

REPORT FOR ASPG

Hung parliaments — summary of proceedings of seminar held by the Western Australia Chapter of the ASPG, November 2010

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In 2010 hung or minority parliaments prevailed in the Westminster systems of the United Kingdom and the former Dominions of Canada, New Zealand and Australia. Particularly in recent years there have also been a number of hung parliaments in the Australian states and the Australian Capital Territory. Given this trend the Western Australian Chapter of the Australasian Study of Parliament Group (ASPG), as part of its 2010 program, conducted a seminar in the Legislative Assembly Chamber titled ‘Hung Parliaments: The Constitutional and Political Ramifications (UK, Tasmanian, Australian and WA Experiences)’. The topic had been suggested by Emeritus Professor David Black, the Chairman of the evening proceedings, at the time of the Governor Peter Underwood’s ‘activist’ role in the formation of the Tasmanian Government in April 2010 was being debated. Then, when the 18 August 2010 federal election returned a hung parliament, it was apparent that a timely seminar focus had been formulated. It was also recalled that following the 6 September 2008 election Western Australia had entered the same phase with its ‘alliance’ government led by Premier Colin Barnett.

Following the formal opening of the seminar by Speaker Grant Woodhams, the keynote address was delivered by Senior Counsel Chris Shanahan, who has a special interest in constitutional law.¹ Shanahan, who was delighted to be speaking in the Chamber, reminded his audience about the date of the seminar, 11 November, being an auspicious day. It was Armistice Day as well as the day the Whitlam government was dismissed with the exercise of the Governor General’s reserve powers. It was also the date in 1947 when Winston Churchill told the House of Commons ‘it has been said that democracy is the worst form of government except all those other forms that have been tried from time to time.’ Indeed Shanahan featured his address with quotes from some of the masters of political thought.

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¹ The full text of the paper by Chris Shanahan titled, ‘A gallows of hung parliaments — a Western Australian perspective’, appears in this issue of the *APR* as an Address.

Hung parliaments he placed in the context of the theory articulated by Francois Rabelais (1494–1553) that ‘nature abhors a vacuum.’

For Chris Shanahan the term ‘hung parliament’, perhaps derived from the notion of a ‘hung jury’, was of ‘recent vintage’. It broadly meant ‘a Parliament in which no single party has an absolute majority, that is no party can form a Government in its own right because no party has more than half the available seats in the House of Parliament in which government is formed’. Shanahan was to emphasise ‘that forming a Government following a hung Parliament demonstrates the Parliamentary nature of our Parliamentary democracy.’ He recalled how before 1868, following the broadened franchise of the Great Reform Act one year earlier, it had been practice for the government’s majority to be tested on the floor of the House of Commons following an election. Prime Minister Benjamin Disraeli broke this tradition once he realised that he would be defeated in a vote of confidence. Nowadays, if an opposition wins a clear majority on election night, the Prime Minister or Premier on behalf of the Government will typically give a television speech conceding defeat.

The outcome of the events in 1868 in the United Kingdom had the effect of reducing the ‘caretaker period’ which had always been extended to the recall of parliament. The contemporary caretaker period, which is not legally binding begins with the dissolution of the ‘lower house,’ until the new government is formed. Following the clarification of the modern caretaker period, ‘when no major policy decisions that may commit an incoming government making significant appointments or entering major contracts or undertakings,’ Shanahan gave particular focus to both the September 2008 Western Australian election and an often overlooked case study of the 1968 South Australian hung parliament circumstances. The detail is contained in Shanahan’s address in which, with respect to Western Australia, he questioned whether it would be possible for a ‘recalcitrant Premier’ to continue in office for a significant or ‘unconscionable’ period of time. Although such a scenario was unlikely Shanahan presented a reminder, citing the authority of the now Chief Justice Wayne Martin (who was present at the seminar), that the Commission on Government (COG) in 1996 had recommended a Constitutional Convention that the powers (including the reserve powers) of the Western Australian Governor be examined.

Shanahan, too, floated the desirability of a People’s Constitutional Convention. This position was amplified in later questioning when Chris Shanahan was also asked whether he thought it was likely that Governor General, Her Excellency Ms Quentin Bryce, would prorogue the House of Representatives in the event of a similar untimely death to that of Speaker Merv Toms in 1973 who had been casting his vote with the John Tonkin labor government. Tonkin only had a one seat majority following the 1971 Western Australian election. Chris Shanahan did not seek to pre-empt what the incumbent Governor General may do but he thought that the Western Australian Governor, Sir Douglas Kendrew, had made the appropriate decision in that circumstance which could readily be replicated with a similar

narrow majority in contemporary Australia. Shanahan recognised some constitutional flexibility occasioned by the existence of 'reserve powers' but a weakness was its ambiguity which made relevant his call to renovate the 'architecture' of the powers of the Governor (or Governor General).

Without doubt Shanahan, whose presentation included some cartoons and, as mentioned, the thoughts of influential thinkers provoked considerable thought which was the backdrop to presentations of four incumbent Members of the Western Australian Parliament. The first speaker was the Hon. Wendy Duncan MLC, a Parliamentary Secretary, and also the President of the National Party at the time of the 'caretaker period' negotiations in September 2008. Earlier in the day she had taken a bad fall hurrying to the 11.00 a.m. minute's silence for Armistice Day. Nevertheless she presented her paper although a few paragraphs do not do justice to her contribution, as is the case with each Member.

Wendy Duncan made the admission how 'the Nationals in Western Australia took the unique approach prior to the 2008 State election of deliberately campaigning for a hung parliament'. Many such parliaments with minority governments in Europe and modified Westminster based models (such as Scotland) were producing effective outcomes. The campaign was based on the promise that if the Nationals were delivered the balance of power they would use it to negotiate with either side of politics to deliver the Royalties for Regions policy. This meant that it was planned that 25 per cent of mining royalties earned by the state were returned to regional infrastructure and services. It was made clear by Wendy Duncan, that when the Nationals joined the 'alliance' to assist with the formation of the Barnett government, that their party would not seek the deputy premiership as this would have aligned them too closely with their partners in government. It was explained that the 'alliance' agreement expressly stated that it is not a 'coalition and that the National Party are exempted from a 'class of issues' which significantly affect regional Western Australia'. Without doubt the Nationals had crafted a new version of the modern Westminster model of cabinet government.

In Wendy Duncan's concentration upon some of the political aspects of hung parliaments she postulated some of the reasons for the 'string of hung parliaments in recent years'. Some of her observations included that the major political parties have become so poll, marginal seat and election cycle focussed, that there is very little difference between them leading to an absence of a 'vision'. One result is that core issues such as health, education and law and order are so closely matched voters attention is turned to second tier or special interest issues such as poker machines, climate change, or delivery of services to the regions. Duncan made reference to a Canadian author Maria Gallego who contended that voters prefer 'the compromises of minority government to the uncompromising prime ministerial positions of majority governments'.

One critical factor that Wendy Duncan addressed was the burgeoning proportion of swinging voters in the electorate. She argued that 'not only are Australian voters

fickle, but they are also savvy'. A researcher Mark McCridle found in August 2010 that only 33.6 per cent of voters said they supported the same party every time, while a 'staggering 56 per cent stated that they vote for the party with the best policies at the time.' This is well above the reading which prevailed when Wendy Duncan was studying politics in the 1970s. Indeed some 31.4 per cent of the electorate always watch election night coverage, 73.1 per cent support compulsory voting and an 'amazing' 80.7 per cent discuss their votes with others. In conclusion, said Wendy Duncan, 'minority governments can work, they very often result in better and more democratic government and they are probably here to stay'.

The next speaker, John Kobelke, a Labor MLA, who was first elected at the 1989 election and had the benefit of some eight years ministerial experience, agreed with some of Wendy Duncan's opinions. The major parties were being drawn to the 'centre' and were being poll and focus group driven. He indicated that the 'political rule book' dictated that major parties gain hold of the middle ground. Other factors such as leadership and presentation of policies was also very important to electoral performance. However, in his view majority governments could make hard decisions and deliver on electoral commitments. One good example was the capacity of the Gallop government, in which John Kobelke was the Minister for Water Resources (2006–2008), to deal with the water crisis and build the first desalination plant. In John Kobelke's view the single-member plurality system of election promotes stability and strong governments whereas proportional representation (PR) systems including mixed member proportional (MMP), as in New Zealand, lead to coalition type governments. On the other hand John Kobelke, who experienced a phase of minority government near the end of Carmen Lawrence's government which was defeated at the 1993 election as well as the current phase of 'alliance' government, did concede that such hung parliaments could periodically deliver benefits. Ideas, for instance are not necessarily left on the backbenches. Parliamentary committees, too, could beneficially be chaired by opposition members or independents as was the case with the present 38th Parliament. Moreover, during the Lawrence period of minority government, whilst no significant legislation was defeated several important motions were lost by the government giving voice to public opinion.

Long serving MLC, Giz Watson (Greens WA) was scheduled to speak at the seminar but was unfortunately forced to withdraw due to illness. Robin Chapple from the same party, an MLC from 2001 to 2005 to then return to the Legislative Council in 2009, made an interesting suggestion that 'hung parliaments' should be known as 'balanced parliaments'. In his view 'balanced parliaments' are generally more collegiate, inclusive and productive which was sometimes the *modus operandi* of the Legislative Council. To demonstrate his claims, Chapple spoke of the Swedish Riksdag. With no party generally receiving more than 30 per cent of the chamber membership under a PR voting system, Chapple indicated that legislation is the product of a 'Nordic political culture' engaging all sides of the political spectrum. The Parliament's Senior Education Officer, James Sollis, later sought an

explanation as to whether there was less emphasis on the Executive in the Swedish Parliament. The response was in the affirmative.

In the course of canvassing his views about European legislatures Robin Chapple was less impressed with 'multi-party' Italy but he was on stronger ground addressing the performance of the Scandinavian countries such as Sweden, Norway, Denmark and Finland in terms of their social legislation and economic performance. In his promotion of consensus politics, Chapple spoke in praise, with of the 'Agreement for a Better Parliament' which had been negotiated following the election of a 'hung parliament' in Canberra at the 21 August 2010 Federal Election. This included the extensive reform procedures of Parliament and the conduct of debate on Afghanistan which had previously been denied by majority governments in the House of Representatives. Broader constitutional matters such as the recognition of indigenous peoples and local government have been aired and a Climate Change Committee has been established. Truth in political advertising and the creation of an independent budget office were likely to emanate from the new political paradigm.

The fourth Member of Parliament to address the seminar was the Honorable Dr Elizabeth Constable. As far back as 1991 she had become the first woman elected as an independent to the Western Australian Parliament. As the incumbent Minister for Education and Tourism it was indicated she has the unique record of being the only woman independent to have gained Cabinet office in Australia's political history. Apart from her current role in the Barnett 'alliance' government a major reason why Dr Constable's insights had been sought was because she had also been a Legislative Assembly member during the aforementioned Lawrence 'minority' government.

Dr Constable did query whether she fitted the 'loose fish' category which keynote speaker Chris Shanahan had borrowed from the first Prime Minister of Canada from 1867, Sir John A. MacDonald, to describe 'independents' before firm party lines had been established. She admitted that she had initially learnt much about the Parliament sitting beside senior independents, who were also former Liberal Party members, namely Ian Thompson and Bill Grayden. She also questioned whether minority governments should be categorised as 'unstable'. In her view minority governments can be effective. In fact at the last sitting in 1992 before the 1993 election she cited the reflections of National Party leader HENDY Cowan, soon to become Deputy Premier and Jim McGinty, a future leading labor party minister. Both had thought that the minority government phase had been salutary for the workings of the parliament.

Being a Minister in the current Barnett Government was clearly a different experience for Dr Constable, however, she contended it was not a majority government rubber stamping legislation through the parliament. Minority parliaments 'get things done', although it often takes longer. In response to a poll focussed on 'what the public thinks of minority government' published in the

Weekend Australian of 6-7 November, 2010, Dr Constable thought the adverse opinion of Liberal party supporters could be explained by a sense of disappointment with the inability of the Federal Coalition led by Tony Abbott to gain office in the hung parliament. It was not necessarily a public view of minority governments. The same poll had indicated strong Green support for such a parliamentary picture, which reflected Robin Chapple's positive opinion expressed at the seminar. Both Elizabeth Constable and Robin Chapple responded to a question about the importance of pairs in a hung parliament. Although printed in *Hansard* pairs are not recorded in votes and proceedings nor mentioned in the Standing Orders. In the previous parliament there were pairing arrangements for independents. They had prevailed to cover interstate ministerial commitments in the contemporary parliament. Robin Chapple, had spoken of the consternation over pairs which had prevailed in the 36th Parliament (2001–2005) when the Greens for a period held a balance of power in the Legislative Council.

Professor Anne Twomey in her *Quadrant* article (November 2010) 'How to Succeed in a Hung Parliament' had indicated as Lesson 1 the need to 'be explicit in the scope of pairing arrangements'. As Anne Twomey was an attendee at the Seminar she agreed to present a brief resume of the formation of government from hung parliaments in Tasmania in 1989 and 2010 in which the respective Premiers Robin Gray and David Bartlett had made campaign statements about their preparedness to govern. In both instances the respective Governors (Sir Phillip Bennett and Peter Underwood) had played pro-active and interventionist roles without giving weight to campaign statements. A critical factor was deemed to be the likelihood of stable government for a reasonable period. The activism of both respective Governors was in marked contrast to what had transpired in May 2010 in the United Kingdom. In that 'balanced' House of Commons Conservative Party leader, David Cameron, was able to accept an invitation from the Queen to form government after he had negotiated a coalition agreement with Nick Clegg, the Liberal Democratic Party leader. The Monarch was not seen to be 'activist' in the coalition arrangements.

During the discussion phase of the seminar the Hon. Barry House, as President of the Legislative Council, sought a response from the panellists about the difference between a role in government compared with opposition. He recalled the adage that 'the worst day in government was better than the best day in opposition'. Whilst there was support for this view from both Wendy Duncan and Elizabeth Constable, the latter indicated that she had never felt that she was in opposition. Her guiding concern was her electorate of Floreat (renamed Churchlands). Later Notre Dame political scientist Martin Drum asked Dr Constable whether she had the option and had even considered 'walking out' of Cabinet. In response she indicated that this situation had not arisen but if necessary she would speak to Premier Barnett at an early stage. No formal agreement existed with the Premier as their Cabinet relationship was based on trust. Nevertheless dissent from a Cabinet decision could arise.

In the new paradigm Elizabeth Constable did not attend Liberal Party meetings. Indeed, Labor MLA, Chris Tallentire, queried whether the ‘alliance’ held joint party meetings. Wendy Duncan said ‘no’ although she did recognise that Cabinet meetings, including both Liberals and Nationals and an Independent, took place thereby fulfilling policy, planning and strategic functions. As a National she indicated that one of her roles was to attend the early stage of Liberal Party meetings attended by upper house Liberals to discuss administrative and procedural considerations. In addition the Nationals conduct their own party meetings with their representatives in both the Legislative Council and Legislative Assembly.

Alex Rosier from Kalamunda Senior High School, sought to ask if there was a trend away from majority parliaments despite the fact that electors do not vote for hung parliaments. The general consensus, as suggested during the seminar, was that hung parliaments are more prevalent. Dr Constable considered it may be cyclical but noted how electors some 20 years ago had often ‘hedged their bets’ by voting differently in the upper house. In fact there was a period in the early 1990s when no government in Australia held an upper house majority. Robin Chapple thought the explanation could be linked to an electorate increasingly resistant to ‘presidential politics’ and less politically aligned compared to an earlier generation. This again raised the question of the voting system as an independent variable. On this question the seminar participants were apprised of a summary of electoral results, made available by seminar participant Lance McMahon from the John Curtin Institute of Public Policy, who considered Maurice Duverger’s law could possibly be redundant in Australia as it seems to be in other Westminster that have plurality in single member districts failing to produce majority governments.

Near the conclusion of the seminar the highly relevant question about the role of the media during the caretaker periods of hung parliament settings was raised. Seminar participant, Keith Neill, citing the ‘hot house’ atmosphere which prevailed in Tasmania in April 2010, sought an opinion from Chris Shanahan about this facet of modern politics. In Shanahan’s view a strong democracy is not possible without quality journalism. Irresponsible reporting can create a ‘hot house’. It was imperative that journalists recognise the weighty responsibility they carry to report political events ethically and accurately. Concern was expressed about the Western Australian setting with virtually only one major newspaper often judged to not reaching the required high standards. Although this was a topic of keen interest the lapse of time meant that Professor Black drew the proceedings to a close particularly thanking the keynote Speaker, the Members of Parliament, the audience and those who had assisted in the organisation of the interesting seminar. This tabulation included Speaker Grant Woodhams for permitting the Assembly Chamber to be the venue, the Clerk of the Legislative Assembly, the Clerk of the Legislative Assembly, Deputy Clerk, John Mandy (the ASPG Secretary), Legislative Assembly Staff including John Pollard and Anne Day, as well as David Embry, who prepared a DVD of the seminar. ▲