Turnout – 91.60% Informal – 3.65per cent	In Favour of Secession	Yes (138,653) – 66.23% No ( 70,706) – 33.77%
8 April 1933	Westminster Delegation	Yes (88,275) – 42.09% No (119,031) – 51.91%

### Table 8.5 Daylight Saving Referendums<sup>488</sup>

Polling Date (Turnout- Informal)	Subject	Outcome
8 March 1975 (88.86% – 0.97%)	First Daylight Saving Referendum	Yes: 250,644 – 46.34% No: 290,179 – 53.66%
7 April 1984 (86.48% – 0.64%)	Second Daylight Saving Referendum	Yes: 329,536 – 45.65% No: 392,340 – 54.35%
4 April 1992 (86.20% – 1.03%)	Third Daylight Saving Referendum	Yes: 399,441 – 46.86% No:452,985 – 53.14%
16 May 2009 (85.64% – 0.40%)	Fourth Daylight Saving Referendum	Yes: 519,899 – 45.44% No: 624,304 – 54.56%

### Table 8.6 Retail Shopping Hours Referendum (s)<sup>489</sup>

Polling Date (Turnout- Informal)	Subject	Outcome
26 February 2005 (89.67% – 2.05%)	Week night shopping until 9.00p.m.	Yes: 457,183 – 41.34% No: 648,860 – 58.66%
26 February 2005 (89.66% – 2.98%)	General retail shops to trade for 6 hours on Sunday	Yes: 422,942 – 38.61% No: 672,478 – 61.39%

<sup>487</sup> See David Black (ed) (2009), *The Western Australian Parliamentary Handbook*, twenty second edition, Perth: Parliament of Western Australia, p. 392–393.

<sup>488</sup> Based on 2009 *Western Australian Referendum on Retail Trading Hours Report*, Perth: Western Australian Electoral Commission.

<sup>489</sup> Derived from 2005 *Western Australian Referendum on Retail Trading Hours Report*, Perth: Western Australian Electoral Commission.

# APPENDIX 9

## Glossary of Terms

Absent Vote	If an elector goes to a polling place outside the district for which he or she is enrolled they may be given an absent vote. The elector states the address they believe they are enrolled for, signs a declaration regarding their electoral information, receives absent ballot papers for that district and/or region and casts their vote. The completed absent ballot papers are then placed in an envelope attached to the declaration. The declaration is subsequently checked against the roll to determine the elector's eligibility and, if found to be correct, the ballot paper envelope is removed and sent to the appropriate district for inclusion in the final count.
Absolute majority	In electoral terms 50 per cent plus one of the valid vote cast (including preferences) required for the election under the alternative (preference) voting system used for Legislative Assembly elections. For constitutional purposes it is the nearest whole number above exactly half of the normal membership of the Legislative Assembly and Legislative Council.
Ballot Paper	The paper on which a vote is marked. The ballot paper shows the candidates' names, party affiliation, or in the case of a referendum, the question(s). It also contains voting instructions.
By-election	An election conducted for a Legislative Assembly district vacated by a Member of Parliament for reason other than Parliament's expiration or dissolution.
Casual Vacancy	A vacancy prior to the expiration of the term usually caused by retirement, death, or resignation of the current member in the Legislative Council
Court of Disputed Returns	The Court of Disputed Returns has jurisdiction to hear petitions in which the validity of any election or return is disputed.
Donkey Vote	A ballot paper which is marked 1, 2, 3, 4 etc. down or up the ballot paper, thought to be numbered in this

way by a voter who is indifferent to the outcome. It is still a valid vote (estimated to be between 1 per cent and 2 per cent or so of the formal vote).

#### Early Vote

An early vote in person is a vote cast at a designated place before polling day, in person, by an elector who will be unable to attend a polling place on polling day.

An early vote by post is a vote under certain prescribed circumstances when an elector may apply for an early vote (by post). Usually this relates to an inability to attend a polling place on polling day. Early votes can be received up until 9am on Thursday following polling day at a State election, provided the early vote envelope carries a postmark that is not later than the close of polls.

#### Franchise

A word of French origin, meaning free. Today it means a citizen's right to vote. The term 'suffrage' is also used to represent the right to vote.

#### General Election

An election for all the seats in a House of State Parliament.

#### Informal Vote

A ballot paper that is either left blank, does not show preferences in accordance with instructions and/or the law, or where the voter's full intention is unclear. In a State election a ballot paper will also be informal if the voter can be identified through some marking which can be made on it. These ballot papers neither contribute to the election of a candidate nor are they included in calculating the quota/absolute majority required to be successful vote that cannot be allowed in the election count because the ballot paper has not been completed correctly. Sometimes referred to as a spoiled or invalid vote.

#### Malapportionment

The term used in an electoral system which incorporates a weighting (or bias) in favour of some voters against others. In Western Australia this weighting has often been geographic, favouring rural voters against metropolitan voters.

#### Mobile Polling

Polling which is carried out by electoral officials who travel to remote areas, hospitals and declared special institutions in a specified period either prior to or on polling day. The electors serviced by this form of

polling would usually be severely inconvenienced if required to attend a polling place on polling day due to remoteness or physical capacity.

Ordinary vote

The elector goes to a polling place in the district for which he or she is enrolled, has his or her name crossed off the electoral roll and casts a vote.

Provisional vote

A provisional vote can be used under certain circumstance. These include an elector who claims to have enrolled and whose name has been marked off in error: or whose eligibility has been objected by a scrutineer. The elector signs a declaration regarding their electoral information; receives the provisional ballot papers for the district and/or region that they have claimed enrolment for and casts a provisional vote. The ballot papers are placed in an envelope attached to the declaration. The declaration is subsequently checked against the roll to determine the elector's eligibility, and if the voter is found to be eligible to vote, the ballot paper (s) are included in the count.

Ticket voting

A written statement of preferences lodged with the Western Australian Electoral Commission by a candidate of a political party, or Independent, after the close of nominations for use in interpreting the votes of electors who 'plump' with the numeral one (1) for one party, or group, in the Legislative Council.

Writ

The legal instrument authorising an election to be held and which also sets key elements of the election timetable. Writs are issued to the district and regional returning officers by the Clerk of Writs (the Electoral Commissioner) upon the receipt of a warrant from the Governor.

# Select Bibliography

## Articles and Books

- Black, David (1989), *Legislative Council of Western Australia: Membership Register, Electoral Law and Statistics 1890–1989*, Perth: Western Australian Parliamentary History Project.
- Black, David (1996), *Election Statistics: Legislative Assembly of Western Australia 1890–1996*, Perth: Parliament of Western Australia and Western Australian Electoral Commission.
- Brent, Peter (2006), 'The Australian Ballot: Not the Secret Ballot', *Australian Journal of Political Science*, Vol. 41, No. 1, March, pp. 39–50.
- Bryce, Malcolm (1988), 'Electoral Reform in Western Australia, 1983–87', *The Parliamentarian*, January, pp. 20–26.
- Buxton, Jeremy (1979), 'Electoral Politics Past and Present in Western Australia', in Ralph Pervan and Campbell Sharman (eds), *Essays on Western Australian Politics*, Nedlands: University of Western Australia Press, pp. 35–63.
- Byrne, N.F. (1960), 'The Western Australian Electoral System, 1917–1956', *University Studies in Western Australian History*, Vol. 111, No.4, pp. 5–59.
- Choules, Michelle (2012), 'The Right to Sit', in David Black and Harry Phillips (2012), *Making a Difference-A Frontier of Firsts Women in the Western Australian Parliament 1921–2012*, Perth: Parliament of Western Australia, pp. 32–46.
- Farrell, David and McAllister, Ian (2006), *The Australian Electoral System: Origins, Variations and Consequences*, Sydney: University of Sydney Press.
- Goot, Murray (1985), 'Electoral Systems', in Don Aitkin (ed.), *Surveys of Australian Political Science*, Sydney: George Allen and Unwin, pp. 179–264.
- Hawker, Geoffrey (2002), *Politicians All: The Candidates for the Australian Commonwealth Election 1901; A Collective Biography*, Sydney: Wild and Wooley.
- Hill, Lisa (2012), 'Compulsory Voting: Residual Problems and Potential Solutions', *Australian Journal of Political Science*, Vol. 37, No. 3, pp. 437–455.

Kelly, Norm (2012), 'Electoral Rules', in Rodney Smith, Ariadne Vromen and Ian Cook (eds), *Contemporary Politics in Australia: Theories, Practices and Issues*, Cambridge: Cambridge University Press, pp. 120–130.

Kelly, Norm (2012), *Directions in Australian Electoral Reform: Professionalism and Partisanship in Electoral Management*, Canberra: ANU EPress.

Mackenzie, W.J.M. (1967), *Free Elections: An Elementary Textbook*, London: George Allen and Unwin.

Macphail, Isla (2008), *Highest Privilege and Bounden Duty: A Study of Western Australian Parliamentary Elections 1829–1901*, Perth: Western Australian Electoral Commission.

Macphail, Isla (2012), 'Beyond the Ambitions of Chartism: The Attainment of Women's Suffrage in Western Australia', in David Black and Harry Phillips (2012), *Making a Difference-A Frontier of Firsts: Women in the Western Australian Parliament, 1921–2012*, Perth: Parliament of Western Australia, pp. 1–31.

Major, Shaun (1994), *The Citizens Initiated Referendum: Direct Democracy or Irresponsible Mass Government*, Perth: Western Australian Electoral Commission.

Major, Shaun (1995), *To Vote or Not Vote: Compulsory Voting in Australia*, Perth: Western Australian Electoral Commission.

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

Phillips, Harry (2002), *Compulsory Voting: The Australian Experiment*, Perth: Western Australian Electoral Commission.

Phillips, Harry (2006) (with the assistance of Kirsten Robinson), *The Quest for 'One Vote One Value' in Western Australia's Political History*, Perth: Western Australian Electoral Commission.

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

Phillips, Harry (1980), 'The Political Participation Ethic and the Compulsory Vote', *Social Sciences Forum*, Vol. 6, No. 1, June, pp. 1–14.

Phillips, Harry (1992), 'Compulsory Voting Revisited', *Journal of Parliamentary and Citizenship Education*, Vol. 1, No. 1, pp. 20–26.

Phillips, Harry (1983), 'Proportional Representation in the Canadian Federation,' in Peter Crabb (ed), *Theory and Practice in Comparative Studies*, Sydney: Australian and New Zealand Association for Canadian Studies, pp.140-165.

Rae, Douglas (1971), *The Political Consequences of Electoral Laws*, New Haven: Yale University Press.

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

Reilly, Benjamin (2004), 'The Global Spread of Preferential Voting: Australian Institutional Imperialism?' *Australian Journal of Political Science*, Vol. 39, No. 2, pp. 253–266.

Rumley, Dennis (1985), 'The evaluation of electoral distributions: the case of Western Australia', *Australian Geographical Studies*, Vol. 23, April, pp. 105–114.

Sawer, Marian (ed) (2001). *Elections Full, Free and Fair*, Annandale: The Federation Press.

Sawer, Marian and Zappala, Gianni (2001), *Speaking for the People: Representation in Australian Politics*, Melbourne: Melbourne University Press.

Sawer, Marian and Miskin, Sarah (eds) (1999), *Representation and Change: 50 Years of Proportional Representation in the Senate*, Canberra: Department of Senate.

Skene, Judy (1999), 'Amending the Suffrage Story: Local Government in Western Australia, 1876-1999', *Studies in Western Australian History*, Vol. 19, pp.62–74.

Stenberg, Ernst (1914), *Principal Electoral Systems for the Election of the Legislatures in Self-Governing Countries, Together with A Draft Scheme for the Establishment of an Electoral System of Proportional Representation in Western Australia*, Perth: Law Book Company of Western Australia.

## **Reports and Pamphlets**

Report on Informal Voting, State General Election, 4 February 1989, Vol. 1 Legislative Assembly, Western Australian Electoral Commission, No. 1/90.

'Compulsory Voting' (1998), *Electoral Backgrounder* No. 8, Canberra: Australian Electoral Commission.

Electoral History in Outline: A Contribution to the Centenary of Responsible Government in Western Australia, Publication 7/90, Perth: Western Australian Electoral Commission.

Evans, Tim (2006), 'Compulsory Voting in Australia', Australian Electoral Commission

First Report (1983), Parliament of the Commonwealth of Australia, Joint Select Committee on Electoral Reform, pp. 1–13.

*History of the Indigenous Vote* (2006), Public Awareness Programs Section, Australian Electoral Commission, Kingston, Commonwealth of Australia.

Parliament and Representation in Western Australia (1984), Australian Institute of Political Science and Politics Department of University of Western Australia Conference Proceedings, (June).

Parliament Week (1984), Seminar on Progress Towards Parliamentary Democracy in Western Australia.

Proportional Representation Voting Systems of Australia's Parliaments, Electoral Council of Australia, Parkes; Australian Capital Territory, [www.eca.gov.au](http://www.eca.gov.au)

State Electoral Department, Reports and Statistics, 1906 to 1936, Perth: Government Printer.

Report of the Royal Commission on the Electoral Act, 1907–1921 and other relative matters (1935), previously a Joint Select Committee, Perth: Government Printer.

Report of the Committee of Inquiry Appointed to inquire into and report on various aspects of the Electoral Act of Western Australia 1907–1976 (1978) (Justice Kay).

Report of the Select Committee of the Legislative Assembly Appointed to Inquire into the Compilation of Electoral Rolls (1905), Perth: Government Printer. See also 'Report on the Principal Electoral Systems for the Election of the Legislatures in Self-Governing Countries', Votes and Proceedings on 1910–1911, Vol. 2, Legislative Assembly.

Report No. 1 (1995), Commission on Government, Perth: Western Australia.

Report of the Standing Committee on Legislation in Relation to the Electoral Distribution Repeal Bill 2001 and the Electoral Amendment Bill 2001, Legislative Council (2001).

Report of Standing Committee on Environment and Public Affairs: Local Government Amendment Bill (No. 2) 2006 (2007).

Seminar on Progress Towards Parliamentary Democracy in Western Australia (1984), Parliament Week (September).

Parliament and Representation in Western Australia (1984), Australian Institute of Political Science and Politics Department of University of Western Australia, (June).

Western Australian Electoral Commission, Annual Reports, 1987 to 2011.

Western Australian Electoral Commission, Electoral Cases: Western Australia, South Australia, Tasmania, Northern Territory.

Western Australian Electoral Commission (2012), 2013 State General Election: Strategy and Service Commitments.

## **Theses and Papers**

Beckingham, Vanessa (2004), 'The Alternative Vote: In Theory and Practice', Unpublished Honours Thesis, Mount Lawley: Edith Cowan University.

Buxton, Jeremy (1977), 'Western Australian Electoral Politics in the 1960s: Being an Analysis of Voting Figures and Parliamentary Debates through the years 1959 to 1971. Unpublished Master of Arts Thesis, Nedlands: University of Western Australia'.

Byrne, N.F. (1959), 'A Historical Survey of the Western Australian Electoral System 1917–1956', Unpublished Master of Arts Thesis, Nedlands: University of Western Australia.

McKenzie, John (1936), 'Survey of Western Australian Politics in the Period of Representative Government, 1870–1890,' BA Honours Dissertation, University of Western Australia.

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

Phillips, Harry (1976), 'Challenges to the Voting System in Canada, 1874–1974', Unpublished Ph.D. Thesis, London: University of Western Ontario.

Phillips, Harry (2012) 'Proportional Representation in Western Australia: its Principles, History, Outcomes and Education', Perth, Western Australia Electoral Commission.

Sayers, Anthony (1986), The Debate Over Representation in Western Australia 1983–1985: The Proposals for Reform of Labor's First Term, Unpublished Bachelor of Arts Honours Thesis, University of Western Australia.

Taylor, Noela (1997), 'Adult Franchise in Local Government in Western Australia', Unpublished Master of Philosophy, Murdoch University.

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