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Editor - Professor Rodney Smith



State Politics: South Australia, Tasmania
and Queensland

Politics and Public Trust

Parliamentary Committees and
Evidence Gathering



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* Indicates that the article has been double-blind reviewed.

From the Editor

Rodney Smith

Professor of Australian Politics, University of Sydney

This issue of the *Australasian Parliamentary Review* has something of a focus on state politics, with articles on South Australia, Tasmania and Queensland by Mark Dean, Mike Lester and Dean Bolwell, and Paul Williams respectively. All three articles take the most recent state elections as a starting point to explore broader issues in the politics of their chosen states. These issues include aspects of parliamentary representation and relations between parliaments and executives.

Two other papers in this issue explore public trust in politics and politicians, an issue also raised in David Solomon's article in the Autumn/Winter 2018 issue of this journal. Jonathan O'Dea, drawing on his own experiences in New South Wales politics as well as wider examples, identifies some of the causes of lack of public trust and proposes some lessons for politicians who want to build or rebuild public confidence on political processes and institutions. Chris Angus, also focusing on evidence from New South Wales, explores the ways in which parliamentarians' treatment of petitions might affect public trust in the political system.

The remaining paper in this issue analyses the role of parliamentary investigatory committees and how their performance might be improved via a detailed case study of the Parliament of Victoria's Environment, Natural Resources and Regional Development Committee and its inquiry into the Country Fire Authority Training College at Fiskville.

In this issue, we also welcome back the 'From the Tables' digest, covering significant parliamentary activities across all Australasian jurisdictions. This digest, compiled by Glenn Ryall, covers the 12 months from July 2017 to June 2018. The longer than usual time period covered means that the digest is also longer than usual, and includes much that I'm sure will be of interest to readers.

This issue is rounded off with reviews of four significant recent books on aspects of Australian and New Zealand politics, public administration and law: *New Directions for Law in Australia*, reviewed by Bob Debus; *In Search of Consensus*, reviewed by Leonid Sirota; *Opening Government*, reviewed by Chris Crawford; and *Double Disillusion*, reviewed by Hiroya Sugita. If you have a relevant book that you would like reviewed in the *Australasian Parliamentary Review*, please contact me.

Sadly, I must advise readers of the death of Ken Turner, a longstanding member of the *Australasian Parliamentary Review's* Editorial Board. Ken joined the Department of Government and Public Administration at the University of Sydney in 1963, chairing the Department between 1974 and 1981 and retiring as Associate Professor in 1988. During his academic career and after his retirement, he did much to promote research and teaching on parliaments, and particularly on the Parliament of New South Wales. Among other publications, he was author of a study of the NSW Legislative Council (*House of Review?*, University of Sydney Press, 1969), co-author of *A History of the Labor Party in NSW 1891-1991* (Longman Cheshire, 1991), and co-editor of *The Wran Model* (Oxford University Press, 1985), *The Premiers of NSW 1856-2005* (two volumes, The Federation Press, 2006) and *The Governors of NSW 1788-2010* (The Federation Press, 2009). In the early 2000s, Ken served as a member of the Sesquicentenary of Responsible Government in NSW Committee, helping oversee the production of many original studies of NSW politics and history.

Ken used his academic knowledge to engage publicly with issues of Australian constitutional and political reform. He co-wrote the pamphlet *Changing the System* in 1981, which among other things argued for fixed term parliaments. He also provided influential advice on reforms to the NSW Legislative Council and on the introduction of public funding of election campaigns in NSW. Ken Turner will be missed by many people, including those associated with the *Australasian Parliamentary Review* and the wider community concerned with the state of Australian parliaments.

Articles

Parliament in the Periphery: Sixteen Years of Labor Government in South Australia, 2002-2018*

Mark Dean

Research Associate, Australian Industrial Transformation Institute, Flinders University of South Australia

* Double-blind reviewed article.

Abstract

This article examines the sixteen years of Labor government in South Australia from 2002 to 2018. With reference to industry policy and strategy in the context of deindustrialisation, it analyses the impact and implications of policy choices made under Premiers Mike Rann and Jay Weatherill in attempts to progress South Australia beyond its growing status as a 'rustbelt state'. Previous research has shown how, despite half of Labor's term in office as a minority government and Rann's apparent disregard for the Parliament, the executive's 'third way' brand of policymaking was a powerful force in shaping the State's development. This article approaches this contention from a new perspective to suggest that although this approach produced innovative policy outcomes, these were a vehicle for neo-liberal transformations to the State's institutions. In strategically avoiding much legislative scrutiny, the Rann and Weatherill governments' brand of policymaking was arguably unable to produce a coordinated response to South Australia's deindustrialisation in a State historically shaped by more interventionist government and a clear role for the legislature. In undermining public services and hollowing out policy, the Rann and Weatherill governments reflected the path dependency of responses to earlier neo-liberal reforms, further entrenching neo-liberal responses to social and economic crisis and aiding a smooth transition to Liberal government in 2018.

INTRODUCTION

For sixteen years, from March 2002 to March 2018, South Australia was governed by the Labor Party. This was government headed by two in-principle social-democratic leaders, Mike Rann (2002-2011) and Jay Weatherill (2011-2018). It was a period

preceded by Labor's years in the political wilderness, wherein it sought to distance itself from its role in the State Bank collapse of the early 1990s and regroup to contest the decade of Liberal government that followed. Traditionally, the agenda of social-democratic Labor governments in Australia's history has focused on 'reforming and humanising capitalism, to improve the position of the working class and other disadvantaged groups, rather than on a more radical transformation to a socialist society'.¹ In the early global period, an apparent triumph of neo-liberal ideas heralded by the Thatcher and Reagan administrations led historian Francis Fukuyama to declare 'the end of history', at which the capitalist free market had emerged victorious from its ideological struggle with socialist state planning over the best way to arrange production to grow economies and societies.² The analysis of Labor government in South Australia from 2002 to 2018 presented below deals with evidence that the Rann and Weatherill Labor governments attempted to negotiate the local-state experience of this 'end of history' by applying a kind of social-democratic reform broadly accepting of globalisation, as though Labor governments were henceforth required to adapt to the new reality in order to make social democracy relevant to the 21st century.

This paper adds a dimension of political-economic analysis to earlier research into the Rann Government's contentious relationship with parliamentary institutions;³ and contributes further insights to the previous research on the Rann-Weatherill era, such as that by Manwaring, who has written of this period as the Labor Party's 'search for democratic renewal'.⁴ Overall, this period can be understood as one wherein principles of the Blairite 'third way' approach to government were borrowed heavily to enact a supra-democratic form of governance by business and community groups. This paper argues that, upon reflection, the third way was a social-democratic model ostensibly 'relevant' to the 21st century, but became in practice the vehicle for a range of principally neo-liberal reforms that contributed not only to dismantling

¹ C. Johnson, 'Gillard, Rudd and Labor Tradition'. *Australian Journal of Politics and History*, 57(4), 2011, p. 563.

² F. Fukuyama, *The End of History and the Last Man*. New York: Free Press, 1992.

³ J. Bastoni, 'The Executive Versus the Legislative Council: A Case Study from the South Australian Parliament'. *Australasian Parliamentary Review*, 27(1), 2012, pp. 126-133; C. McIntyre and J. Bastoni, 'What's In It for Us? Why Governments Need Well Resourced Parliaments'. *Australasian Parliamentary Review*, 25(1), 2010, pp. 177-183.

⁴ R. Manwaring, *The Search for Democratic Renewal: The Politics of Consultation in Britain and Australia*. Manchester: Manchester University Press, 2014.

traditional notions of social democracy but to de-politicising the economy. Concomitantly, this de-politicisation had the adverse effect of politicising the bureaucracy to facilitate the influence of interest groups within society over government policymaking. These processes have had ongoing consequences for the role of government in the current period of Liberal government under the leadership of Premier Steven Marshall.

To demonstrate this argument, the analysis in this paper deals with some of the former Labor government's key innovative, experimental and often-times nation-leading policy responses in a period of significant change in South Australia. Given the author's area of research expertise in industry policy and political economy, the analysis covers specifically

- a. the way that Labor sought to innovate in ways it deemed befitting of the 'new economy', which saw it exhibit a preference for non-parliamentary processes via a 'third way' for building policy consensus with business and the community to compete in the global economy;
- b. how this strategy was arguably not adequate to address structural economic issues relating to economic crisis, in particular manufacturing deindustrialisation; and
- c. how the impact of such an approach was to politicise the executive branch of government, in large part creating deeper challenges to an effective policy response to the serious social and economic consequences of deindustrialisation.

BACKGROUND TO THE RANN-WEATHERILL PERIOD

Reviewing the most recent sixteen years of Labor government in South Australia must begin with a brief overview of the period of government immediately preceding it, at State and national levels, which played a significant role in shaping the period under review. Social democracy in Australia from the 1980s exhibited key traits of a marriage to 'economic rationalism'. The technocratic transformation of the senior executive of the Australian Public Service, beginning with the Hawke Labor Government, has been extensively documented. Such rationalisation meant that

from 1983, ‘macroeconomic “stability” (that is, business confidence) became rhetorically central, and interventions increasingly relied on ‘supply side’ mechanisms’.⁵ This altogether prioritised a neoclassical approach to economic policy and by such means, declared market-driven mechanisms to be the best vehicles for delivery of efficient public services, stipulating the abandonment of full employment as industry policy.

The embrace of neo-liberal policy at federal level in Australia from the 1980s placed enormous pressure on state governments to fall into line with market-oriented changes that rolled back the government’s active role in the economy. South Australia had exhibited a long and extensive history of an enterprising, interventionist state whose active policymaking role had been central to the State’s social and economic transformation.⁶ Given this historically interventionist role of the state in South Australia, interventionist policy responses had become path-dependent. Path-dependency means that ‘the past strongly influences your choices for the future [and] in order to understand policy options you must understand the past, which vastly complicates the analysis’.⁷ The path-dependence of the longer-term form of government and the South Australian Parliament are important factors to consider when interpreting the role of the Rann and Wethearill governments in responding to requirements for renewal, transformation and crisis.

The Liberal Party that governed South Australia from 1993 to 2002 was led initially by Dean Brown (1993–1997) and then by John Olsen (1997–2002). This decade marked the period in which economic rationalism became most deeply embedded in South Australian government policy and most expansively throughout its institutions, although the foundations had been established by the prior Bannon Labor government (1982–1993). The ‘greater rhetorical emphasis on promoting a business environment conducive to investment’⁸ in the state planning priorities of the Brown-

⁵ S. Wilson and B. Spies-Butcher, ‘After New Labour: Political and Policy Consequences of Welfare State Reforms in the United Kingdom and Australia’. *Policy Studies*, 37(5), 2016, p. 410.

⁶ K. Sheridan (ed.), *The State as Developer—Public Enterprise in South Australia*. Adelaide: Royal Australian Institute of Public Administration, 1986.

⁷ D. Colander and R. Kupers, *Complexity and the Art of Public Policy: Solving Society’s Problems from the Bottom Up*. Princeton: Princeton University Press, 2014, p. 54.

⁸ S. Hamnett, ‘Ten Years of Metropolitan Strategic Planning in South Australia’. Paper presented at the 2nd Bi-Annual National Conference on The State of Australian Cities. Brisbane, 30 November—2 December 2005, p. 5.

Olsen era marked a turning point in South Australia's process of institutional neo-liberalisation. To both Brown and Olsen, policy measures of public austerity and privatisation were the only considerable response to the state financial crisis and the State Bank collapse that occurred under the former Bannon government's neo-liberal experiments within a conducive policy context of the federal Hawke-Keating government, measures which were made further possible with the hard-line neo-liberalism of the federal Howard Coalition government (1996–2007). As a result, by the end of the 1990s, many of the State's assets had been leased or privatised, organised labour power eroded, and numerous sectors of the economy deregulated.

Industry policy had been a significant part of previous Dunstan and Bannon Labor Government policy responses to economic crisis and change, and was evident to some extent during the Tonkin Liberal Government's term in its support of local industry engagement in high-technology manufacturing. But the Liberal Government decade of the 1990s squandered much of the previous momentum in government economic planning and industrial development. It viewed neo-liberalism—rolling back industry policy to allow markets to determine industrialisation—as the only way to alleviate the State's growing debt problem, with a raft of privatisations of public assets such as the Electricity Trust of South Australia (ETSA), public sector data services and other important infrastructure.

Labour market and financial market deregulation, and the privatisation of public assets, had weakened South Australia's responses to the economic downturn experienced from the early 2000s. Policy responses were focused on balancing budgets, not investing in productive assets to achieve long-term economic development. During the 1990s, Lance Worrall was an economic adviser to Opposition Leader Mike Rann and from 2002 was Premier Rann's chief economic adviser. In an interview, Worrall contextualised the neo-liberal ideology that had left the outgoing Liberal Government so short-sighted, clearly out of step with voters' desire for government to build a longer-term vision, and offering Labor a strategic campaign:

What they said was, if we sell this [ETSA] we will have an extra seven-hundred-and-fifty-million a year to spend [...] it was complete voodoo economics. It ignored the fact that you're only going to sell it to somebody on the basis that it earns an income. So it's the difference

between the interest payments and the income you would've received had you maintained ownership; and then they sold it too cheap, so the savings on interest were less than the retention value of it and the income you would've got from it⁹.

In its final term, the Liberal Government faced battles on multiple fronts. It was a minority government depending on the support of two conservative Independents in the House of Assembly (the lower house). Revelations of the mismanagement of infrastructure projects involving members of the Government damaged Liberal Party and public confidence in the Premier, leading to a leadership spill that saw Olsen replaced by Rob Kerin, who would take the Government into the election.¹⁰ These issues were stacked precariously upon the Government's trickle-down approach to public investment, one which did not significantly reduce an unemployment rate that remained at 7.1 percent in January 2002, just a month prior to the State election.

A MAJOR ACHIEVEMENT OF MINORITY GOVERNMENT

Despite the Liberal Government's problems, the 2002 South Australian election returned a hung Parliament. After negotiations by both parties, Labor and its Leader Mike Rann were able to outmanoeuvre their Liberal opponents, benefiting from a history of 'bad blood' between the Liberals and Independent conservative MPs, as well as an internal struggle between the Liberal Party's traditional conservative wing and an emergent group of neo-liberals.¹¹ In contrast, Rann was an energetic and tactically adept politician, seasoned by eight years as Opposition Leader, earlier Bannon government ministerial duties and prior to that, a period as Don Dunstan's media advisor. Rann's pragmatic leadership was a critical factor in changing the minds of unlikely key allies and permitting Labor to govern in minority (Labor had won 23 seats, with 24 seats needed for a majority). Independent Peter Lewis was offered the role of Speaker of the House of Assembly and Rann further promised Lewis the Government's support for reforms to the State's Constitution. The newly

⁹ Interview with Lance Worrall, 2015.

¹⁰ G. McCarthy, 'The Revenge of the Legislature: The South Australian Election 2002'. *Australasian Parliamentary Review*, 17(2), 2002, pp. 22-34.

¹¹ D. Jaensch, 'The 2006 South Australian Election'. *Australasian Parliamentary Review*, 21(2), 2006, pp. 198-207.

settled landscape of the State's Parliament helped to cast the way forward for the Labor Government and its strategy to develop policy innovatively and as far removed from the legislative arm as possible.

POLICY INNOVATION FOR A NEW ECONOMIC ERA

Labor's return to South Australian Government early in the twenty-first century would require a markedly different approach to governing for it to occupy its traditional role as the government of social and economic reform in Australia. The Rann Government inherited challenging terrain upon which to implement a policy strategy befitting an age of 'innovation'. It was of great importance to the government that the image of South Australia as a 'rustbelt state' be shaken off, and a future-oriented image be created. But to do this, given the inherited institutional terrain, South Australia ultimately had to be 'open for business'.

The Rann Government made significant commitments to policy and institutional changes designed to facilitate economic development in South Australia in a way that, in keeping with its social-democratic principles, was also socially transformative. It quickly turned to searching for the State's place in the 'new economy', and building industry policy responses that leveraged the rise of the new 'digital age' with its concomitant demand for high-technology industrial investment and skills development in emerging growth industries. Given the historic structure of South Australia's economy, to a large extent this strategy centred on transformation of the manufacturing industry. But politically and economically neo-liberal circumstances at national level meant that manufacturing had long not been a priority for the South Australian state government or the federal government. Hence, an economically rational approach was also evident in the Rann Labor Government's approach to policy development from 2002.

However, there was clear innovation in the Rann Government's trademark social-democratic approach to social policy. Rann personally took inspiration from policy models implemented in overseas jurisdictions, inspired most of all by UK Labour Prime Minister Tony Blair's 'Social Exclusion' policy initiative of the late-1990s, which sought a solution to social disadvantage in which the concept of 'social welfare' was

transformed into ‘social innovation’.¹² This was ‘third way’ policymaking, which meant finding a ‘middle ground’ between the ALP’s traditional social-democratic leanings and the more overtly free market approach of the Liberals. It would offer an alternative whereby market forces were to be harnessed by policy innovation to raise social protections, involving an increased role of the government and stakeholders outside of Parliament to deliver a shared vision.

This Blairite ‘New Labour’ ethos involved a vision of market-driven transformation of economy and society, exhibited in the ‘new public management’ approach to public sector operations. A critique of this particular vision in the context of UK government by Rhodes highlighted its networked system of governance that—having increased in size and scope to effectively become less accountable—produced a problem of government being hollowed out and thus less-equipped to act as a rectifying central authority.¹³ These typical ‘third way’ policy approaches have since been criticised for their reliance on largely unpaid work and under-funded services in the social sector to address issues of poverty and social exclusion.¹⁴ Nevertheless, what Rann envisioned was akin to the attempts of the Blair Government to ‘reinvent’ government, which meant embedding ‘a new form of control from the centre based upon business corporation models, including promotional means for managing consent’.¹⁵

Despite this appearance of more inclusive democratic decision-making processes, the ‘third way’ was a vehicular means by which key tenets of neo-liberal reform were implemented. This took shape as a market-friendly outlook in government policy practically to the exclusion of the traditionally social-democratic stance of regulatory protections against market forces, and strengthening of the economically liberal philosophy of personal responsibility for an individual’s social and economic circumstances. In election campaign mode, Labor in South Australia had made clear its commitment to business-friendly regulation, public-private partnerships and a

¹² M. Rann, *Social Inclusion: From Welfare to Social Innovation*. Paper presented at the University of Auckland, Auckland, 2012.

¹³ R. Rhodes, ‘The New Governance: Governing without Government’. *Political Studies*, XLIV, 1996, pp. 652-667.

¹⁴ N. Coombs, ‘The Political Theology of Red Toryism’. *Journal of Political Ideologies*, 16(1), 2011, pp. 79-96; A. Pedlar, ‘Practicing Community Development and Third Way Politics: Still Faking it?’. *Leisure/Loisir*, 30(2), 2006, pp. 427-436; J. Whelan, *Big Society and Australia—How the UK Government is Dismantling the State and What it Means for Australia*. Sydney: Centre for Policy Development, 2012.

¹⁵ K. McCracken, ‘The Third Way: Post-ideology or Politics as Usual?’. Paper presented to the Australasian Political Studies Association Conference. University of Tasmania, 29 September—1 October 2003, p. 26.

compact with the voters that sought to balance social inclusion with a strong law and order stance.¹⁶ It sounded its preparedness to make the hard choices about fiscal prudence and measured public spending in policymaking avenues beyond government and to a significant extent, beyond Parliament.

THE RANN GOVERNMENT'S INNOVATIVE TURN FROM PARLIAMENT

The Rann Government's policy initiatives were an attempt to make government more agile and capable of delivering on its social-democratic values without absorbing significant public debt. But this signalled consequences for the relationship between the executive and the legislature, and furthermore the executive and broader South Australian communities and interests. Far from centralising power in a more robust relationship of legislative action, the Rann Government enacted an experimental approach to democracy, including the use of focus groups, citizens' juries and collaborative initiatives with external stakeholders.

With Labor's growing consolidation of power on the Treasury benches, its own executive-driven agenda marginalised any previously slated changes to the legislative body. The rhetorical justification for an executive-led approach to developing the state reflected the government's embrace of a third way approach to its interventionist role in shaping South Australia's future. Furthermore, the rapidly waning credibility of Peter Lewis saw the Rann Government distance itself from support for Lewis's attempts to push reforms in the legislature that would increase its scrutiny of the executive. The Government was further insulated from Lewis when it gained the support of other MPs from outside the ALP that it brought into Cabinet: Independent Rory McEwen as Minister for Local Government, Forests, Industry, Trade, Regional Development, Small Business, Agriculture, and Food and Fisheries; and Nationals MP Karlene Maywald, who was given portfolio roles strategic to her Riverland electorate that included Minister for Regional Development and Minister for the River Murray.¹⁷ These MPs had declared publicly that they were seeking political stability and would not abide another change of government, thus removing

¹⁶ McCarthy, 'The Revenge of the Legislature'.

¹⁷ Maywald had voted against the Brown-Olsen Liberal Government's privatisation of ETSA.

Lewis as a major hurdle to the Rann Government implementing its agenda.¹⁸ McIntyre and Williams reflected on the *realpolitik* of Labor's quickly shifting attitude to the proposed constitutional reforms:

For the government there was little incentive to assist the legislature to maintain scrutiny over the executive... any enthusiasm a party may have for reform while in opposition tends to wane once they make the move to the Treasury benches.¹⁹

Key to the Rann Government's attempt to circumvent the legislative process in delivering on its third way agenda was the government's control over finances. The Rann government increased focus on the treasury as its vehicle and this became evident in its first budget. Newly sworn-in Treasurer, Kevin Foley, employed the typical rhetoric of preceding Liberal governments when declaring in his first budget speech Labor's intention to steer away from the profligate and wasteful spending that had placed the State in the midst of a 'crisis'. Expenditure was rationalised to produce a budget surplus and gain voters' trust in Labor on economic matters by regaining the coveted AAA-credit rating from Standard and Poor's (SandP).²⁰

The requirements of an AAA-credit rating have often seen economic jurisdictions of various formations enact austerity policies in an attempt to secure a suitable investment location for foreign capital. The South Australian Government's commitment to operating within such confining neo-liberal rules meant that the full scope of Labor's campaign promises—and arguably, Premier Rann's personal social-democratic agenda—for spending on education, health and community services, as

¹⁸ A. O'Neil, 'Political Chronicles: South Australia July to December 2002'. *Australian Journal of Politics and History*, 49(2), 202, pp. 287-292.

¹⁹ C. McIntyre and J. Williams, 'Lost Opportunities and Political Barriers on the Road to Constitutional Reform in South Australia'. *Australasian Parliamentary Review*, 20(1), 2005, p. 113. Constitutional reforms proposed in a series of questions to approximately 2000 citizens across the state in public meetings related to measures to improve parliament and government; size, structure and role of the Legislative Council (upper house); size structure and role of the lower house (Legislative Assembly); and representation and the South Australian Electoral System McIntyre and Williams, 'Lost Opportunities and Political Barriers', pp. 104-105.

²⁰ O'Neil, 'Political Chronicles: South Australia July to December 2002', pp. 287-292. According to SandP, the merit of its rating system is in its provision of indicators by which governments can issue bonds to fund public investment; likewise, it is a measurement of the relative security of capital investment by foreign interests in a domestic economy. SandP Global, *Guide to Credit Rating Essentials—What are Credit Ratings and How Do They Work?* New York: Standard and Poor's, 2018.

well as infrastructure modernisation, could not be fulfilled early on.²¹ As the years unfolded, the AAA-credit rating would become somewhat of an obsession for Treasurer Foley, whose powerful position emphasised the use of market-oriented mechanisms to achieve policy outcomes.

A senior public servant who worked closely with the Rann Government at this time disclosed that Labor's hidden strength resided in the nature of its third way policy responses. These could be directed by the executive without any real fear that Labor would face an electoral challenge. A collaborative partnership approach meant business and community sectors delivered a neo-liberal government policy program:

I think Mike Rann made a point that he would govern as though he had a majority of ten, not of one, because the alternative would be to cower. The State at that stage did not have a triple-A credit rating, it had been lost on the back of the previous Labor government's management of the State Bank. The Liberals had come in and done the hard yards in terms of asset sales and restoring the government's balance sheet to a better position.²²

With its approach, the Rann Government was able successfully to alter course away from the precariousness of its minority government position. Change driven by the legislative process was, of course, inevitable. In order to achieve its largely outsourced policy initiatives, the Rann Government had to utilise the parliamentary process to pass its budgets. But beyond this, the Rann Government's most significant use of the legislative arm of law was to regulate those it deemed socially deviant (for example, motorcycle gangs), to promote action on addressing the drought that was inflicting hardship upon the environment and small businesses dependent on water, and to give attention to issues relating to the regional seats of the Independent MPs upon whose confidence and supply support it relied. Beyond this, its third way approach gathered pace as Labor set about the task of developing its agenda for South Australia.

²¹ J. Spoehr, 'Preface', in J. Spoehr (ed.), *State of South Australia: Trends and Issues*. Kent Town: Wakefield Press, 2005, p. viii.

²² Interviews with a senior public servant, 18 March 2015 and 23 May 2016.

BEYOND THE LEGISLATURE: THE THIRD WAY IN PRACTICE

The experimental third way model of achieving reform represented a transformation in government's interventionist policymaking role that minimised its involvement of parliament. The collaborative model for policy development meant governments owned the strategic direction of policies but had less control over how their implementation occurred. Government service delivery was outsourced in many areas, as a commitment to balanced spending put the government's strategy of operation in the private and not-for-profit sectors.

Altogether, a third way outlook delivered in step with market-oriented policy made it apparent that the neo-liberal reforms of the 1990s would not be reversed. Instead, a hostile Opposition and scrutineering Independents in Parliament would be placated by the Rann government's deference to 'responsible government'.²³ The third way presented an effective means of ensuring neo-liberal responsibility, offering insulation from any charge that Labor would present a social-democratic affront to the demands of business. Its stance aimed to deliver measured outcomes. However, the competing pressures of stakeholder interests, public demands and political cycles led the Rann government to outsource much responsibility for public services and program delivery in a partnership-driven approach;²⁴ with community delivered social welfare policy responses.

The third way priorities of the Rann government saw the development of key institutions of reform built on public-private collaborations, and represented an attempt to get as much responsibility for delivering on a new agenda out of government as possible. The first step, taken shortly after Rann took office, was to establish an Economic Development Board (EDB) as an independent committee that was external to State Cabinet. Tasked with advising the Government on emerging economic opportunities to maximise South Australia's competitive position, the EDB comprised a spectrum of individuals mostly from across the State's private economic sectors. It was empowered to critique the Government's performance and report shortcomings to the South Australian public. Along with possessing a significant

²³ R. Martin, *Responsible Government in South Australia: Volume Two—Playford to Rann 1957-2007*. Kent Town: Wakefield Press, 2009.

²⁴ C. Aulich and J. Hein, 'Whole-of-Government Approaches to Outsourcing and Market Testing by the Commonwealth Government'. *Australian Journal of Public Administration*, 64(3), 2005, pp. 34-45.

degree of strategic power, the EDB's independent and authoritative position was considered critical to ensuring government transparency, responsibility and accountability.

However, the Labor Government's social-democratic streak meant that the EDB's advocacy of more hard-line neo-liberal reforms was counter-balanced by its integration into a tripartite institutional assembly that also included a Social Inclusion Board and the Premier's Round Table on Sustainability. The Social Inclusion Board (SIB) was tasked with ensuring that the benefits of economic growth would reach the most disadvantaged people in South Australia's community. The Premier's Round Table on Sustainability was appointed to advise Government where economic development impeded environmental protection. Together these boards formed a 'triple bottom-line' approach to balancing the State's challenges of economic development, social equality and environmental sustainability.

The document that emerged from the Rann Government's negotiations with the EDB's vision for the State was *South Australia's Strategic Plan (SASP)*. The *Strategic Plan* was launched in 2004 and updated biannually.²⁵ It followed a series of summits involving the three key advisory boards in collaboration with a representative alliance of South Australia's business, peak bodies and NGOs engaged in collaborative policy development with a 'joined-up' government.²⁶ A list of 79 targets set out SASP's 'shared' approach to making the State more competitive in the global economy. This entailed improving South Australia's average employment rate, increasing its population, significantly expanding its export income, improving the education of its citizens, bringing environmental sustainability to the forefront of its development, and tackling its rates of crime to build safer urban communities.

By handing greater control to interests outside of government to deliver reform, the third way approach entailed shifts from *government* to *governance*. The decentralised nature of third way policy has depoliticised action on social development by embedding neo-liberal discourse in welfare reform to modernise society in line with global free market capitalism. In the South Australian case, this

²⁵ Department of the Premier and Cabinet, *South Australia's Strategic Plan: Creating Opportunity*. Adelaide: Department of the Premier and Cabinet, Government of South Australia, 2004.

²⁶ Department of the Premier and Cabinet, *South Australia's Strategic Plan: In a Great State*. Adelaide: Department of the Premier and Cabinet, Government of South Australia, 2011.

emboldened the Rann Government to reform the public sector as part of a broader microeconomic agenda to reduce the limitations of public services on market competition. Its years in office entailed the introduction of performance management, decentralisation of program delivery to line agencies, restructuring of public sector industrial relations to contract-based models, and outsourcing of service delivery to third-party providers. In an operational sense, the Rann Government displayed disregard for the Legislative Council, at times taking action to thwart upper house committees.²⁷ Deliberate efforts to stymie review processes limited parliamentary oversight that may have applied a much-needed level of scrutiny to fiscal budget allocations, including those which provided for public-private partnership-driven economic and social transformations and did not contain a regulatory framing role for the legislature, let alone a decisive policy role for government. This meant that the executive minimised the role of Parliament in transforming South Australia.

SHADOWS OF DEINDUSTRIALISATION

The third way policy response of the Rann Government did not contain a coherent strategy to deal with the creeping economic issues South Australia would face over much of the following decade. For example, energy policy had been an issue plaguing the legislative body since the privatisations of the 1990s. The sale of ETSA had weakened South Australia's bargaining position in national electricity pricing, but the Rann Government adopted a pro-market competition approach in attempts to mitigate growing issues around the State's entry into the National Energy Market. Rather than showing an inclination to raise issues like energy and manufacturing in industry policy discussions, the Rann Government exhibited most visibly an intent to drive policy development through a networked array of new public-private partnerships to which it had ceded significant powers. Increasingly, Labor also promoted an image of the Premier as the champion of progress, particularly in establishing a nation-leading portfolio on climate change, responsibility for which was taken by the Premier himself.

²⁷ Bastoni, 'The Executive Versus the Legislative Council'; McIntyre and Bastoni, 'What's In It for Us?'.

The challenges to this chosen approach to governance were first tested when the process of closure began amongst key industries and firms in South Australia. In 2003, the Port Stanvac oil refinery in Adelaide's south ended operations. Despite putting 400 employees out of work, this closure did not elicit an industry policy response.²⁸ In 2003, signs came that the operations of Mitsubishi Motors in Australia, including its engine building and assembly facilities in Adelaide, faced a precarious future. Mitsubishi responded positively to lobbying by the Howard and Rann governments and held off closure. Meanwhile, however, the economic rationalism of Treasurer Foley saw the dissolution of the State's Department of Business, Manufacturing and Trade as a 2004-05 budget measure aimed at reducing government expenditure and increasing public sector efficiency.²⁹ Arguably, this was the government body critical to aiding industrial transformation, but the government favoured the supposed market efficiencies created through business and social innovations to achieve this goal.

The importance of manufacturing—South Australia's traditional industrial base—had been marginalised. Instead of focus an active policy strategy on its elaborate transformation, the Rann Government threw its support behind the collaborative initiatives it had empowered. Prior to this, the Manufacturing Consultative Council (MCC)—a tripartite body comprised of government, industry and union leaders—had been tasked with advising government on how the state's manufacturing industries could be transformed for global competitive advantage by utilising the State's existing local supply chain and networks of skills and knowledge, driven by collaborative industrial initiatives.³⁰ But without an active interventionist role from the Government, recommendations of the MCC to increase the focus in public policy on the importance of manufacturing to the South Australian economy, were not implemented, as the Government had outsourced responsibility to business and community led initiatives and was not itself actively participating in transformation.

²⁸ A. Parkin, 'Political Chronicles: South Australia January to June 2003'. *Australian Journal of Politics and History*, 49(4), 2003, pp. 597-603.

²⁹ H. Manning, 'Political Chronicles: South Australia January to June 2004'. *Australian Journal of Politics and History*, 50(4), 2004, pp. 618-623.

³⁰ Manufacturing Consultative Council, *A Report to the Government of South Australia from the Manufacturing Consultative Council*. Adelaide: Manufacturing Consultative Council, Department of Trade and Economic Development, 2005.

SEARCHING FOR THE ECONOMIC 'SILVER BULLET'

There were serious consequences of the Rann Government's response to a series of watershed events in the process of deindustrialisation gathering pace in South Australia. In 2004, Mitsubishi announced that it would close its automotive manufacturing plants in Adelaide's southern regions. Instead of responding with an alternative policy for short-term economic stimulus through public infrastructure jobs with jobs targeted at laid-off Mitsubishi workers,³¹ the Rann Government's response involved limited labour market assistance to former employees at Mitsubishi and companies in the local supply chain. This response was evidence that the Rann Government saw no future for the scale of manufacturing production that had shaped South Australia's industrialisation historically. It owed partially to the Government's vision of a State economy defined by knowledge-intensive and service-based industries, which would in large part be driven by the large-scale defence industry contracts coming online through earlier Government investment in the Australian Submarine Corporation and its Techport facility at Osborne in Adelaide's north. But arguably, this was a narrow vision, given that globally the manufacturing sector contributed the highest spending on innovation research and development, knowledge and demand for service industries.³² The critical role of manufacturing had been largely ignored in hopes that defence spending would absorb scores of unemployed manufacturing workers.

Furthermore, the weak response of the Rann Government to automotive deindustrialisation had much to do with the fact that it was clinging to the hopes of the expansion of the Olympic Dam mining project in the State's north and the economic stimulus that this would provide to the mining sector in the form of demand for skilled labour. The expansion of Olympic Dam was to be an investment so great that it would boost the South Australian economy for many years to come. When established, \$47.7 billion was expected to flow to South Australia over the course of the project's 40 year life.³³ This represented the economic windfall South

³¹ J. Spoehr, 'The Mitsubishi Closure and Industry Policy'. *Evatt Journal*, 4(2), 2004.

³² J. Spoehr, *Far from the Car—The Case for Transformational Change In Response to the Closure of the Automotive Manufacturing Industry*. Adelaide: Australian Workplace Innovation and Social Research Centre, The University of Adelaide, 2015.

³³ H. Manning, 'Political Chronicles: South Australia July to December 2011'. *Australian Journal of Politics and History*, 58(2), 2012, pp. 314-321.

Australia needed to facilitate the transformation of its manufacturing industries and to grow its competitive edge in the global knowledge economy. Outsourcing public services and social welfare was justifiable as a requirement in tough times, but with Olympic Dam's upgrading the State would turn a corner whereby ostensibly, the Rann government's full social-democratic vision could be realised.

THE FIRST ELECTORAL CHALLENGE

The popularity of the Rann Government was providing it with the buoyancy it needed in the lead-up to the 2006 election. Labor's popularity was buffered by good news about the awarding of future defence manufacturing contracts that would ideally present the viable transition of automotive sector workers into a related industry after the mining boom eased the period of transition. The Government spruiked the positive economic trajectory of the State in the media. In its election campaign, Labor presented a 'presidential style' leader in Rann, which the Liberal Opposition could not match with its comparatively uncharismatic leader, Rob Kerin.

But behind Rann's presidential style of leadership was the deepening of the executive-driven management of decision-making, including the addition of unelected officials in new roles. Labor doubled down on its methods to bypass the legislature by enrolling the Chair of EDB, Robert de Crespigny, and the Chair of SIB, Monsignor David Cappel, in the Cabinet's Executive Committee. Moving unelected officials into the Government's most senior directive body represented a significant contravention of the Westminster system.³⁴ But to its broader strategy the process of entrenching this element of new public management-style government appeared to be a necessity until the Rann Government was able to capture the public windfall from the mining boom. A senior public servant, occupying an advisory role to the Premier at this time, seemed to excuse this controversial move:

Rann understood that the public sector on its own, and Cabinet on its own, don't have the answers. They were not necessarily the only places—repositories—of knowledge, and insight into the future³⁵.

³⁴ H. Manning, 'Political Chronicles: South Australia January to June 2005'. *Australian Journal of Politics and History*, 51(4), 2005, pp. 606-612.

³⁵ Interview with a senior public servant, 2015.

For the time being, the Rann Government's strategy was working. A Labor campaign focus on 'Media Mike' contributed to a clear majority victory for Labor.³⁶ This 'landslide' win saw the Government attain its largest majority to date--28 seats in the lower house to the Liberals' meagre 15. In the Legislative Council, the story was significantly different. A 'hung parliament' gave Labor and the Liberals 8 seats each, with a range of Independent and minor parties opposed to the Rann Government's policy agenda at various points. This added to Rann's strong desire to abolish the Council,³⁷ and do away with a house of parliament in which sat the most spirited challengers to the government's agenda.³⁸ However, Rann showed no substantial signs of actively implementing any abolition attempt.

Labor was now in an enviable position. Polling six months after the 2006 election showed Labor in a comparatively strong standing compared to a weak and divided Liberal Opposition. Andrew Parkin observed the confident style and behaviour of the Rann Government as an audacious government capable of managing short-term crises, with 'a long-term agenda, less amenable to media headlines ... being set in place via the Strategic Plan, the Government Reform Commission and other such devices.'³⁹ This focus on 'devices' had extended the shadow of the executive over a once hostile and now relatively tamed Parliament.

GLOBAL CRISIS ARRIVES IN SOUTH AUSTRALIA

Over the years that followed, cracks would begin to form as the impact of the Global Financial Crisis (GFC) reached South Australia. The State was on the cusp of a resources boom, providing the Rann Government with a expectation that its sacrifices to the market had helped the State weather the storm under Labor's steady hand. Much of the infrastructure spending that entailed part of the Government's commitment to underwriting this steady transformation was already being funded, based on an expected \$250 million in receipts from mining royalties over the next

³⁶ D. Jaensch, 'The 2006 South Australian Election'. *Australasian Parliamentary Review*, 21(2), 2006, pp. 198-207.

³⁷ Jaensch, 'The 2006 South Australian Election'.

³⁸ Bastoni, 'The Executive Versus the Legislative Council'.

³⁹ A. Parkin, 'Political Chronicles: South Australia July to December 2006'. *Australian Journal of Politics and History*, 53(2), 2007, p. 319.

decade.⁴⁰ But in the second half of 2008, commodity prices on Wall Street nosedived. In flow-on effects, deep recessions in many countries across the globe shook confidence in global markets and by 2009 the GFC dented a period of national economic prosperity in Australia.

As the longest-serving Labor Premier in South Australia, Rann was enjoying a wave of popularity. He put this down to his third way approach in seeking expert advice outside of the government.⁴¹ But this had distracted from political-economic developments to which the Government would now need to respond more attentively. Surplus estimates were replaced by a budget deficit. Sharp reductions in South Australia's economic growth forced the Government to consider asset sales and the rescheduling of expenditure in significant infrastructure projects over longer timeframes.⁴² By the end of 2009, the Rann Government was forced to revise down its spending to deal with an estimated \$1.1 billion of lost revenue, the majority of this loss due to shortfalls in the federal government's GST receipts, a transfer payment South Australia's struggling economy depended upon, at least over the short-term.

The GFC diminished the hopes of short-term economic growth from the resources boom in South Australia. Nevertheless, the Rann Government hoped that prudential budgetary management would triage South Australia's economy between GFC and its imminent mining *Eldorado*. Then, in October 2009, the last remaining tyre manufacturer in Australia, Bridgestone, closed in Salisbury in Adelaide's north, taking 600 manufacturing jobs with it. The loss of Bridgestone exposed more deeply the gamble the Rann Government had taken in depending substantially on the slated expansion of Olympic Dam to deliver growth to South Australia, instead of enacting policies true to its social-democratic principles and testing them via parliamentary deliberation.

⁴⁰ H. Manning, 'Political Chronicles: South Australia July to December 2012'. *Australian Journal of Politics and History*, 59(2), 2013, pp. 308-313.

⁴¹ Rann, *Social Inclusion*.

⁴² H. Manning, 'Political Chronicles: South Australia July to December 2008'. *Australian Journal of Politics and History*, 55(2), 2009, pp. 291-297.

THE 2010 ELECTION AND THE TURNING TIDE

Fortune began to turn away from Rann at the 2010 South Australian Election. Where once the Rann Government and the Premier himself had enjoyed a great deal of support from the South Australian community, things were beginning to change. Jaensch described how 'hubris, arrogance and spin' defined the four years between Labor's decisive 2006 election victory and its more marginal win in 2010.⁴³ Hamilton's critique of the UK 'New Labour' third way approach adopted by the Blair Government during the 1990s would become just as applicable to the Rann Government:

With the advent of the Third Way, politics made a transition from ideas to personalities. The policy analyst was replaced by the spin-doctor, the party platform can be found beneath the media strategy; image management substituted for bold reform; and choosing words became more important than choosing actions. Staying 'on message' means avoiding debate. The new sophisticated social democrats understood the modern world in ways the 'old socialists' could not.⁴⁴

Indeed, commentators consistently described how Premier Rann was the 'king of spin',⁴⁵ and how the Rann Government focused excessively on control of the messages it conveyed to the public.⁴⁶ As the emptiness of third way politics crept into view, this proved a weakness, with the electorate now having clearly grown weary of personality politics. Most obviously, the public no longer appreciated Rann's personal style, which increasingly came across as arrogant and unheeding of the public. Rann appeared only to have an ear only for executives heading South Australia's business networks and for an international class of expert consultants appointed to the *Thinkers in Residence* program to advise the government on the State's future across a range of important social and economic issues.

⁴³ D. Jaensch, 'The South Australian Election 2010: A Summary'. *Australasian Parliamentary Review*, 25(1), 2010, p. 221.

⁴⁴ C. Hamilton, 'The Third way and the End of Politics'. *The Drawing Board: An Australian Review of Public Affairs*, 2(2), 2001, p. 100.

⁴⁵ H. Manning, 'Mike Rann: A Fortunate 'King of Spin'', in J. Wanna and P. Williams (eds.), *Yes, Premier: Labor Leadership in Australia's States and Territories*, Sydney: University of New South Wales Press, 2005.

⁴⁶ L. Megarrity, *Background Note: The South Australian Election 2010*, Canberra: Department of Parliamentary Services, Parliament of Australia, 2010.

Allegations of an illicit sexual relationship between Rann and a former South Australian Parliament employee came to a head very publicly, with Rann assaulted at a Labor Party event by the former partner of the employee in question just weeks prior to the 2010 election.⁴⁷ Despite denying allegations of an affair with the woman, Rann's reputation was damaged significantly. The scandal, combined with a perceived loss of faith in Rann by voters appeared to manifest in an average swing to the Liberals of 8 percent across all seats.⁴⁸ Yet this was still not enough for them to take government from Labor. Despite the Liberal Party winning the majority of first preference votes and two-party votes, its largest gains occurred in safe seats.

Labor had survived a major test of its mandate in withstanding significant swings against it. But the sense that the Rann Government (or perhaps Rann himself) had suffered a blow to its credibility with voters was reflected in a far more timorous Labor Government. The 2010-11 State Budget was an exercise in conservative fiscal management and aversion to any kind of strategic stimulus spending, despite the urgency of economic activity in the post-GFC environment. This only compounded the public's discontent with the government and revealed the paradox of a neo-liberal approach to social-democratic government. Two key ways that the Government budgeted to deal with shortfalls were new privatisations, after promises from Rann that none would take place, and voluntary redundancy packages and a range of cuts to employment conditions for public servants. These issues galvanised growing opposition to the Rann Government from the public sector labour union and community groups opposed to regional industry privatisations.⁴⁹ Anger was warranted, given that the Budget identified how the Rann Government's spending on infrastructure had declined in all key target areas. It had failed to measure up to objectives of the Strategic Plan despite this being its chief mechanism for

⁴⁷ M. Owen, 'Unions Call for Budget Deficit and an End to AAA 'Obsession'. *The Australian*, 2011. Accessed at: <https://www.theaustralian.com.au/national-affairs/unions-call-for-budget-deficit-and-an-end-to-aaa-obsession/news-story/57117ab5be2128552bbcacea0f93bcf3>

⁴⁸ R. Manwaring, 'Political Chronicles: South Australia January to June 2010'. *Australian Journal of Politics and History*, 56(4), 2010, pp. 660-666.

⁴⁹ M. Owen, 'Unions Voice Anger at Labor Leadership. *The Australian*, 2011. Accessed at: <http://www.theaustralian.com.au/national-affairs/unions-voice-anger-at-labor-leadership/news-story/a5486a4e19376aa170dbb6bcc2131ff3>

transforming the State's economy.⁵⁰ The Government's attempts to provide the minimum foundational investments in post-GFC recovery, well short of any kind of stimulus spending, reflected again its deep reliance on the mining boom reaching South Australia.

By 2011, economic uncertainty was hurting consumer and business confidence, which in turn was damaging the State's budget.⁵¹ Dissatisfaction peaked in the labour movement over the Rann Government's strict adherence to economic management decisions to appease Standard and Poor's. There was open division in the Labor Party, as both Premier Rann and Treasurer Foley had fallen out of favour with the Party's industrial base. Following a Party room vote in late 2011, Rann ceded the leadership to Jay Weatherill in a staggered handover process that occupied a total of ten weeks.

By the end of 2011, new Premier Weatherill had indicated his leadership would be very different in style, temper and policy direction to steer South Australia forward.⁵² The change of leadership opened a way for questioning the earlier commitment to maintaining the AAA-credit rating, which had become a key line of attack from unions opposed to public sector wage freezes and redundancies.⁵³ In an attempt to mend bridges within the Party, Weatherill moved to increase public spending. Despite the fact that this would cause a credit rating downgrade and would cost the Government more in interest on borrowing, the State possessed a small debt-to-GDP ratio, meaning public debts would remain manageable over the short-term.

Off its starting block, the Weatherill Government poised to take South Australia in a new direction by addressing some of the key economic sectors, like manufacturing, relatively neglected by the Rann Government. But it soon became evident that its policy responses would not wander far from those of Rann. As far as the

⁵⁰ H. Manning, 'Political Chronicles: South Australia July to December 2010'. *Australian Journal of Politics and History*, 56(2), 2011, pp. 315-321.

⁵¹ S. Martin, 'SA at Risk of Losing AAA Credit Rating, Economic Outlook "Negative"'. *The Advertiser*, 2011. Accessed at: <http://www.adelaidenow.com.au/news/south-australia/sa-at-risk-of-losing-aaa-credit-rating/story-e6frea83-1226144485325>

⁵² Manning, 'Political Chronicles: South Australia July to December 2011', pp. 314-321.

⁵³ M. Owen, 'Sex Scandal that Threatened to Topple Rann'. *The Australian*, 2011. Accessed at: <https://www.theaustralian.com.au/news/inquirer/sex-scandal-that-threatened-to-topple-rann/news-story/da76fa96bff80d71b823955fcebdc979>

Government's leadership was concerned, the Olympic Dam expansion was a panacea for economic development. Indeed, BHP's hotly anticipated expansion remained so important that the initial leadership quarrel between Rann and Weatherill centred on a dispute between them over which leader would announce it.⁵⁴ Ultimately, Rann introduced the necessary bill into Parliament on his final day in office.

The anticipated expansion meant that infrastructure vital for the State's economic future could still be funded through borrowing that would easily be paid back. But on the 22nd of August 2012, BHP announced that it would shelve the expansion of Olympic Dam well beyond the 15th December 2012 date specified in its indenture agreement with the South Australian government. The mining conglomerate cited unfavourable market conditions combining subdued commodity prices and higher capital costs, which were symptoms of the GFC's squeeze on global market investment. The pressure to cut costs, stay competitive and remain profitable was placed even on Australia's most lucrative primary industry. On behalf of the Government, Premier Weatherill broke the news to South Australians that the expansion project would be postponed indefinitely. The Government had been banking on expected significant future income but on the basis of new predictions in the wake of the GFC, the long-expected gains were no longer certain. South Australia suffered a further credit rating downgrade from AA+ to AA. A looming record budget deficit of \$1.7 billion threatened further expanding the level of public debt.

Facing a mounting economic crisis, the Government enacted emergency budget measures and made public service cuts to help reduce government spending. Treasurer Jack Snelling attempted to convince voters that budget deteriorations were due to nearly \$2 billion of GST revenue cuts from the federal government, rather than infrastructure commitments that could not be funded in the absence of industrial revenue. Presaging massive revenue reductions, Snelling cited a need to rationalise programs and create sensible economic conditions. Significant aspects of the Government's suite of programs to promote joined-up governance and cross-sector partnerships were cut from its 2012-13 Budget.

⁵⁴ M. Owen, 'Veteran Labor Premier Mike Rann Felled in Factional Coup'. *The Australian*, 2011. Accessed at: <https://www.theaustralian.com.au/national-affairs/veteran-labor-premier-mike-rann-felled-in-factional-coup/news-story/e3729b1bf84b1d917aed9a77feb159d4>

A GROWING POLITICISATION OF THE PUBLIC SECTOR AND ITS CONSEQUENCES

In a symbolic sense, cuts to key Rann era policies marked the decisive end of the third way experiment with executive-led and business-and-community driven policy responses. With his popularity waning as voters struggled to notice any discernible difference between Weatherill's leadership and that of Rann, Weatherill sought to develop a better public image for himself and his Government. This entailed replacing Snelling with himself in the Treasury portfolio, in a bold move designed to streamline and more effectively coordinate the Government's central agencies to achieve clear policy gains in the lead-up to the 2014 election, now barely a year away.⁵⁵

The popularity of Premier Weatherill was boosted by events that transpired following the election of the Abbott Coalition Federal Government in 2013 and the acrimonious approach that Government would take in its dealings with South Australia. In early December 2013, during Question Time in the Commonwealth Parliament, Abbott Government Treasurer Joe Hockey goaded Holden into revealing its intentions for its Australian operations while the company was engaged in commercial-in-confidence negotiations. As Lynch and Hawthorne wrote in the *Sydney Morning Herald*, this was '...a clear signal that the federal Cabinet had turned on the company and wanted a swift end'.⁵⁶

Even before this stunning act, there had been a clear lack of industry policy certainty from the Abbott Government. Just days later, Holden announced that it would end manufacturing operations in the country in 2017, meaning closure of its automotive manufacturing plant at Elizabeth in the City of Playford in Adelaide's north. This would mean the direct loss of 1,600 jobs across the four years from 2013 to 2017. Beyond this, estimates of the potential flow-on effects of the plant's closure put the

⁵⁵ R Manwaring, 'Political Chronicles: South Australia January to June 2013'. *Australian Journal of Politics and History*, 59(4), 2013, pp. 650-655.

⁵⁶ J. Lynch, and M. Hawthorne, 'Australia's Car Industry One Year from Closing its Doors'. *Sydney Morning Herald*, 2015. Accessed at: <https://www.smh.com.au/business/the-economy/australias-car-industry-one-year-from-closing-its-doors-20151013-gk7ip0.html>

unemployment figure in South Australia beyond 13,000.⁵⁷ Compounding this loss were budgetary challenges the Weatherill Government faced with a forecasted deficit increase from \$44 million to \$955 million in the 2015-16 financial year. Steel-smelting operations at Port Pirie in South Australia's mid-north were under threat, as Swedish corporation Nyrstar signalled its intention to close its plant, which would result in a projected loss of 5,000 regional jobs. These issues presented dire circumstances for the State's economy and a fresh-faced Labor Government leadership seeking to communicate its own agenda. But given the unmistakable disdain for South Australia shown by the Abbott Government, Weatherill's approval rating increased as the Premier sought to take a strong stance against federal government neglect. The Labor Party's projected two-party preferred vote also increased as the South Australian Government attempted to continue presenting a forward-looking strategy of State renewal and rejuvenation.⁵⁸

RETURN TO MINORITY GOVERNMENT

With an ongoing sparring match between the Abbott and Weatherill governments, Labor entered the 2014 election race in South Australia optimistic, but unlikely to win a fourth term. A fourth Labor term was unprecedented in modern South Australian history. The Liberal Party boasted two-party preferred polling before the election that gave it a 52 percent to 48 percent lead. At the election itself, the Liberals won 91,000 first preference votes more than Labor. Government should have changed hands, however, Labor still managed to win 23 seats to the Liberals' 22 seats. Neither party managed to win a majority of the popular vote, due to votes for Independent candidates. Commentators put Labor's victory down to its more adept utilisation of modern campaigning techniques, like the use of social media and digital data analysis to target voters in key seats.⁵⁹

⁵⁷ B. Burgan and J. Spoehr, *Updated Assessment on the Contribution of Holden's Elizabeth Operations to the Economy of the State of SA and Recent Investment Decisions*. Adelaide: Australian Workplace Innovation and Social Research Centre, The University of Adelaide, 2013.

⁵⁸ H. Manning, 'Political Chronicles: South Australia July to December 2013'. *Australian Journal of Politics and History*, 60(2), 2014, pp. 279-328.

⁵⁹ H. Manning, 'Political Chronicles: South Australia January to June 2014'. *Australian Journal of Politics and History*, 60(2), 2014, p. 655.

Independents have been an increasingly typical feature of recent parliaments in Australia. As in the 2002 South Australian election, the Independent vote played a critical role in Labor remaining in government in 2014. The decision of Geoff Brock, Independent MP for Frome, to align himself with the Weatherill government gave Labor the majority it required. A personal agreement was apparently struck between Weatherill and Brock for the latter to take a Cabinet position as Minister for Regional Development and Local Government, with an increase in financial aid for regional and industrial issues in Brock's seat, which encompassed the steelworks city of Port Pirie. Two months later, former Liberal Leader-turned-Independent Martin Hamilton-Smith accepted an invitation from the Premier to join the Government as Minister for Investment and Trade, Defence Industries and Veterans' Affairs. Labor was in a comfortable position to govern for another four years.

Policy driven attempts to promote its 'new economy' policies began to define the last four years of Labor Government under Weatherill. In attempts to create positivity, the Weatherill government's *Jobs Plan* sought to assist social and economic transformation in the form of re-skilling workers, employment strategies for communities and assisting firms and industries affected by automotive manufacturing deindustrialisation with help in the transition to advanced manufacturing. This strategy was accompanied by planning reforms and an inner-city 'Vibrancy' agenda to transform the Adelaide CBD and surrounding suburbs in ways that nurtured culture and creativity and maintained the city's mantle as one of the world's most liveable cities. This strategy centred largely on the State's intervention to cultivate a creative urban environment that would attract foreign knowledge workers and investment from global high-tech firms. These policy responses did not involve any major new infrastructure spending announcements, with Manning commenting that Labor's 2014 election slogan, 'Let's Keep Building South Australia' appeared in practice to align more closely to the Liberal's counter-slogan, 'Backing Business to Grow the Economy'.

Behind the façade that these minor differences between Liberal and Labor strategies represented, major scandals emerged in 2014 and 2015 relating to bureaucratic misconduct and maladministration. First, the Independent Commission Against Corruption (ICAC) investigated the Government's handling of a land sale to a private venture capital firm without a competitive tendering process, to determine if there was evidence of corruption. The Government's action in this case was for long an ongoing subject of ridicule in the local media and the ICAC found substantial mismanagement of public resources. Then followed an investigation into the government's child protection agency, Families SA, particularly around the handling of child sexual abuse and the death of a vulnerable child, in which the agency showed

gross negligence. In 2016 and 2017 more problems emerged. The Weatherill Government was condemned for its handling of the State's health service overhaul and damned by the ICAC's findings of maladministration and negligence in the management and delivery of services at the Oakden Older Persons Mental Health Facility. The Government faced further backlash over its lacklustre response to warnings from various peak bodies over the creeping failure of the vocational education and training agency, TAFE SA.

Behind these serious failures to demonstrate government accountability to the public, a media narrative began to emerge from former and current senior bureaucrats about the hollowing out and politicisation of the South Australian Public Service. Following termination of his employment, former head of South Australia's Department of Planning, Transport and Infrastructure, Rod Hook, raised concern in the press that the State's public service was being politicised at '[...] an alarming rate', with very little concern shown 'from the Commissioner for Public Employment or the unions'.⁶⁰ In the 2016 Bettison and James Oration, Greg Mackie, a long-serving senior public servant and head of a statutory body, the South Australia History Trust, criticised the politicisation of the senior echelons of the public sector as a phenomenon leading to significant time-wasting and a lack of external focus on the needs of South Australia's community.⁶¹

With numerous issues relating to bureaucratic failure occupying the media, the Weatherill Government nevertheless pushed forward with an initiative to renew Labor's social-democratic agenda. 'Reforming Democracy' was a platform designed to shift politics away from the 'announce and defend' style of Rann. However, the Opposition, media and much of the public met the new platform with scepticism, seeing it as one that offered ideals whilst masking growing failures of bureaucracy in practice.⁶²

⁶⁰ R. Hook, 'Hook: SA Public Service Politicised "at Alarming Rate"'. *Indaily*, 2015. Accessed at: <http://indaily.com.au/opinion/2015/03/13/hook-sa-public-service-politicised-alarming-rate/>

⁶¹ G. Mackie, *Thinking Adelaide: A Passion for Connecting and Collecting*. Paper presented at the 2016 Bettison and James Oration, Adelaide Festival of Ideas, Adelaide, 2016; D. Washington, 'Politicised and Time-Wasting: SA's Public Sector Culture Questioned'. *Indaily*, 2016. Accessed at: <http://indaily.com.au/news/local/2016/10/24/politicised-and-time-wasting-sas-public-sector-culture-questioned/>

⁶² R. Manwaring, 'Political Chronicles: South Australia July to December 2015'. *Australian Journal of Politics and History*, 62(2), 2016, pp. 314-319.

Much of the blame for this scepticism might be understood by the decay in the government's delivery of public services. In turn, this can be apportioned to the institutionalisation of the third way under the Rann Government, and furthermore, the path-dependent nature of this philosophy becoming embedded in government, following several decades prior of neo-liberal reforms to the public sector and treasury decision-making. Ironically, the 'third way' approach that colonised the Rann Government's administration delivered the neo-liberal economic program that was responsible for socio-economic problems to which it now needed to respond. The Weatherill Government attempted to turn away from the problems caused by Rann's presidential-style governing by encouraging a 'debate and decide' approach. However, with the third way largely institutionalised, this represented little more than a decision to allow debate to occur more publicly, minus the resources required for effective outcomes, or responsibility being shouldered by an accountable government ultimately still determined to deliver its intended aims. The embedding of third way principles for public sector management and policymaking had produced a weakened bureaucratic apparatus, now limited in its institutional capability to hold the authoritative centre having long been undermined by a growing network of private interests at the helm of policy and strategy.

Growing governmental action under conditions that might be reasonably thought of as lacking strong mandate was exemplified by Premier Weatherill's proposal to dump nuclear waste in South Australia. After a two-year process of establishing a Royal Commission into South Australia's participation in the nuclear fuel cycle and subsequent public consultation through a citizens' jury, the final Commission report handed down a decision in 2016 not to support nuclear waste dumping, dashing hopes of realising what was, for a time, Weatherill's legacy project. The federal Labor Party and other state Labor counterparts had never been in support of nuclear waste dumping. Manning was correct in suggesting that South Australia's economic turmoil in the face of a declining industrial base 'prompted a profound rethink' by Weatherill, as in the waning days of its fourth term the Government sought policy solutions that were credible, despite the inherent environmental risks of nuclear waste.⁶³

⁶³ H. Manning, 'Political Chronicles: South Australia January to June 2014'. *Australian Journal of Politics and History*, 60(2), 2014, p. 653.

Proposing a nuclear waste dump in the State's far north had largely to do with the continuing mindset within the Labor Government. Its leaders continued to hold onto diminishing hope that such a 'silver bullet' solution would permit true reform to flow from by global fortune favouring a rustbelt state with captured economic bounty. Unfortunately, the sacrifices to attain this were significant. The Weatherill Government's agenda to reform democracy employed the same third way policy responses, but now they were being implemented in a State suffering from low business confidence and a subdued economy. In the first quarter of 2017, South Australia recorded the nation's highest unemployment rate (6.8 percent compared to a 5.7 percent national average). The Government's agenda to reform democracy appeared to focus on the voters, not the business networks or community organisations previously tasked with delivering social and economic outcomes with efficiency targets that translated to budget surpluses.

A SECOND WIND?

Despite its declining popularity, the Weatherill Government received another spike in late 2016, after events that once more drew out the significant divergence between the views of the Federal Government and the reality of South Australia's situation. On 28 October, an 'extreme weather event' brought record-breaking wind, rain and storms to South Australia. Power outages occurred in all premises connected to the State's energy grid. As indiscriminate as the target of this storm was, it was quickly politicised. Despite accepting the premise that the blackout resulted from extreme weather conditions, both Prime Minister Malcolm Turnbull and Federal Energy Minister Josh Frydenberg levelled their criticism at the ambitious renewable energy targets of the South Australian Labor Government, which aimed to reach 50 percent renewable energy by 2025 and achieve net zero emissions by 2050. Despite how indifferent the biggest storm in South Australia in almost 50 years was to this nation-leading pursuit of renewable energy, the storm became a tipping point in power politics at both State and Federal levels.

The Weatherill Government quickly sought to counter its naysayers by producing its new energy policy for South Australia. It contained a suite of initiatives, with capital investments, incentives and regulatory measures aimed at increasing local control of

energy provision and security and raising the level of public ownership of the network South Australians had paid so much into whilst gaining little in return, like promised stable energy prices after privatisation.⁶⁴ Short of re-nationalising the State's energy industry and capital assets, this policy response spoke directly to major concerns of voters about long-running issues of energy service affordability and security. Then the Weatherill Government achieved a coup when Elon Musk, head of global tech giant Tesla, agreed to deliver the largest battery storage project in the world in the State's Mid-North region. Musk delivered within a self-imposed 100-day deadline from contract signing, receiving a \$50 million fee drawn from provisions in the energy policy.

Over the course of 2017, power remained a hot-button issue in South Australia. The mounting policy problems the Government faced elsewhere acted as a snowball effect, placing Labor in what seemed like an irredeemable position. The cumulative effect of its innovative policy responses was of a government with a vision, but arguably a vision that relied too heavily on viewing the State as an economic powerhouse, rather than a State with an economy struggling to diversify and transform its way into the new economy on the foundations of an increasingly narrow industrial base. However, energy policy represented a decisive break from the third way notions underpinning the Government's policy trajectory. A historical perspective on the 'enterprising' South Australian government suggests that the Weatherill Government's energy policy represented a significant risk-taking initiative when measured by the criteria of previous state interventions to transform South Australia's economic structure and drive its social transformation in step. It has brought into focus a need for policymakers to reimagine the role of the state in the economy in entrepreneurial terms, particularly where state risk-taking has the potential to yield rewards that cancel out failures. This is a critical pivot point for taking South Australia forward in a new era of digitally driven social, economic and industrial transformation.

⁶⁴ C. Finn, 'Electricity Markets, Competition and Prices—Myths and Realities', in J. Spoehr (ed.), *Power Politics: The Electricity Crisis and You*. Kent Town: Wakefield Press, 2003.

CONCLUSION: LOOKING BACK ON THE WAY FORWARD

Sixteen years of Labor Government in South Australia in the early twenty-first century saw Premiers Mike Rann and Jay Weatherill preside over a period that was, like that faced by their immediate predecessors, characterised by a new range of challenges. Confronting reasonable fiscal circumstances after massive asset privatisations during the 1990s, the Rann Government promised to deliver on an expansive social-democratic agenda. But fearing backlash from the public should its agenda too quickly remind voters of the economic failures of the Bannon decade, Rann's measured approach entailed a degree of prudence that missed opportunities for reform, favouring deference to global economic monitors and 'silver bullet' panaceas. These combined to sweep away strong decision-making processes that met the needs of all South Australians.

Under a dogmatic approach to managing the State's way out of crisis, the neo-liberal mechanisms that delivered Labor's social-democratic agenda focused on personalities and executive decisions as a way to balance debt and promises. Yet this politicised decision-making and imposed upon the bureaucracy a hollowing-out process that exposed the contradictions of a 'There is No Alternative' mindset. Arguably, this mindset was derived from the path-dependent effects of neo-liberal policymaking that had become entrenched by the dismantling of public institutions by previous governments. When the time came to respond to global economic crisis, this executive-driven approach under-delivered where a more deliberative legislative method may have institutionalised a mix of policies capable of helping the Government navigate its way through a financial minefield in which any wrong move resulted in a credit rating downgrade.

The Weatherill Government's attempts to 'steer but not row' were dealt the double-blow of a hollowed-out bureaucracy with diminishing talent to make the hard choices in an increasingly difficult economic environment. Its eleventh-hour efforts to enact meaningful change in the area of energy policy left a reminder of the kind of 'entrepreneurial state' decision-making that the Rann Government initially promised to South Australians before it made stronger promises to the global economic orthodoxy.

The present Liberal Government, elected in March 2018 and led by veteran Opposition Leader Steven Marshall, has offered South Australians a new direction and a return to what it will no doubt define as a period of responsible and prudent government as it occupies itself with the business of establishing the State's economy firmly in the 'new economy'. Significantly, the third way transformation of the State's public policymaking had a profound impact on the role of government throughout the

Rann era, with the Weatherill Government toeing the line to some extent but responding to crises in an interventionist way reminiscent of the kind of leadership shown under earlier Premiers like Don Dunstan. Besides an energy policy that continues to set a high benchmark for action by other Australian jurisdictions, the third way has aided the job of the incumbent Marshall Liberal Government further to roll back and limit the public sector as it embarks on a far more obvious neo-liberal direction. This is despite Marshall's claim that he does not hold an 'ideological' agenda for the public sector, and—perhaps as a comment on the politicisation that long affected it—simply considers the public sector to be in need of reform following years of poor leadership.⁶⁵

South Australia now enters a period of development that follows the end of local automotive manufacturing, now read as a watershed moment and a perceived opportunity for the state to embrace the high-tech possibilities of the future. The historic record of Liberal governments in South Australia, with their string of privatisations that arguably stripped governments of critical tools and sources of revenue, may be a fading memory in the minds of the State's rapidly ageing population. Equally, a burgeoning youth cohort, on the cusp of an age where, traditionally, most move away for greater opportunities interstate or overseas given three decades of decline in South Australia, have known virtually nothing but Labor governments.

The Rann-Weatherill period warrants revisiting as a time of South Australian government in which the spirit of the Dunstan era was revived for modern times, or so it may be argued. If Labor's stewardship of the State in the 'digital age' represented such a revival, it is arguably the case that what both Dunstan and the Rann-Weatherill governments had in common was presiding over periods defined by global turbulence. Uncertainty surely stifled their innovative attempts to institutionalise forms of government that might more fully integrate South Australia into global dynamics, not in a detrimental sense as a 'rustbelt state' but as a global leader on social and economic ideas that recognise the historical and institutional role of the state as a leader, not merely a bystander. It is clear that in its experiments, the Labor Government led by Rann and then by Weatherill was innovative and provided

⁶⁵ T. Richardson, 'No "Ideological War" against Poorly-Led bureaucracy, Says Marshall'. *Indaily*, 21 September, 2018. Accessed at: <https://indaily.com.au/news/politics/2018/09/21/no-ideological-war-against-poorly-led-bureaucracy-says-marshall/>

valuable lessons to governments—especially social-democratic ones—about government in a 21st century political economy defined by governance.

In the March 2018 election, voters directed at Labor their blame for high unemployment, loss of industry, a politicised state bureaucratic apparatus, and high-power prices that followed a pronounced local experience of national recession. In response, South Australians chose the Liberals to clean up the mess often perceived as endogenous to Labor rule. But rather than representing a rejection of social democracy, a shift of the pendulum from Labor to Liberal exposed the growing disaffection amongst South Australian voters for what has perhaps unfairly been perceived as a period of centre-left government that never quite managed to escape the shadow of the State Bank collapse of the early-1990s. This was a significant impediment to the Labor Government from its outset, long before the impact of the GFC.

So, just how much blame for South Australia's economic and social challenges can be shouldered by the governments of Rann and Weatherill? Many of the issues they faced were borne of a political and economic crisis with global origins, facilitated since the 1980s at the national level of Australian politics, and manifested locally in the decades that have followed. The policy choices of Labor and Liberal governments in South Australia during the latter 20th century have, arguably, entrenched structural social and economic issues to which Rann and Weatherill responded with innovative measures. Yet in the face of an increasingly volatile economy and a narrowing range of policy tools, the third way seemed the only viable or perceived solution given the path-dependence of neo-liberal ideology to which the Labor Government often had to bend. Initiatives that minimised the influence of the Parliament may have contributed to undermining the longer-term outcomes these leaders hoped for. The role that the Parliament plays in delivering the Marshall Government's declared free market, small government and individualised vision for South Australians will certainly present challenges if the Government seeks to drive a more fully-fledged development of the State through private enterprise and communities of individuals.⁶⁶

Despite a beginning in minority government and an ending backgrounded by a slowly decaying public faith in democratic institutions and political process, the innovative

⁶⁶ Richardson, 'No "Ideological War"'.

approach to government embedded by Rann and tinkered with by Weatherill transformed South Australia in significant ways that arguably could not have been achieved by a Liberal government. However, not all of these experimental approaches to social and economic change were positive and in fact they have further entrenched the deference of both Liberal *and* Labor governments to a neo-liberal orientation.

From the political-economic perspective presented in this article, the tendency of neo-liberal policies to ‘fail forward’⁶⁷ are exemplified in many of the Rann and Weatherill governments’ failures. In many instances, government and bureaucracy became increasingly unresponsive to community needs and often served only special economic interests; but neo-liberal policymaking nevertheless continued to function as the orthodox response of governments at all levels. The focus on personalities helped to sell a broad government innovation agenda, but it also distracted from a more active and interventionist role of government, which failed to effectively mitigate deindustrialisation and the politicisation of the public interest.

Of course, significant exceptions to this rule, such as the energy industry policy initiative, demonstrate the kind of entrepreneurial and risk-taking leadership governments are capable of showing, particularly in a State like South Australia where a strong positive role for government in the economy and the community is for the most part accepted. But as evidenced in the Rann-Weatherill period, this role was challenged by policy choices and by the government’s neglect of Parliament’s role in institutionalising potentially positive changes. Further research is essential in order to more fully unpack the consequences of this period of government—and its precedents in the 1980s and 1990s—for the Government’s and the public’s future engagement with the legislative system and with policymaking, as the Liberal Government sets about building its own vision for South Australia.

⁶⁷ J. Peck, *Constructions of Neoliberal Reason*. Oxford: Oxford University Press, 2010.

Tasmania: Majority or Minority Government? *

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INTRODUCTION

While the outcome of the March 2018 Tasmanian State Election was predictable,¹ the controversies that dogged the campaign were not. Yet it was the aftermath of the election that was most astonishing—not only to the public but also to members of Cabinet.

Tasmania is different. Its parliamentary institutions are unusual and its electoral system is distinctive. So were the issues on which the March 2018 state election was fought. In the lead up to the election both major parties campaigned to govern alone or not at all—neither in minority nor in coalition with the Greens. As well as this apparently overarching concern, there were three other major issues prominent during the campaign—an acute housing shortage, the thousands of poker machines in pubs and clubs, and the surprise matter of gun control.

Health, education, law and order, the economy and who would best manage the budget were, as usual, also policy battle grounds; however, the minority government fear campaign, a television blitz on the benefits of poker machines and considerable

1 N. Miragliotta, 'As Tasmania Looks Likely to Have Minority Government, The Greens Must Decide How to Play Their Hand', *The Conversation*, 26 February 2018. Accessed at: <https://theconversation.com/as-tasmania-looks-likely-to-have-minority-government-the-greens-must-decide-how-to-play-their-hand-91985>.

publicity on the housing crisis robbed most other issues of oxygen during the campaign. A proposal to relax gun controls came to light at the very end of the campaign period and, given the enduring legacy of the Port Arthur massacre, astounded many voters, even if it did not impact on the final election result.

BACKGROUND TO THE ELECTION

Tasmania has a unique electoral system that accurately reflects party support in the electorates in lower house seats and which has often produced minority governments. As a result, the size of Parliament has again become a particular issue in recent times.

Tasmania's electoral system

The Tasmanian House of Assembly has five multi-member electorates (or 'divisions') with its home-grown Hare-Clark quota-preferential electoral system in contrast to a typical Australian lower house of single-member electorates.² By-elections are rare and casual vacancies are typically filled by recounting the votes from the preceding general election in the affected electoral division. While all other states and territories have fixed four-year terms for their house of government,³ Tasmania alone has a maximum four-year term, which confers an advantage for incumbent governments as they have some flexibility in choosing election dates. The March 2018 election was held at the maximum point allowed for the first-term Liberal government.

The Tasmanian upper house, the Legislative Council, which dates back nearly 200 years to 1825, has the power to reject money bills and send the lower house to an election. Yet unlike the other state upper houses, it does not itself face a general election. The government has no power to dissolve the upper house because elections for its single-member electorates are staggered, alternating between elections for three divisions in one year and two in the next year. All other Australian

² The Australian Capital Territory adopted a similar system for electing its single House of Parliament.

³ Queensland followed maximum three-year terms until a 2016 referendum allowed the State to move to fixed four-year terms from 2018.

state upper houses have multi-member electorates, half or all of whose members face elections at the same time as lower house members. Further, the Tasmanian Legislative Council is the only parliamentary chamber in Australia in which most of its members—nine of a total of 15—are Independents.⁴ Following the most recent round of elections in May, the Liberals held two seats in the Legislative Council to Labor’s four. This meant that of all the parliamentarians from whom Cabinet and shadow Cabinet would normally be drawn, there were 15 Liberal and 14 Labor Members—almost equal numbers that arguably increased a sense of threat to the Government’s ascendancy.

Table 1. Tasmanian House of Assembly: Number of Seats Since 1856

Year	Number of seats
1856	30
1870	32
1885	36
1893	37
1900	35
1906	30
1959	35
1998	25

Source: Wikipedia: Tasmanian House of Assembly history.

In the lead up to the election there was significant public discussion about the size of the House of Assembly. While as shown in Table 1, it had had at least 30 Members since its origins in 1856 and 35 from 1959, in 1998 the *Parliamentary Reform Act* reduced it to 25 Members. This measure arose as a productivity offset to justify a controversial 40 percent pay rise for MPs in the mid-1990s, at a time of austere state

4 T. Newman, *Representation of the Tasmanian People*. Hobart: Tasmanian Parliamentary Library, 1994, pp. 140-170.

budgets and restrictions on public sector pay rises. It also especially suited the two major parties, which saw it as a chance to make life harder for the Greens by lifting the quota required to win a seat from 12.5 percent to 16.7 percent of the vote.⁵ Nonetheless, as a result of strong environmental campaigning, particularly well-received in the south of the State, the Greens continued to be elected to the House of Assembly, and prior to the 2018 election held three seats.

POLITICAL BACKGROUND TO THE 2018 ELECTION

To understand the Tasmanian 2018 election, it is important to review the election of 2010. At that election, the incumbent Labor Party and the Liberals each won 10 seats and the Greens five seats. The Labor Premier, David Bartlett, made a deal with the Greens that included appointing two Greens MPs to Cabinet to form what was in effect a coalition government. This was despite Labor promising during the election campaign that it would allow Opposition Leader Will Hodgman to take Government if the Liberals won more votes than Labor. In fact, the Liberals won 39 percent of the vote, Labor 36.9 percent and the Greens 21.6 percent. Bartlett had a change of mind for two reasons: constitutionally, the Governor refused his resignation before numbers were tested on the floor of the House; politically, Labor Members wanted to retain Government and Greens Members wanted to exercise their balance of power.⁶

Despite Bartlett's resignation after only a year, the Labor-Greens coalition Government proved to be remarkably stable. Under new Premier Lara Giddings, it lasted almost its full four-year term. However, the Government was plagued by a hangover from the global financial crisis (GFC) and by problems of its own creation. Much of this was blamed publicly on the Government and Giddings decided to terminate the coalition arrangement before the election. As a result, both Labor and the Greens suffered an electoral backlash in 2014. At that election, the Liberals surged to 51.2 percent of the vote, giving them 15 seats and majority government.

5 A quota under Hare-Clark is the total number of votes divided by the total number of seats per electorate plus one, plus one vote. Where there is only one seat the quota is therefore half the number of votes, plus one vote—which is the same as used throughout Australia in all single-member electorates.

6 ABC News, 'Greens, Bartlett Reach Last Minute Compromise', 2010. Accessed at: <http://www.abc.net.au/news/2010-04-20/greens-bartlett-reach-last-minute-compromise/402622>.

Labor was reduced to 27.3 percent and seven seats and the Greens vote fell to 13.8 percent and three seats.⁷

Because Tasmania has had a history of minority governments since the 1980s, debate about which party can form ‘stable majority government’ has been a central theme in almost all recent election campaigns in the state. So, it was during the 2014 campaign and again in 2018. From mid-2017, successive public opinion polls showed a big drop in support for the Liberals and a boost for Labor under newly installed Leader Rebecca White. Labor was lifted due to strong campaigning on the Government’s handling of health, problems with a two-speed economy (involving growth in the State’s south but much less in the north and north-west), and ongoing battles between the Government and local government over ownership of Taswater—the council-owned corporation responsible for water and sewerage across the state.

An EMRS poll in December 2017 had the Liberals and Labor level-pegging on 34 percent. White led Hodgman as preferred Premier by 48 percent to 35 percent after first bettering the Liberal Leader in a ReachTEL poll in July of the same year.⁸ As a result, most commentators were suggesting the possibility of another hung Parliament, which set the stage for an interesting election.

The economy

One of the underlying themes of the Tasmanian election was the economy and the state budgetary position—and which party was better to manage it. One the eve of the election, the economy and budget both appeared to be in good shape, which augured well for the Hodgman Government.

In February 2018 the number of people employed in Tasmania stood at 246,200, compared to 235,300 in March 2014 when the Hodgman Government came to office. Unemployment in trend terms had fallen from 19,000 in March 2014 to 14,800 in February 2018. The unemployment rate stood at 5.7 percent compared with the

7 Tasmanian Electoral Commission, ‘House of Assembly Elections 2014’. Accessed at: https://tec.tas.gov.au/House_of_Assembly_Elections/StateElection2014/Results/Results.html

8 D. Beniuk, ‘Tasmanian Premier Will Hodgman to Call March 3 Election’. The Mercury, 2018. Accessed at: <http://www.themercury.com.au/news/politics/tasmanian-premier-will-hodgman-to-call-march-3-election/news-story/61a475b1a8ef7e2a899faed0bc290e78>

national average of 5.5 percent which, for Tasmania, was a very good outcome. The participation rate was also stable at 60.9 percent. Hobart's consumer price index was running at 2.1 percent per year, compared with the 1.9 percent average for all eight Australian capitals. Not all indicators were good, however. For example, there had been a relatively big rise in part-time employment, from 83,400 in March 2014 to 93,900 in February 2018.⁹ Final demand growth was also down to 2.2 percent, below the Australian average of 3.3 percent. Overall growth in gross state product (GSP) also remained low at 1.1 percent per year, while Australia was running at 2.3 percent in trend terms. Nevertheless, GSP was fairly consistent for the period 2013 to 2017 following a sharp fall in 2012 under Labor in the wake of the GFC.

Another important indicator for Tasmania is population growth. During the late 1980s and early 1990s, Tasmania's population stalled and, for a short period, even fell, as Tasmanians migrated interstate in search of better employment opportunities. Since the early 2000s it has been growing, albeit slowly, but population is still a significant indicator of the state's economic health. Over the first term of the Hodgman Government, population increased by about 7000 people and net interstate migration showed small gains from 2015, compared to net losses in the years between 2011 and 2015.

Tasmania's budget was also in good shape. On 1 December 2017, the Premier made a speech to the Committee for Economic Development of Australia (CEDA) in which he said Tasmania was in much better shape than when the Liberals came to office in 2014. He declared Tasmania was now a stronger, prouder, more confident place, and the economy one of the strongest performing in the country. Hodgman noted that credit rating agency Standard and Poors had confirmed Tasmania's AA+ rating, the budget had returned to surplus four years ahead of schedule, state debt had been eliminated and, for the first time ever the total state sector, the general government sector—including its state-owned companies and GBEs—was net debt free, with a cumulative surplus of \$811 million forecast over the next four years.¹⁰

Heading into the election, one of the Government's key messages was that the state was performing well economically and the Liberals were responsible financial managers, so why risk a change in government—or worse, a minority government?

9 ABS Cat No. 6202.0

10 Will Hodgman, CEDA State of the State Address, December 1, 2017.

Housing squeeze

The combination of increased demand for housing from mainland and local buyers, rising prices and the explosion of Airbnb short-term rentals in many areas as a result of the tourism boom, had resulted in a visible housing crisis in the state as increasing numbers of families could not find affordable rental accommodation. As a tent city for the homeless grew at the vacant Hobart showgrounds and caravan parks were affected, welfare groups increased pressure for the Government to provide for these housing needs.¹¹ The Government response appeared piecemeal and a group of homeless people erected a tent dwell-in on the lawns of Parliament house just before the election and refused to move.

THE ELECTION

The election was fought on three major issues—gambling, gun control and health, despite the existence of significant matters including housing and campaign finance laws. The three parties adopted different approaches to the campaign, with varying degrees of success.

Labor's poker machine gamble

In December 2017, Labor announced the adoption of what had been a Greens policy, to remove electronic gaming machines from pubs and clubs by 2023. Widely described as 'bold', the move would have seen around 2,300 poker machines stripped out of venues across the state over the five years while allowing others to remain in Tasmania's two casinos.

While the Federal Hotels Group held the licences for all poker machines in pubs, clubs and the two casinos, the Liberal Government had previously announced it would open up to tender the rights to operate gaming machines outside the casino environment after 2023, with a reduction of 150 machines across the state. This followed a joint house parliamentary committee report in September 2017 that did

11 'Time to Act on Rent Crisis', The Mercury, 2018. Accessed at: <https://www.themercury.com.au/news/opinion/editorial-time-to-act-on-rent-crisis/news-story/4c99bbc6f4ef29cfcaab5b24bb1fcde>

not recommend a complete ban on the machines outside the casinos but urged a 'significant' reduction in machine numbers. The Committee's *Future Gaming Markets Final Report* found of the gambling industry's \$311 million revenue in 2015-2016, the Government recovered \$96.4 million in taxes, fees, penalties and levies.¹²

Labor said its policy was based on research that showed more than 80 percent of Tasmanians wanted poker machines out of pubs and clubs and that some of the poorest suburbs in the state were contributing much of the \$110 million lost each year on poker machines in pubs and clubs.¹³

The policy was strongly supported by the social welfare sector but the long lead time from the announcement of the policy to the date to the election proved to be a tactical mistake. It gave Federal Hotels and pub and club venues time to run a well-funded, state-wide campaign against Labor and the Greens. Due to the absence of state-based campaign disclosure laws it has not been revealed how much the gaming lobby spent on the anti-Labor campaign. The amount may never be known, as only the money directly donated to parties and candidates has to be declared under Tasmanian electoral law—and even that will not be known until early 2019, when the parties are required to lodge their returns. However, it was widely reported that the anti-Labor, pro-pokies television and billboard advertising blitz by the Federal Group, the Tasmanian Hospitality Association and the Liberal Party overshadowed the electoral spending of all other parties and candidates combined.

On election night, Greens Leader Cassy O'Connor called for donation law reform claiming the Liberal's big budget campaign was fuelled by 'millions and millions of dirty money' from the gambling industry. She said: 'I have a message for the Liberals: the stain of being bought by the gambling industry will live with you forever. I am saddened at the corruption of our democracy'.¹⁴

Labor's poker machine policy most likely had two other effects—one good for the Party and the other calamitous. In the absence of environmental lightning rods in this

12 ABC News, 'Poker Machines to be out of Pubs and Clubs under Tasmanian Labor', 13 December 2017. Accessed at: <http://www.abc.net.au/news/2017-12-13/poker-machines-to-be-out-of-pubs-clubs-under-tasmanian-labor/9254442>

13 Tasmanian Labor Party Policies. Accessed at: <http://www.pokieshurtpeople.com/>

¹⁴ M. Maloney, *The Examiner*, 3 March 2018. Accessed at: <https://www.examiner.com.au/story/5262273/greens-leader-slams-dirty-money-campaign/>

campaign, stealing the Greens' thunder on banning poker machines is credited as a major factor in helping Labor take one of the Greens' seats. But, while Labor also clawed back two seats from the Liberals, the dominance of the poker machine issue appears to have stalled Labor's earlier gains among voters during 2017 made on the back of their campaigning on health.

Gun control

Following considerable publicity about mass shootings in the United States, and in the state that suffered the notorious Port Arthur massacre in 1996 that led to the present strong national agreement on gun control, many Tasmanians were startled when it emerged that the Liberals had made a secret promise to weaken gun laws if re-elected. The agreement was made between then infrastructure Minister Rene Hidding and farmer and shooter groups, who wanted access to silencers and semi-automatic weapons for 'pest control', as well as longer gun licensing periods. When this agreement was revealed in the last few days of the campaign, the Liberals moved to reassure voters that there would be no breach of the national firearms agreement that had been negotiated after Port Arthur, and farmer groups said they would abide by any decision of Parliament. Responding to public pressure, after the election, the Liberal Government said it would support a Legislative Council inquiry into the issue.¹⁵

Health issues

Health was one of the major battle grounds between the major parties during the election campaign.¹⁶ Labor's surge in the polls under Rebecca White was built on concentrating on the Government's handling of health, hospital facilities and waiting periods, which continued as major issues between elections. The Liberal Government had appeared to be taking positive measures to resolve various apparent crises, such as ambulance 'ramping' at major hospitals due to lack of emergency beds, continued progress on the redevelopment of the Royal Hobart Hospital and a reduction in

15 E. Coulter, 'Tasmanian Farmers Not Fazed if Election Eve Gun Law Changes Do Not Get Up', ABC Online, 5 April 2018. Accessed at: <http://www.abc.net.au/news/2018-04-04/tasmanian-farmers-not-gunning-for-changes-to-firearms-laws/961852>.

16 G. Burgess, 'Tasmania Election: Parties Trade Blows in Fight to Claim Health High Ground', ABC Online, 12 February 2018. Accessed at: <http://www.abc.net.au/news/2018-02-12/tasmanian-election-sees-parties-battle-over-health/9422748>

waiting periods for some elective surgery. Yet, as early as May 2017, White, who had taken on the health portfolio as Leader, was publicly saying that health had been raised with her more than any other issue since she became Labor Leader. In her budget reply speech in May 2017, she said: 'Overwhelmingly, almost without exception, when I ask what is most important to them, they say health. Our health system and our hospitals are in crisis. The damage was done three years ago when the Liberals slashed \$210 million out of the health budget'.¹⁷

While the Government had boosted health spending by \$658 million in the 2017 Budget, White said this was an 'afterthought' that did not negate or right the decisions of the Government's first three budgets, or assuage the apparent outrage in the community and the medical profession. Labor labelled health the major election issue. It promised to spend an additional \$88 million on health across a range of initiatives, including solving the state's hospital bed shortage with the introduction of 'medihotels' to reduce bed block, a policy well-established in some other states, and establishing a Health Communities Commission.

One particular women's health issue also rose to the fore during the campaign. While abortion had been fully legalised only in 2013 under the previous Labor Government, in early 2018 the last dedicated abortion facility in the state closed down, meaning that women needed to travel to Melbourne to access such a facility. The Government provided airfare subsidies in response, but feminist groups argued that this was insufficient and out of line with a modern health system. Health Minister Michael Ferguson, a committed Christian, said that the issue was being handled at an operational level by health experts, 'not by me as minister'.¹⁸ However, Labor accused him of letting his ideology get in the way of policy.¹⁹ Several weeks after the state election, a group called 'Not Ovary-Acting' organised a rally attended by several hundred people on the Parliament House lawns in Hobart. While the issue received scant attention during the election campaign, compared with the barrage of pro-

17 B. Richards, 'Health the Key Focus in Labor Leader Rebecca White's Budget Reply', *The Mercury*, May 30, 2017. Accessed at: <http://www.themercury.com.au/news/politics/health-the-key-focus-in-labor-leader-rebecca-whites-budget-reply/news-story/ca03fb5655d332928a790d6c37b26f6b>

18 M. Ferguson, Minister for Health, 'Private Clinic Closure', 13 January 2018. Accessed at: http://www.premier.tas.gov.au/releases/closure_of_private_abortion_clinic

19 R. Shine, 'Abortion Rally at Tasmanian Parliament Ups Pressure on Hodgman Liberal Government', ABC News 28 April, 2018. Accessed at: <http://www.abc.net.au/news/2018-04-28/abortion-rally-at-parliament-ups-pressure-on-state-government/9707190>

Liberal advertisements, the rally brought extensive publicity to it in the election's aftermath.

Unannounced policies

It emerged four days after Tasmanians voted that the Liberals' commitment to relax gun laws was one of about 200 election promises that the Party made directly to interest groups but did not release publicly. The reason given for this was that the 'sheer volume' of policies made it 'impractical to widely promote them all'. Among them were commitments relating to crime, health, infrastructure, gaming, funding for Catholic education, wildlife, fiscal strategy, energy, sport and climate change.²⁰

Premier Hodgman's surprising statement that only 100 of the Party's 300 policies were published on its website before the Saturday 3 March election—while simultaneously asserting that his Government had a mandate for all of them—came as State Treasury released documents which showed the Department of Finance had been unable to assess and cost 161 of Liberal promises—along with 27 from Labor and 14 from the Greens—prior to the election, due to insufficient time or information. This revelation met with calls for stronger rules to force political parties to release all election promises, fully costed, before polling day. Whether this has a long-term impact remains to be seen, with at least two Independent upper house MPs declaring the Government only had a mandate for the policies it publicly announced prior to the election.²¹

Campaign approaches

While the Liberals relied on their strong economic credentials throughout the election period with a campaign launch slogan of 'Taking Tasmania to the Next Level', it was evident that the supporting campaigns by the hotel gambling industry, which included considerable television advertising, more than blunted any swing promoted

20 J. Dunlevie, 'Liberals Release Election Policies Four Days after Tasmanians Vote, but Upper House to Test "mandate"', ABC Online, 7 March, 2018. Accessed at: <http://www.abc.net.au/news/2018-03-07/liberals-release-policies-four-days-after-tas-state-election/9524270>

21 R. Whitson, 'Tasmanian Liberals Blasted Over Withholding of Policies, as Tactic Likened to a "Dictatorship"', ABC Online, 8 March, 2018. Accessed at: <http://www.abc.net.au/news/2018-03-08/tasmanian-liberals-blasted-for-policy-delay-until-after-election/9529550>

by the welfare lobby on the issue. Statewide, the still popular Liberal leadership team of Will Hodgman and Jeremy Rockcliffe was well supported by Treasurer Peter Gutwein and Health Minister Michael Ferguson.

The Labor approach tended to focus more directly on Rebecca White as a fresh Leader, which boosted the Party's chances of success. As mentioned earlier, Labor had decided to run on the poker machine issue early in the campaign, a tactic that allowed the industry time to develop its own response. There was also post-election criticism of Labor's apparent inertia between December 2017 and the start of the election campaign proper, an inertia only partly explained by need to conserve limited funds for the election period. Labor also failed to make any dent in the Government's narrative on economic management and fiscal responsibility.

The Greens suffered from having their gambling policy adopted by Labor. The party's main focus was on the environment, with policies to clean up the environmental damage from industrial-sized salmon farms and to better protect the state's parks and reserves. However, without the benefit of a major environmental concern for the first time in several decades, their campaign appeared diffuse and they notably struggled in northern electorates.

The Jacqui Lambie Network ran 12 candidates in three of the state's five electorates—Braddon, Bass and Lyons—but failed to have much impact on the policy debate. Her team concentrated on anti-politician policies, such as promises to clean up Parliament with an anti-corruption commission, as well as concerns about creating local jobs, more accessible and affordable education, and leaving decisions about the use of medicinal marijuana to doctors, not politicians.

THE OUTCOME

The Liberals, led by Premier Will Hodgman, were returned to government with a resounding 50.3 percent of the vote and yet secured a bare majority of 13 of the 25 seats in the House of Assembly, after losing two seats. The Labor Party, under Rebecca White, won 32.6 percent of the vote and ten seats, an increase of three from the all-time low of seven at the 2014 poll. The Greens, led by Cassy O'Connor, won 10.3 percent of the vote and two seats, down one (see Table 2).

Hodgman earned his place in history by securing a second term majority, becoming only the second Liberal Leader in Tasmania to do so, after Robin Gray in the 1980s. Labor recorded its third worst result since World War II but still registered an improvement from its position prior to the election by securing two seats from the

Liberals and one seat from the Greens. The Greens recorded their worst result in terms of percentage votes since they became a party in Tasmania after the 1989 election. Despite the relatively poor results for Labor in historical terms, the Party felt White achieved a good result in the short time available. She remained Party Leader, with no obvious challenger in the wings. It is likely Labor will give White the opportunity for a second tilt whenever the next election is called. With just two Members in the new Parliament, O'Connor has also stayed on as unchallenged Leader of the Greens.

Table 2. Tasmanian State Election Results 2018 Compared with 2014

Party	Votes 2014 (%)	Votes 2018 (%)	Seats 2014 (n)	Seats 2018 (n)
Liberal	51.2	50.3	15	13
Labor	27.3	32.6	7	10
Greens	13.8	10.3	3	2
Other	7.7	6.8	0	0
Total	100.0	100.0	25	25

Source: Tasmanian Electoral Commission.

On 1 May, the first sitting day of the new Parliament, whether the Liberal Government was still a majority government became debatable, as the Government lost the key vote on their nomination for Speaker. A move by Labor and the Greens to nominate first-time Liberal MP and former Hobart Lord Mayor, Sue Hickey, for the Speakership against the Liberal's official candidate and former Minister Rene Hidding caught everyone by surprise—apparently including Hickey herself.²²

Despite the loss of the vote on the Speakership, it was arguable that the Liberals still held a majority, as newly elected Speaker Hickey maintained she was still a Liberal Party member. Premier Hodgman chose to interpret the situation that way and could point to Hickey's guarantee to support the Government in any motion of confidence as well as to support budget bills. However, Hickey also said she would act

²² See also 'From the Tables – July 2017 to June 2018' later in this issue of the *Australasian Parliamentary Review*.

independently, would not attend any meetings of the parliamentary Liberal Party and would vote on 'most' non-budgetary legislation on its merits. Thus, arguably, the new circumstances could be interpreted as meaning that Tasmania had another minority government. Hickey further indicated she was interested in increasing the size of Parliament. She would support any issues to improve women's health and said she was 'shocked' to learn of the Government's plan to change gun laws.²³

While the State general election resulted in the Liberal and Labor parties each having 14 MPs in the Tasmanian Parliament—the Liberals with 13 in the House of Assembly and one in the Legislative Council and Labor with 10 in the Assembly and four in the Council—the Liberals improved their position to 15 seats overall with a win in the newly created seat of Prosser at the upper house elections in May 2018. Liberal Jane Howlett—a candidate for Lyons at the state election—saw off 12 competitors, including Labor's Janet Lambert. The other seat up for election—Hobart—was retained by incumbent Independent and former Lord Mayor, Rob Valentine.

Formation of Cabinet

Premier Hodgman's new Cabinet was sworn in on 20 March, 2018. Despite the Liberal's loss of two Assembly seats, the size of the Cabinet was restored to nine, after it had been temporarily reduced to eight in a late term reshuffle in 2017 that saw Denison MHR Elise Archer move from the Speakership to the portfolios of Attorney-General and Minister for Justice and Corrections. The post-election Cabinet saw the promotion of two former backbenchers to the ministry—Braddon MHA Roger Jaensch and Bass MHA Sarah Courtney. Former Minister Rene Hidding's defeated bid to become Speaker forced a minor ministerial reshuffle on 4 May 2018, when he was appointed Parliamentary Secretary to the Premier.

Roger Jaensch was appointed Minister for Planning, Human Services and Housing, which meant he was given the difficult job of finding a solution for Hobart's pressing housing crisis. His predecessor in the role, Jacquie Petrusma, remained a Minister but with the more junior responsibilities for Disability Services and Community

23 A. Humphries, 'Speaker Sue Hickey's Outlook on Tasmanian Parliament', *The Mercury*, 13 May 2018. Accessed at: <http://www.themercury.com.au/news/politics/speaker-sue-hickeys-outlook-on-tasmanian-parliament/news-story/dcf9ef77cbc4402a872e38d45d0a504>

Development, Aboriginal Affairs, Women, Sport and Recreation. Sarah Courtney was appointed as Minister for Primary Industries and Water, and Racing.

The responsibilities of some other reappointed Ministers were reshuffled. Premier Hodgman became Minister for Tourism, Hospitality and Events, Parks, Heritage, Trade. Deputy Premier Jeremy Rockliff became Minister for Education and Training, Infrastructure, Advanced Manufacturing and Defence Industries (a new portfolio). Peter Gutwein remained Treasurer and Minister for State Growth and Local Government. Elise Archer remained Attorney-General and Minister for Justice and Corrections. Despite Government problems with health during the last term Michael Ferguson retained the health portfolio, along with Police, Fire and Emergency Management, Science and Technology. Guy Barnett was reappointed as Minister for Resources, Energy, Building and Construction, and Veterans' Affairs.

Debate over the size of Parliament

One driver of the size of Parliament debate was that a 25 seat Assembly resulted in a Cabinet with arguably too few ministers, each of whom had too much responsibility for efficient government. The Liberal Party's one seat majority was barely enough to fill the ministry and parliamentary roles such as the Speakership and chairmen of committees. Further, the small pool meant there was a dearth of talent to choose from when selecting a ministry. Yet, while both major parties and the Greens have publicly supported the restoration of the 35-Member House in principle, neither major party proposed it as a policy, probably because it was seen as too politically risky to propose that there should be more politicians.

National issues had no impact

The 2018 Tasmanian election was fought almost entirely on state issues. Whereas during the 2013–2017 period, Australian politics centred on fiscal inequity, energy, same-sex marriage, housing, and the dual citizenship of MPs, only one of these matters—housing—resonated in the Tasmanian election.²⁴ None of the national political debates about income and company tax reform, the relative GST revenue

24 D. Bolwell and R. Eccleston, 'Ebb Tide in Blue: Recent Sub-National Elections in the Australian Federation'. *Regional and Federal Studies*, 28(3), 2018, pp. 253-274. DOI: 10.1080/13597566.2018.1465050.

share between the states, superannuation, and the popularity of the Coalition under Prime Minister Malcom Turnbull versus that of Labor under Opposition Leader Bill Shorten, appeared to have any impact whatsoever on the Tasmanian election. Tasmanians seemed more than able to distinguish between national and state issues and cast their vote accordingly. Even the national dual citizenship fiasco, which saw two Tasmanian Federal Senators (former Liberal President of the Senate Stephen Parry and Independent Senator Jacqui Lambie) resign their seats, had no noticeable impact.²⁵ That was despite the fact that Lambie subsequently turned her attention to running a team of candidates in three electorates in the State election.

ONGOING ISSUES AND LESSONS

In the aftermath of the Tasmanian election there are a number of outstanding issues and lessons that may yet have an impact on national politics. One is the importance of economic issues. Like Australia generally, Tasmania's economy was strong yet it was still a close run thing for the incumbent Government. If there is a lesson to be learned from that, it may be that if the benefits are not being shared by all, then the long-held nexus between the strength of the economy and the return of incumbent governments may not continue.

Then there is the gun laws issue. An upper house inquiry into proposed changes will take some time. Until then the Government has said it would not introduce new legislation. Yet if it does so following the enquiry, this may well raise the issue again nationally, should the farm lobby seek to replicate the laws in other states. Former Prime Minister John Howard is already on the record as opposing any changes that undermine the national firearms agreement; however, it is unlikely that the gun control lobby would miss the opportunity to make it an issue for the Federal Government.

The question of poker machines in the community may not be resolved. This is not a new issue for Australian politics. In 1999 Howard announced a Ministerial Council on

²⁵ On these resignations, see also 'From the Tables – July 2017 to June 2018' later in this issue of the *Australasian Parliamentary Review*.

gambling and accused the states of being addicted to poker machine revenue.²⁶ In 2007 Labor Leader Kevin Rudd also criticised state Labor governments for hurting Australian families with their over-reliance on poker machine taxes, vowing to come up with solutions to wean states off the addiction.²⁷ While Federal Labor Leader Bill Shorten steered clear of the issue when he was campaigning in the Tasmanian election, both sides of politics were watching to see how the issue played out. It is likely that the welfare and gaming lobbies will push for commitments on this issue in the lead up to the next federal election. At the state level, there remains a big question over the long term impact of the Hodgman Government appearing indebted to the gaming lobby in return for its strong financial support during the campaign.

CONCLUSION

Labor's relative success with its focus on health in the early part of the Tasmanian election campaign may also be factored into Labor's national election strategies due in 2019. Shorten concentrated on health while he was in Tasmania in early June 2018 to campaign in the Braddon by-election for Justine Keay, who was another casualty of the dual citizenship fiasco.

As newly elected Speaker of the House, Sue Hickey's first major public task was to meet with the tent city squatters on the Parliament house lawns and ask them to move on, with an obvious police presence behind her. Yet the issue of the housing crisis is likely to remain for Hobart, as burgeoning tourism and profitable short-stay accommodation continue to force poorer would-be residents to the end of the lodging queue.

Finally, there is a question of what impact the Liberal Government's many election commitments will have in the long-term—both in terms of the perception of being 'a bit too clever by half' in selectively announcing their commitments and also on whether they overcommitted financially with election promises that they will struggle to deliver. If Labor learns from its tactical mistakes in the 2018 campaign, a return to the traditional pattern of Labor government in the state appears more likely for 2022.

26 J. Howard, 'Howard Announces National Approach To Problem Gambling'. Media conference transcript, 16 December 1999.

27 M. Franklin, 'Rudd Attacks States Over Pokies', *The Australian*, September 11, 2007.

One, Two or Many Queenslands? Disaggregating the Regional Vote at the 2017 Queensland State Election*

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* Double-blind reviewed article.

INTRODUCTION

Queensland has long been described as comprising very distinct demographics borne of very different geographies, industries, civic cultures and voter behaviours. This variegation of Queensland political, economic and cultural life has usually been acknowledged by way of the so-called ‘two Queenslands’ thesis—a thesis itself manifest in two distinct interpretations: a divide between coastal Queensland and the rural interior¹ and, more commonly, a divide between Brisbane and ‘the bush’.² Given Queensland’s enormous physical size of 1.85 million km², it is perhaps unremarkable such strong contrasts should be found among the most decentralised population of any Australian state or territory.³

Veteran psephologist Malcolm Mackerras was an early scholar to explore this phenomenon, when he identified two distinct electoral demographics in Queensland at the 1972 Australian federal election.⁴ Paradoxically, this dichotomisation runs counter to a major thesis underpinning much of Mackerras’s work: that a ‘uniform swing’ can be deduced from raw results to indicate the totality and uniformity of a

¹ J. Holmes, ‘Coast versus Inland: Two Different Queenslands?’. *Australian Geographical Studies*, 32(2), 1994, pp. 167–182.

² P. Bowers, ‘How an Old Friend Turned on Sir Joh’. *Sydney Morning Herald*. 25 October 1986, p. 27; P.D. Williams, ‘Rebel Yell a Wake-Up Call on Queensland’s Great Divide’. *Courier Mail*. 27 November 2012, p. 18.

³ Queensland is the only State where more people live outside the capital city than within it.

⁴ M. Mackerras, ‘The Swing: Variability and Uniformity’. *Politics*, 8(1), 1973, p. 238.

state or nation's electoral mood.⁵ Despite the obvious utility of translating what is merely a mean aggregate swing into a concept of state or national 'uniform' swing—a reductionist approach suited to journalism to make sense, for the generalist reader, of changes in voter support between successive elections—the concept of 'uniform swing' has found numerous detractors over the past five decades.⁶ Indeed, it is the unsustainability of the 'uniform swing' thesis that adds weight to the argument that Queensland remains economically, socially, culturally and electorally heterogeneous.

In this context, over 20 years ago Holmes retooled the 'two Queenslands' thesis via a geographical analysis that argued Australia—and especially Queensland—'shows a spatial dichotomy between a restricted but relatively well-endowed coastal strip and a vast, under-endowed interior'.⁷ Holmes noted that this dichotomy, acknowledged since Queensland's colonial days, has manifested itself in occasional calls for North Queensland separatism.⁸ Moreover, Holmes argued that distinctions between coastal and inland Queensland had become starker since 1960 as rural populations, in an age of mechanised agriculture, migrated to the coastal strip.⁹ The thesis was updated in 2018, when Kraaier analysed data from the 2017 Same Sex Marriage Postal Survey and concluded the 'single geographic state of Queensland has cleaved over time into two entities quite distinct in economic, political, social and cultural form'.¹⁰

⁵ M. Mackerras, *Australian General Elections*. Sydney: Angus and Robertson, 1972; M. Mackerras, 'Uniform Swing: Analysis of the 1975 Election'. *Politics*, 11(1), 1976, pp. 41-46; M. Mackerras, 'No Change: Analysis of the 1977 Election'. *Politics*, 13(1), 1978, pp. 131-38.

⁶ B. Austen, 'A Comment on Malcolm Mackerras'. *Politics*, 13(2), 1978, pp. 342-44; C. Sharman, 'Swing and the Two-Party Preferred Vote: A Comment on Malcolm Mackerras'. *Politics*, 13, 1978, pp. 336-39; E. Thompson and T. Wheelwright, 'An Analysis of the 1977 Federal Election in New South Wales'. *Politics*, 13(1), 1978, pp. 139-46; O. Hughes, 'Uniform Swing Revisited: Further Comments on Mackerras'. *Politics*, 19(2), 1984, pp. 111-18; M. Goot, 'The Transformation of Australian Electoral Analysis: The Two-Party Preferred Vote—Origins, Impacts, and Critics'. *Australian Journal of Politics and History*, 62(1), 2016, pp.59-86.

⁷ Holmes, 'Coast versus Inland', p. 167.

⁸ Holmes, 'Coast versus Inland', p. 169.

⁹ Holmes, 'Coast versus Inland', p. 174.

¹⁰ N. Kraaier, 'How the 2017 Same-Sex Marriage Postal Survey and the 2017 Queensland State Election Underscore the "Two Queenslands" Thesis'. *Queensland Review*, 25(1), 2018, p. 39.

PURPOSE

This article reveals the most recent geographical variations among Queenslanders' vote choices that, in turn, can assist our understanding of where—and perhaps why—Queensland voters in recent years have eschewed traditional major party loyalties to support minor parties such as Pauline Hanson's One Nation (PHON) and the Greens. This study is especially germane to a state such as Queensland which has long boasted an almost static political culture that, in the twentieth century, produced politically very stable governments with long incumbencies under large parliamentary majorities: a phenomenon described elsewhere as Queensland's electoral 'hegemonies'.¹¹ In the century since the birth of Queensland's modern bi-polar party system in 1915, the state has seen just three such hegemonies, interrupted by just four single-term aberrations.¹²

The relevance of this study is further underscored given these patterns of stability have been interrupted recently by increasing electoral volatility. In the two decades between 1996 and 2017, Queensland elections produced no fewer than three hung parliaments,¹³ and saw the Newman Government—elected in 2012 with the largest lower house majority in Australian history—defeated after a single term.¹⁴ Most profoundly, this volatility has seen significant haemorrhaging of support from the major parties. The 2017 Queensland State Election was the first occasion since 1915

¹¹ P.D. Williams, 'The Queensland Election of 17 February 2001: Reforging the Electoral Landscape?'. *Australian Journal of Political Science*, 36(2), 2001, pp. 363-71; P.D. Williams, 'The Queensland Election of 7 February 2004: The Coming of the Second Labor Hegemony?'. *Australian Journal of Political Science*, 39(3), 2004, pp. 635-44; P.D. Williams, 'How Did They Do it? Explaining Queensland Labor's Second Electoral Hegemony'. *Queensland Review: Labor in Queensland, 1989-2011*, 18(2), 2011, pp. 112-33; P.D. Williams, 'Back from the Brink: Labor's Re-Election at the 2017 Queensland State Election'. *Queensland Review*, 25(1), 2018, pp. 6-26.

¹² Labor governed Queensland from 1915 to 1957 (interrupted by a single-term Moore Country and Progressive National Party Government between 1929 and 1932); the Country-Liberal Coalition (later renamed the National-Liberal Coalition) and later the National Party alone, governed between 1957 and 1989; Labor has governed from 1989 to the present, with two single term interruptions (the Borbidge-Sheldon National-Liberal Coalition Government from 1996 to 1998 and the Newman Liberal National Party Government from 2012 to 2015).

¹³ The Borbidge-Sheldon National-Liberal Coalition Government (1996-98); the Beattie Labor Government (1998); and the Palaszczuk Labor Government (2015-17).

¹⁴ Williams, 'Back from the Brink'; P.D. Williams, 'Political Chronicle—Queensland, July-December, 2017'. *Australian Journal of Politics and History*, 64(2), 2018, pp. 328-37.

to produce a combined major party primary vote below 70 percent.¹⁵ Given that much of the minor party support is found in the state's northern and western regions, where political disenchantment and populist sentiments are strong, understanding how Queensland's electoral behaviour varies according to geography can aid scholars understand the nature and causes of electoral volatility and political disenchantment.

HYPOTHESES

This article tests twin hypotheses. The first argues the 2017 Queensland election was the most regionally focused—in terms of leader visits, policy commitments and news media coverage—in at least a decade. As outlined below, the key issues of the 2017 campaign—after stability and jobs—included the contentious share of infrastructure funding between Brisbane and regional Queensland, environmental concerns for the Great Barrier Reef, tree-clearing, the Adani coal mine and public loans for rail links. Each of these issues brought a sharp focus to bear on regional Queensland and, more critically, to the potential of Pauline Hanson's One Nation Party (PHON)—fuelled by regional voter discontent—to hold the balance of power after the election.

The article's second hypothesis is that the traditional 'two Queenslands' thesis outlined above is a blunt instrument incapable of properly analysing increasingly variegated patterns of voter behaviour, especially the growth in minor party support. This article therefore offers a 'six Queenslands' thesis that argues at least six Queensland regions—Brisbane City, Brisbane Fringe, Gold Coast, Sunshine Coast, Eastern Provincial, Western Rural—must be explored to map adequately the State's current electoral volatility.

METHOD

Following contextual descriptions of the 55th Parliament and the 2017 campaign, and after a tabling of overall results of the 25 November election, this article's first

¹⁵ In producing a combined major party primary vote of just 69.12 percent, the 2017 Queensland State Election falls below Queensland's 1957 Labor 'split' election (which saw a combined major party primary vote of 72.12 percent), and below the State's 1998 'One Nation' election (which returned a combined major party primary vote of 70.12 percent).

method, in testing Hypothesis 1, is to contrast southeast Queenslanders' opinions and issue salience with those of regional Queenslanders.¹⁶ The article also tests Hypothesis 1 via a rudimentary content analysis of print media news coverage in the *Courier Mail*, the *Brisbane Times* and *The Australian*, using the Factiva database to search items on 'Queensland and region*' and 'protest', and 'Queensland and region*' and 'vote*' that appeared during the month before the 2009 to 2017 state elections.¹⁷

The article's second method, testing Hypothesis 2, is to disaggregate the primary vote of each of Queensland's four most significant parties—Labor, LNP, PHON and the Greens—across six geographical regions: Brisbane City (districts up to 20 km from Brisbane's Central Business District), Brisbane Fringe (outlying suburbs and satellite towns including Logan, Ipswich, Moreton Shire and Redlands Shire), Gold Coast (Coolangatta to Logan), Sunshine Coast (Moreton Shire to Maroochydore), Eastern Provincial (coastal strip from Gympie to Cairns), and Western Rural regions (west of the Great Dividing Range). Finally, the article constructs a composite matrix cataloguing the level of support ('strong', 'moderate' or 'weak') each party received in each of these six regions. Party support in a region is defined by each party's primary vote in that region, relative to its own state total and to its competitors within the region.

The article acknowledges the inexactness of delineating both the regional boundaries and the criteria of party support, an imprecision Holmes also notes, given 'there is no single, consistent, all-purpose boundary' in such analyses.¹⁸ The article also acknowledges the complexity of comparing two successive election outcomes separated by a major electoral redistribution that included the first expansion of the Queensland Legislative Assembly since 1986 (from 89 to 93 seats). In 2017, the Legislative Assembly comprised 21 seats in Brisbane City (down one from 2015), 19 seats in Brisbane Fringe (up two), 11 seats on the Gold Coast (up one), nine seats on the Sunshine Coast (up one), 21 seats in the Eastern Provinces (up one), and 12 seats in the Western Rural regions (no change).

¹⁶ For discussion of issue salience, see D. Repass, 'Issue Salience and Party Choice'. *American Political Science Review*, 65(2), 1971, pp. 389-400.

¹⁷ The dates are 21 February to 21 March 2009, 24 February to 24 March 2012, 31 December 2014 to 31 January 2015 and 25 October to 25 November 2017. For discussion of content analysis, see D. Riff, S. Lacy and F. Fico, *Analyzing Media Messages: Using Quantitative Content Analysis in Research*. 3rd ed. New York: Routledge, 2014.

¹⁸ Holmes, 'Coast versus Inland', p. 168.

THE 55TH PARLIAMENT: MINOR GOVERNMENT IN FORM – MAJOR IN IMPACT

Given that extensive descriptions of both the 55th Queensland Parliament (2015-17) and the 2017 election campaign (29 October-25 November) have been detailed elsewhere,¹⁹ only a brief summary of each is required here, notwithstanding the significance of the 2017 election. First, this election saw the Liberal-National Party (LNP) relegated to Opposition just three years after winning the largest parliamentary majority in Australian history. Second, the survival of the minority Palaszczuk Labor Government was questioned from its first days, questioning that increased after two MPs deserted Labor to sit as Independents,²⁰ and after three ministers resigned—and another stood aside—over policy or personal failings.²¹ Third, the Parliament produced a comprehensive legislative program—a so-called ‘de-Newmanisation’ process²²—while suffering just two significant defeats on the floor of Parliament.²³ Fourth, the Government endured mixed economic fortunes that saw continued high unemployment despite a revival of the mining, and especially coal, industries. Fifth, despite these tribulations, Anastacia Palaszczuk maintained a relatively strong level of popular support. The failure of Opposition Leader Lawrence Springborg to arrest Palaszczuk’s lead in public opinion polls saw former Newman Government treasurer Tim Nicholls defeat him in an LNP Party room spill in mid 2016.

¹⁹ Williams, ‘Back from the Brink’; Williams, ‘Political Chronicle—Queensland, July-December, 2017’.

²⁰ The Palaszczuk Government, winning 44 seats in January 2015, was reduced to 42 following the resignations of Billy Gordon (Cook) in early 2015, and Rob Pyne (Cairns) in early 2016. The two Katter’s Australian Party (KAP) MPs often supported the Palaszczuk Government. The LNP’s initial 42 seat total was reduced to 41 when Steve Dickson (Buderim) defected to PHON in 2017.

²¹ Police Minister Jo-An Miller resigned in late 2015 following an adverse CCC report on her ‘reckless’ disposal of confidential documents, and thereafter exercised considerable independence to the point of embarrassing the Government during Estimates Committee hearings. Agriculture Minister Leanne Donaldson resigned in late 2016 over unpaid council rates. Transport Minister Stirling Hinchliffe resigned in early 2017 after ongoing structural problems in *Queensland Rail*. Main Roads Minister Mark Bailey stood aside—and was later cleared by the CCC—in 2017 following allegations of improper private email use for ministerial business.

²² Williams, P. D. ‘Political Chronicle—Queensland, July-December 2015’. *Australian Journal of Politics and History*, 62(2), 2016, pp. 301-08.

²³ Labor failed to block the Katter’s Australian Party (KAP) *Sugar Industry* bill in late 2015, and saw its *Vegetation Management (Reinstatement)* Bill defeated in early 2016. Labor, however, managed to pass tough alcohol management laws in early 2016 (see P.D. Williams, ‘Political Chronicle—Queensland, July-December 2016’. *Australian Journal of Politics and History*, 63(2), 2017, p. 309.

The Parliament also saw major structural change, after a 2016 referendum approved the introduction of fixed four-year terms.²⁴ The timing and (arguably manipulative) manner in which Labor then moved to reintroduce compulsory preferential voting (CPV) fuelled Opposition anger. Confronted by the LNP's *Electoral (Improving Representation) and Other Legislation Amendment Bill* to expand the Legislative Assembly from 89 to 93 seats, the Palaszczuk Government initially balked, regarding a smaller chamber as an opportunity for the Electoral Commission of Queensland (ECQ) to abolish several LNP-held rural seats with dwindling populations. Labor agreed to increase the chamber, however, after moving—with just 18 minutes' notice—an amendment to return the state to a CPV model last used in Queensland in 1989.²⁵ The amendment passed with the support of Labor defector Rob Pyne, despite the LNP arguing the amendment was merely a Labor instrument to secure Green preferences in inner Brisbane seats.²⁶ As detailed below, the LNP indeed had much to lament: not only did Green preferences flow generously to Labor but, more damagingly for the Opposition, LNP voters moving to PHON—and now forced to number all ballot paper squares—preferred Labor before the LNP at rates approaching 50 percent in some districts.

THE 2017 QUEENSLAND ELECTION CAMPAIGN: REWRITING ORTHODOXIES

The paradox of the 2017 Queensland election campaign lies in Labor's ability to secure victory despite what appeared to be a largely disordered and *ad hoc* campaign with few tangible policy commitments. By contrast, the LNP's 'textbook' campaign of smoothly organised events and detailed policy announcements failed to engage voters. The regional flavour of the campaign became apparent from the first day as Palaszczuk flew to north Queensland where, at her first media conference, she was interrupted by anti-Adani protestors. LNP Leader Tim Nicholls 'front-ended' his campaign with major policy announcements, including: the creation of 500,000 jobs over 10 years; the construction of a north Queensland coal-fired power station;

²⁴ The next Queensland election is scheduled on 31 October, 2020.

²⁵ P.D. Williams, 'Political Chronicle—Queensland, January-June 2017'. *Australian Journal of Politics and History*, 63(4), 2017, pp. 641-48.

²⁶ S. Elks and M. McKenna, 'Row over rushed voting changes'. *The Australian*, 22 April 2016, p. 2.

overseeing a \$1.3 billion ‘drought-proofing’ dam plan; and imposing a youth curfew in north Queensland to combat juvenile crime.²⁷

In return, Labor reminded voters state debt had fallen by \$600 million earned from government-owned enterprises the Newman Government had planned to sell or lease. Labor’s most critical event of the first week arrived with Palaszczuk’s media conference on 3 November, when the Premier announced her intention to veto a \$900 million loan to Adani from the Commonwealth Northern Australia Infrastructure Facility (NAIF). Palaszczuk’s initial rationale for exceeding the Integrity Commissioner’s advice—merely to remove herself from the loan decision-making process—was that she wanted to counter a potential conflict of interest, given that her life-partner, Shaun Drabsch, had worked in the private sector on the NAIF application. Commentators soon argued such a dramatic economic policy shift mid-campaign created the impression of a chaotic government beholden to sectional interests.²⁸ When it was revealed Labor had conducted focus group research and found regional Queenslanders opposed to any Adani loan, it was clear Palaszczuk had secured real political advantage.

The campaign’s second week began with Opposition Leader Nicholls pledging expenditure to counter domestic violence and ice addiction, as well as upgrades to the M1 motorway. Palaszczuk’s fortunes improved from this point. The news media subjected Nicholls to closer scrutiny, after he was forced to repeat an earlier commitment to rule out Newman-style cuts to the public service. Palaszczuk then found a positive reception in Maryborough—where Labor would later record a 19.4 percent primary vote swing—when she pledged that Queensland trains would be built locally.

The week also saw PHON Leader Pauline Hanson return to Australia and enter a campaign that she said would produce a result ‘bigger than 1998’.²⁹ After announcing a preference deal with Katter’s Australian Party (KAP)—her only formal agreement of the campaign—Hanson launched her campaign ‘Battler Bus’. But PHON

²⁷ M. Ludlow, ‘Hanson Aide Accused of “Bullying, Threatening” Crossbench Staffer’. *The Australian*, 3 November 2017, p. 10.

²⁸ J. Walker, ‘Palaszczuk Rolls the Dice on Adani’. *The Australian*, 11 November 2017, p. 18; S. Wardill, ‘Qld Premier Wades Through Minefield With Veto of Federal Loan’. *Courier Mail*, 4 November 2017, p. 9; P.D. Williams, ‘Premier Has a Miner Problem’. *Courier Mail*, 7 November 2017, p. 20.

²⁹ J. Marszalek and T. Akers. ‘Leading Question’. *Courier Mail*, 7 November, 2017.

soon suffered significant campaign setbacks. In Townsville, journalists questioned Thuringowa candidate Mark Thornton over a sex shop webpage under his ownership that opined ‘good sex should be in the grey area between tickle fight and domestic violence’.³⁰ Hanson attacked the ‘Safe Schools’ program that, she alleged, instructed children on sexual practices, an accusation state PHON Leader Steve Dickson repeated. Anecdotal evidence suggested that many voters saw the PHON Leaders’ comments as political overreach, a perception that likely shaped some voters’ negative responses to the LNP’s long-awaited decision to preference PHON before Labor in 49 of the 61 seats PHON contested.³¹

Arguably, PHON’s most significant turning point arrived at the beginning of the third week of the campaign, when Fraser Anning resigned from PHON to sit as an Independent, just an hour after being sworn in as a Queensland Senator to replace the disqualified Malcom Roberts.³² Given a *Galaxy* poll found 41 percent of Queenslanders less likely to support PHON after Anning’s resignation, and just seven percent more likely—a net deficit of 37 points³³—any vote preferencing relationship between the LNP with PHON would have been received poorly by voters seeking stability. Both Palaszczuk and Nicholls soon returned to regional Queensland, as Nicholls continued to avoid journalists’ questions around PHON support for a minority LNP Government. Palaszczuk, by contrast, continued to pledge ‘no deals’ with PHON.³⁴

Labor appeared troubled by a *Galaxy* poll which indicated Deputy Premier Jackie Trad would lose her South Brisbane seat to the Greens, 49 to 51 percent.³⁵ But the LNP took little comfort from the campaign’s only leaders’ debate (which included PHON’s Dickson but not a Greens representative) on 16 November. In contrast with Palaszczuk’s more confident style, Nicholls was needled when he conceded the LNP would ‘accept the will of the people [and] work with the Parliament that the people

³⁰ T. Akers, ‘Fifty Shades of Red’. *Courier Mail*, 11 November 2017, p. 9.

³¹ M. Schliebs, C. Peel and S. Elks. ‘How Adani Veto Turned Tide for ALP’. *The Australian*, 9 December, 2017, p. 9. The LNP preferenced Labor ahead of PHON only in Stretton, Toohey, Thuringowa, Logan, Hervey Bay, Mudgeeraba, Buderim and Nicklin, and ran ‘split tickets’ in Coomera, Theodore, Lockyer and Scenic Rim.

³² See also ‘From the Tables – July 2017 to June 2018’ later in this issue of the *Australasian Parliamentary Review*.

³³ S. Wardill, ‘Anning’s Walk Hits Pauline’. *Courier Mail*, 21 November 2017, p. 9.

³⁴ T. Akers, ‘Gloves Off and Rivals Hit Out’. *Courier Mail*, 19 November 2017, p. 5.

³⁵ S. Wardill, ‘Trad on the Edge of Her Seat’. *Courier Mail*, 13 November 2017, p. 4.

of Queensland provide'.³⁶ Sixty percent of the forum's 100 undecided voters said they would now vote Labor, with just 12 percent supporting the LNP, 10 percent supporting PHON and 18 percent undecided.³⁷

The final week saw both major parties officially launch their campaigns. While Labor pledged an extension of the \$20,000 First Home Owners Grant, an extra \$20 million to attract film and television projects, and \$107 million to employ 'quality teachers',³⁸ Nicholls again distanced himself from the Newman Government. The week also saw Pauline Hanson and the independently-minded Labor MP Jo-Ann Miller (Bundamba) embrace at a pre-poll station in what was most likely a staged event that undermined Labor's mantra of 'no deals'.³⁹ The major parties then released costings: Labor pledged new wealth taxes on landowners, luxury car owners and online gambling companies to raise almost \$500 million, while the LNP pledged to cut \$2.5 billion from Brisbane's Cross River Rail, oversee a 'government efficiency program' to save \$1.6 billion, and offer almost \$1 billion in cost of living relief.⁴⁰ In an election only occasionally marked by specific spending commitments, LNP promises totalled \$4.3 billion while Labor's totalled \$1.6 billion. The campaign's final *Galaxy* poll bolstered Palaszczuk and underscored the heterogeneity of the state. Where Labor led the LNP after preferences 52 to 48 percent overall, the Government enjoyed an eight-point lead, 54 to 46 percent, over the LNP in southeast Queensland, while the LNP enjoyed a narrower lead, 52 to 48 percent, in the regions.⁴¹

THE ELECTION RESULTS

Table 1 reveals that in 2017 Labor contained the primary swing against it to 2.04 percent while winning an additional four seats with a 0.1 percent two-party preferred (2PP) swing toward it. It also reveals the LNP's net loss of three seats in a 7.63

³⁶ T. Akers, 'Nicholls Admits a Deal May Be Done'. *Courier Mail*, 18 November 2017, p. 11.

³⁷ J. Marszalek and S. Vogler, 'Voters Apply the Blowtorch'. *Courier Mail*, 17 November 2017, p. 6.

³⁸ S. Vogler, 'Champ's in Her Corner'. *Courier Mail*, 20 November 2017, p. 4.

³⁹ S. Vogler, 'Trail Fails'. *Courier Mail*, 25 November 2017, p. 8.

⁴⁰ C. Peel, and S. Elks. 'Premier Asks for LNP Vote as Nichols Warns of Tax Grab'. *The Australian*, 25 November 2017, p. 11.

⁴¹ S. Wardill, 'Battle Down to a Split Decision'. *Courier Mail*, 24 November 2017, p. 9.

percent negative primary swing.⁴² The Greens' 10.0 percent was a slight improvement over 2015, and not unexpected given the campaign's strong environmental profile.

Table 1. Primary and Two-Party Preferred (2PP) Vote (%) and Seat Share, Queensland Election, 25 November, 2017

	2017 Candidates (2015)	2017 Primary Vote (%)	Primary Swing since 2015 (%)	2017 2PP Vote (%)	2PP Swing since 2015*	Seats won 2017	Seats change (+/-)
Labor	93 (89)	35.43	-2.04	51.2	+0.1	48	+4
LNP	93 (89)	33.69	-7.63	48.8	-0.1	39	-3
Greens	93 (89)	10.00	+1.57			1	+1
KAP	10 (11)	2.32	+0.39			3	+1
PHON	61 (11)	13.73	+12.81			1	+1
CR	8 (0)	0.27	+0.27			0	0
PUP	0 (50)	-	-5.11			-	-
FF	0 (28)	-	-1.19	-	-	-	-
Other	95 (66)	4.58	+0.95			1	0

Source: Electoral Commission of Queensland.

*2PP figures are Dr Kevin Bonham's estimate
<http://kevinbonham.blogspot.com.au/2017/12/queensland-2017-final-results-and.html>

Key: LNP=Liberal-National Party; PUP=Palmer United Party; KAP= Katter's Australian Party; FF= Family First; CR = Civil Liberties, Consumer Rights, No Tolls; PHON=Pauline Hanson's One Nation; Other includes Independents.

⁴² Between 2012 and 2017, the LNP lost 15.96 percent of its primary vote support.

Perhaps the most significant result in Table 1 is PHON's mixed fortunes. While the Party won just 13.73 percent across the state, it attracted 20.11 percent in the 61 seats it contested.⁴³ However, the fact PHON won just a single district (Mirani)—far below Party Leaders' predictions of 20 seats—suggests PHON failed to meet public expectations.⁴⁴

As has been argued elsewhere,⁴⁵ the factors behind Labor's unexpectedly easy return to majority government include: a desire for political stability; Palaszczuk's personal popularity; approval of Labor's creation of 120,000 jobs since 2015; approval of Labor's veto of public loans for Adani; the LNP's contentious decision to preference PHON above Labor in 49 of PHON's 61 seats; a leakage of up to 50 percent of PHON preferences to Labor; voter rejection of Nicholls as a former Treasurer in the unpopular Newman Government; and fears about privatisation and public service cuts under the LNP.

HYPOTHESIS 1: THE 2017 ELECTION AS THE MOST REGIONAL FOR A DECADE

The article now tests the first hypothesis: that the 2017 Queensland election assumed a greater regional focus than any in the previous decade. Initial evidence of the regional nature of the 2017 campaign is found in two *Galaxy* opinion polls which indicate regional Queenslanders rated both their state's prosperity and the campaign's issues very differently from southeast Queensland voters. As revealed in Table 2, a February 2017 *Galaxy* poll found southeast Queensland voters were significantly more optimistic as to the future of their state than were regional voters.

The same opinion poll offers more evidence of the campaign's regional focus in the finding that almost 75 percent of regional Queenslanders believed the Palaszczuk Government unfairly 'skewed' its 2016-17 budget infrastructure spending toward the southeast, with just 54 percent of all Queenslanders agreeing.⁴⁶ The reality of the 2016-17 Queensland budget, however, is very different: with \$5.69 billion allocated

⁴³ Author's calculation.

⁴⁴ M. McKenna and S. Elks, 'Hanson to Target 20 Seats at State Poll'. *The Australian*, 3 October 2017, p. 4.

⁴⁵ Williams, 'Back from the Brink'; P.D. Williams, 'Political Chronicle—Queensland, July-December, 2017', pp. 328-37.

⁴⁶ D. Passmore, 'Keep Share Fair'. *Courier Mail*, 14 February, 2017, p. 7.

to southeast Queensland projects (covering 68 percent of the state population) and \$4.94 billion allocated to regional projects (covering 32 percent of the state population), regional infrastructure investment of \$3,150 per capita far outstripped the \$1,709 spent per capita in southeast Queensland.⁴⁷ This key finding goes far to explain the nature and origins of the (arguably misplaced) disenchantment felt by regional voters who felt sufficiently disillusioned to abandon the major parties and engage with populist parties such as PHON that exploit anti-elite and anti-capital city hostilities in the regions.⁴⁸

Table 2. Queenslanders’ Opinions of State ‘Direction’, by Region, February, 2017 (%)

Region	‘Headed in right direction’	‘Headed in wrong direction’
Brisbane	49	37
Regional Qld	37	49

Source: P. Syvret, ‘Regions Take Gloomy View of Where We’re Going’. *Courier Mail*, 24 February 2017, p. 13.

Further evidence of regionalism is found in Table 3, which shows a mid-campaign *Galaxy* poll finding voters in Queensland’s southeast prioritised issues markedly differently from those in the state’s regions. Where, for example, 40 percent of regional voters rated ‘jobs’ as a salient issue, just 29 percent of southeast Queensland voters did so. Similarly, regional voters found ‘power prices’ a more pressing issue than did those in the southeast. Interestingly, however, ‘stable government’ and ‘leadership’ proved roughly equal in significance for all voters, while Adani rated surprisingly lowly across the state.

⁴⁷ Author’s calculation.

⁴⁸ R. Stimson and R. Davis, ‘Disillusionment and Disenchantment at the Fringe: Explaining the Geography of the One Nation Party Vote at the Queensland Election’. *People and Place*, 6(3), 1998, pp. 69-82; P. McManus, and B. Pritchard, ‘Geography and the Emergence of Rural and Regional Australia’. *Australian Geographer*, 31(3), 2000, pp. 383-91; D. Marr, ‘The White Queen: One Nation and the Politics of Race’. *Quarterly Essay*, 65, 2017, pp. 1-102.

Table 3. Voters' Issue Salience (%), *Galaxy* opinion poll, November 2017

Issue	SE Qld	Other Qld Regions
Jobs	29	40
Stable government	29	28
Health	32	31
Leadership	24	27
Power prices	19	29
Roads	24	19
Economy / Debt	23	20
Adani	16	17

Source: J. Marszalek, 'Greens take it to Trad'. *Courier Mail*, 26 November 2017, p. 6..

Finally, Hypothesis 1 is further supported by evidence in Table 4, which reveals print news media items during the month prior to polling day reported on regional politics more widely than during any previous election of the past decade. News media references to 'regional protest' during the 2017 campaign were almost double the 2015 total, almost five times the 2012 total, and seven times the 2009 total. Similarly, print news media references to a 'regional protest vote' in 2017 were more than three times the 2009 total, and more than double the 2015 and 2012 tallies.

Table 4. Print News Media References to 'Regional Protest' and 'Vote', Queensland Election Campaigns, 2009-2017

Election Year	Queensland + region* + protest	Queensland + region* + vote*
2009	4	31
2012	6	39
2015	15	47
2017	28	99

Source: Author's calculations from Factiva searches of *Courier Mail*, *Brisbane Times* and *The Australian* items published one month before polling day.

HYPOTHESIS 2: SIX QUEENSLAND REGIONS

The article now tests the second hypothesis: that Queensland electoral behaviour requires analysis across six regions. In so doing, this section disaggregates the primary vote for Labor, the LNP, PHON and the Greens across seats in Brisbane City, Brisbane Fringe, Gold Coast, Sunshine Coast, Eastern Provincial and Western Rural regions.

Table 5. Labor Primary Vote (%), 2015 and 2017 Elections, by Region

Region	2017 Primary	2015 Primary	Primary Swing (+/-)
Brisbane City	41.70	42.59	-0.89
Brisbane Fringe	43.10	47.37	-4.27
Gold Coast	30.44	29.76	+0.68
Sunshine Coast	24.94	26.42	-1.48
Eastern Provincial	34.74	38.52	-3.78
Western Rural	23.93	27.06	-3.13

Source: Author's calculations from Electoral Commission of Queensland data. Accessed at: <http://results.ecq.qld.gov.au/elections/state/State2015/results/summary.html> and <https://www.ecq.qld.gov.au/elections/2017-state-general-election2/2017-state-election-results>.

Table 5 reveals that in 2017 Labor suffered a negligible primary swing against it in Brisbane City, a small swing against it on the Sunshine Coast, and moderate swings—partly attributable to the surge in PHON vote—against it in Brisbane Fringe, Eastern Provincial Western Rural seats. Labor also attained a small swing to it on the Gold Coast.

Table 6. Labor Seats Won, 2015 and 2017 Elections, by Region

Region	Total Seats in Region 2017 (2015 total in parentheses)	Number of Seats Won By ALP in 2017	Percentage of Region's Seats Won by ALP in 2017	Number of Seats Won By ALP in 2015	Percentage of Region's Seats Won by ALP in 2017	Percentage ALP Seat Change, 2015-17
Brisbane City	21 (22)	16	67	14	64	+3
Brisbane Fringe	19 (17)	18	95	14	82	+13
Gold Coast	11 (10)	1	9	0	0	+9
Sunshine Coast	9 (8)	0	0	1	13	-13
Eastern Provincial	21 (20)	12	57	14	70	-13
Western Rural	12 (12)	1	8	1	8	0

Source: As for Table 5.

Table 6 indicates Labor increased its seat share most substantially in the Brisbane Fringe via a significant leakage of PHON preferences to Labor. The Party's representation also grew modestly in Brisbane City and on the Gold Coast, but declined on the Sunshine Coast and in the Eastern provinces. Labor's representation remained low and unchanged in Western Rural districts.

Table 7 details the dramatic collapse in the LNP's primary vote across most regions, with Brisbane Fringe, Eastern Provincial and Western Rural seats—where PHON support was strongest—delivering the largest swings against the LNP. Only on the Gold Coast was the anti-LNP swing contained.

Table 7. Liberal-National Party Primary Vote (%), 2015 and 2017 Elections, by Region

Region	2017 Primary	2015 Primary	Primary Swing (+/-)
Brisbane City	36.37	42.31	-5.94
Brisbane Fringe	25.37	36.80	-11.43
Gold Coast	47.04	48.14	-1.10
Sunshine Coast	35.57	45.10	-9.53
Eastern Provincial	27.18	38.52	-11.34
Western Rural	37.46	54.54	-17.08

Source: As for Table 5.

Table 8 details the LNP's decline in representation as a result of the 2017 election. Where the LNP slightly increased its seat share on the Sunshine Coast and in the West, the Party suffered modest declines in Brisbane Fringe, Gold Coast and Eastern Provincial seats. LNP strategists would have been most alarmed, however, at the Party's substantial loss of seats in Brisbane City, with the Party's representation there halved, largely, it can be argued, because progressive LNP voters received poorly the Party's flirtation with PHON.

Table 8. LNP Seats Won, 2015 and 2017 Elections, by Region

Region	Total Seats in Region 2017 (2015 total in parentheses)	Number of Seats Won By LNP in 2017	Percentage of Region's Seats Won by LNP in 2017	Number of Seats Won By LNP in 2015	Percentage of Region's Seats Won by LNP in 2017	Percentage LNP Seat Change, 2015-17
Brisbane City	21 (22)	4	19	8	36	-17
Brisbane Fringe	19 (17)	1	6	2	12	-6
Gold Coast	11 (10)	10	91	10	100	-9
Sunshine Coast	9 (8)	8	89	6	75	+14
Eastern Provincial	21 (20)	6	29	7	35	-6
Western Rural	12 (12)	10	83	9	75	+12

Source: As for Table 5.

PHON contested just 61 of the expanded Parliament's 93 seats and left many Brisbane City districts uncontested. Table 9 therefore details the swing PHON received across entire regions, plus the swing it received only those seats that the Party contested in each region. On both measures, PHON support grew across all regions, partly because the Party stood 50 more candidates in 2017 than in 2015. Not unexpectedly, PHON's vote increased most dramatically in Western Rural, Eastern Provincial, Sunshine Coast and Brisbane Fringe seats.

Table 9. PHON Primary Vote (%), 2015 and 2017 Elections, by Region

Region	2017 Primary	2015 Primary	Primary Swing (+/-)	Primary Vote in Seats Contested by PHON in 2017 (number of seats in parentheses)	Primary Vote in Seats Contested by PHON in 2015 (number of seats in parentheses)	Primary Swing in Seats Contested by PHON in 2015 and/or 2017 (+/-)
Brisbane City	3.17	0	+3.17	11.09 (6)	0 (0)	+11.09
Brisbane Fringe	13.84	0.40	+13.44	20.23 (13)	6.75 (1)	+13.48
Gold Coast	7.15	0.74	+6.41	19.67 (4)	3.68 (2)	+15.99
Sunshine Coast	18.32	0	+18.32	20.61 (8)	0(0)	+20.61
Eastern Provinces	21.75	1.42	+20.33	22.83 (20)	5.38 (5)	+17.45
Western Rural	20.83	3.40	+17.43	24.99 (10)	13.61 (3)	+11.38

Source: As for Table 5.

Table 10. PHON Seats Won, 2015 and 2017 Elections, by Region

Region	Total Seats in Region 2017 (2015 total in parentheses)	Number of Seats Won By PHON in 2017	Percentage of Region's Seats Won by PHON in 2017	Number of Seats Won By PHON in 2015	Percentage of Region's Seats Won by PHON in 2017
Brisbane City	21 (22)	0	0	0	0
Brisbane Fringe	19 (17)	0	0	0	0
Gold Coast	11 (10)	0	0	0	0
Sunshine Coast	9 (8)	0	0	0	0
Eastern Provincial	21 (20)	1	5	0	0
Western Rural	12 (12)	0	0	0	0

Source: As for Table 5.

Table 10 shows that PHON secured just one seat despite a 20.11 percent vote across contested seats. The factors behind PHON's failure lie partly in the Party's poor campaign, its subsequently low primary vote totals—often finishing third and, therefore, denied LNP preferences—and Queensland's return to compulsory preferential voting that saw Labor voters—many of whom had 'exhausted' their ballots with no preference allocation in previous elections—preferencing the LNP in rural seats where Labor finished third. Not unexpectedly, given previous election results, PHON's only representation (Mirani) is in Eastern Provincial Queensland.

Table 11. Greens Primary Vote (%), 2015 and 2017 Elections, by Region

Region	2017 Primary	2015 Primary	Primary Swing (+/-)
Brisbane City	16.85	12.30	+4.55
Brisbane Fringe	8.63	8.27	+0.36
Gold Coast	10.24	8.02	+2.02
Sunshine Coast	11.47	11.71	-0.24
Eastern Province	5.96	5.27	+0.69
Western Rural	5.21	4.41	+0.80

Source: As for Table 5.

Table 11 reveals the Greens, contesting all 93 seats, increased their vote share in all regions except the Sunshine Coast. Unsurprisingly, the Greens' largest increases occurred in Brisbane City and Gold Coast seats; less expected were increases in Eastern Provincial and Western Rural Queensland.

Table 12 reveals the Greens' single victory—in Maiwar (formerly Indooroopilly)—emerged in Brisbane City. Labor ran third in this western Brisbane seat, with the vast majority of Labor voter preferences moving to the Greens, leading to the defeat of an LNP candidate who received the most primary votes.

Table 12. Greens seat, 2015 and 2017 elections, by region

Region	Total Seats in Region 2017 (2015 total in parentheses)	Number of Seats Won By Greens in 2017	Percentage of Region's Seats Won by Greens in 2017	Number of Seats Won By Greens in 2015	Percentage of Region's Seats Won by Greens in 2017
Brisbane City	21 (22)	1	4.76	0	0
Brisbane Fringe	19 (17)	0	0	0	0
Gold Coast	11 (10)	0	0	0	0
Sunshine Coast	9 (8)	0	0	0	0
Eastern Provincial	21 (20)	0	0	0	0
Western Rural	12 (12)	0	0	0	0

Source: As for Table 5.

Table 13 represents a composite matrix of the relative support that each party attracted in 2017 across the six regions used in this study. The criteria of 'strong', 'moderate' and 'weak' party support are defined by each party's primary vote total, relative to its own state total, and to its competitors within each region. As expected, Labor performed strongly in Brisbane City and Brisbane Fringe seats, moderately well in the Eastern Provinces, and weakly on the Gold Coast, Sunshine Coasts and Western Rural districts.

Table 13. Relative Strength of Party Support, 2017 Election, by Region

Party	Strong	Moderate	Weak
Labor	Brisbane City Brisbane Fringe	Eastern Provincial	Gold Coast Sunshine Coast West Rural
LNP	Gold Coast	Brisbane City Sunshine Coast Western Rural	Brisbane Fringe Eastern Provincial
PHON	Eastern Provincial Western Rural	Brisbane Fringe Sunshine Coast	Brisbane City Gold Coast
Greens	Brisbane City	Gold Coast Sunshine Coast Brisbane Fringe	Eastern Provincial Western Rural

Source: As for Table 5.

Not unexpectedly, LNP support remained strongest on the Gold Coast and weakest in Brisbane Fringe and Eastern Provincial seats. More surprising, however, was the LNP's merely 'moderate' support—in the wake of PHON's resurgence—in Sunshine Coast and Western Rural seats. Observers would be unsurprised, however, by PHON's strong performance in Eastern Provincial and Western Rural seats, and its relatively poor results in Brisbane City and Gold Coast districts. Conversely, the Greens' strength in Brisbane City seats, and their weakness in socially conservative Eastern Provincial and Western Rural seats, remains consistent with previous Queensland results.

Perhaps the most significant observation to be made about Table 13 is that only two of the matrix's nine cells are identical. PHON's strong support in Eastern Provincial and Western Rural seats is the exact inverse of the Greens' weak support in these same regions. This evidence confirms two points: first, PHON support is unlikely to be found in the same geographical regions or among the same voter demographics. Second, and more broadly, the different permutations found in seven of the matrix's nine cells confirm the variability of Queensland electoral behaviour among the State's four most significant parties and across its six regions.

CONCLUSION

Queensland has long been described as comprising two very different demographics born of very different geographies, industries and civic cultures. This so-called 'two Queenslands' thesis has been widely cited to describe the pronounced differences in voter behaviour between coastal and inland Queensland, or between Brisbane and 'the bush'. In challenging this thesis, this article has argued, first, that the 2017 Queensland election campaign boasted a heavy regional focus: one that fuelled existing anti-capital city sentiments in regional Queensland and, in turn, support for PHON.

Evidence supporting this hypothesis was offered via opinion polls which found regional Queenslanders rated the salience of election issues very differently, while they also held very different perceptions of their state's future compared with their southeast cousins. The hypothesis was further supported by content analysis which revealed the 2017 Queensland election campaign to be the most heavily marked by regional references in the news media in at least a decade.

This article also argued that a 'six Queenslands' model is appropriate to most accurately analyse the variations in voter behaviour in an age of surging minor party support in the regions. The potential of this analysis to assist our understanding of Queensland electoral politics is found in the article's composite matrix which—in categorising each party's regional support in terms of 'strong', 'moderate' or 'weak' support—revealed the patterns in seven of the matrix's nine cells to be different.

This critical finding confirms the hypothesis that Queensland voter behaviour is extremely variegated, and that a mere 'two Queenslands' thesis is inadequate for meaningfully explaining it. In confirming the regional variegation of Queensland's vote, the pessimism and resentment regional voters often feel towards the capital city, and populist parties' exploitation of those sentiments to harvest regional votes, the article suggests that more finely-grained analyses of how and where populist parties draw support will help suggest solutions to counter these potentially destabilising political forces.

Parliamentarians' Actions within Petition Systems: Their Impact on Public Perceptions of Fairness*

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* Double-blind reviewed article.

INTRODUCTION

Evidence indicates that citizens of developed nations are increasingly losing trust and confidence in their political leaders. With the risk of negative consequences for democratic systems, parliamentary petition systems have been identified as a key area through which to reengage a sceptical and mistrustful citizenry. Complementing existing research into institutional reforms of parliamentary petition systems, this paper examines the actions of Members of the New South Wales Legislative Assembly within their petition system. This analysis of Members' actions, undertaken using a framework of procedural justice, considers how these behaviours might affect public perceptions of fairness with respect to the political system.

POLITICAL MISTRUST AND REENGAGEMENT

Some may view it as an unkind characterisation, yet the evidence is uncontroversial: a significant proportion of Australians dislike their politicians, and have done so for a long time.¹ Recent surveys indicate that levels of public trust, confidence and political

¹ Murray Goot, 'Distrustful, Disenchanted and Disengaged? Polled Opinion on Politics, Politicians and the Parties: an Historical Perspective', in David Burchell and Andrew Leigh (eds.), *The Prince's New Clothes: Why Do Australians Dislike Their Politicians?* Sydney: UNSW Press, 2002, pp. 9-46.

engagement continue to fall,² with Australians ‘judging their politics not through the lens of complacency but more through the lens of righteous indignation.’³ These attitudes form part of a broader decline of public confidence in, and support for, democratic institutions in developed nations.⁴ Scholars have suggested a range of contributing factors for this decline, including poor political performance, falling interpersonal trust, and/or a polarising media sector.⁵

It is said that political disengagement is leading to the increased prevalence of populist candidates, who rely on perceptions of economic and political disenfranchisement as a means of pitting ‘ordinary citizens’ against alleged ‘elites’ in government, institutions and business.⁶ Whether or not this trend will continue, the loss of an engaged and active citizenry will nevertheless make it harder to address challenges in future.⁷

Despite this mistrust, Australians citizens still believe in the values of liberal democracy.⁸ According to Evans and Stoker, many Australians display behaviours that indicate they remain on ‘standby’ to participate in the political process, and

² For example, see: Sarah Cameron and Ian McAllister, *Trends in Australian Political Opinion Results from the Australian Election Study 1987–2016*. Canberra: Australian National University, 2016; Ann Evans and Ian McAllister, ‘Australia 2012’. Accessed at: <http://www.worldvaluessurvey.org/WVSDocumentationWV6.jsp>; Mark Evans, Gerry Stoker and Jamal Nasir, *How Do Australians Image Their Democracy? Australian Survey of Political Engagement Findings 2013*. Canberra: Institute for Governance and Policy Analysis, University of Canberra, 2013.

³ Gerry Stoker, Jinjing Li, Max Halupka and Mark Evans, ‘Complacent Young Citizens or Cross-Generational Solidarity? An Analysis of Australian Attitudes to Democratic Politics’. *Australian Journal of Political Science*, 52(2), 2017, pp. 218-235, 232.

⁴ Paul Whiteley, Harold Clarke, David Sanders, Marianne Stewart, ‘Why Do Voters Lose Trust in Governments? Public Perceptions of Government Honesty and Trustworthiness in Britain 2000–2013’. *British Journal of Politics and International Relations*, 18(1), 2016, pp. 234-254; Philip Norton, ‘Speaking for Parliament’. *Parliamentary Affairs*, 70(2), 2017, pp. 191-206.

⁵ Annika Werner, ‘Party Responsiveness and Voter Confidence in Australia’. *Australian Journal of Political Science*, 51(3), 2016, pp. 436-457; Andrew Leigh, ‘Explaining Distrust: Popular Attitudes Towards Politicians in Australia and the United States’, in David Burchell and Andrew Leigh (eds.), *The Prince’s New Clothes: Why Do Australians Dislike Their Politicians?*. Sydney: UNSW Press, 2002, pp. 47-61; Nathaniel Persily, ‘Can Democracy Survive the Internet?’. *Journal of Democracy*, 28(2), 2017, pp. 71-2.

⁶ Jan-Werner Muller, *What is Populism?* Philadelphia: University of Pennsylvania Press, 2016, pp. 19-20; William Galston, ‘The Populist Movement’. *Journal of Democracy*, 28(2), 2017, pp. 21-33.

⁷ Matthew Flinders, ‘The Problem with Democracy’. *Parliamentary Affairs*, 69(1), 2016, pp. 181-203, 199-200.

⁸ Gerry Stoker and Mark Evans, ‘The “Democracy-Politics Paradox”: The Dynamics of Political Alienation’. *Democratic Theory*, 1, 2014, pp. 26-36; Evans and McAllister, ‘Australia 2012’.

retain enough knowledge of political issues and dynamics to participate effectively.⁹ Given their lack of reengagement thus far, it appears that the public remains unconvinced that political participation is worthy of their time and effort.

REENGAGEMENT THROUGH PARLIAMENTARY PETITION SYSTEMS AND PARLIAMENTARIANS

As institutions with a central role in making public policy, parliaments are key in the battle to re-establish community trust in the political system.¹⁰ Many parliaments recognise the need for change, with a variety of reforms having been introduced or proposed.¹¹ Parliamentary petition systems have attracted particular attention, with scholars arguing that effective parliamentary petition systems may help reconnect a jaded citizenry with its political system.¹² This view is further reinforced because petitioning parliament is regarded as a fundamental right of the citizen in many jurisdictions.¹³ Indeed, it is often the only formal avenue by which the popular will can be conveyed directly to parliament.¹⁴

While parliamentary petition systems have been subject to criticism,¹⁵ a number of legislatures across the world have introduced reforms to their petition systems.¹⁶

⁹ Mark Evans and Gerry Stoker, 'Political Participation in Australia: Contingency in the Behaviour and Attitudes of Citizens'. *Australian Journal of Political Science*, 51(2), 2016, pp. 272-287.

¹⁰ Philip Norton, *Parliament in British Politics*. Hampshire: Palgrave Macmillan, 2005, pp. 224-225.

¹¹ For example, see Carolyn Hendricks and Adrian Kay, 'From 'Opening Up' to Democratic Renewal: Deepening Public Engagement in Legislative Committees'. *Government and Opposition*, 2017, pp. 1-27; Sarah Childs, *The Good Parliament*. Bristol: University of Bristol and UK House of Commons, 2016.

¹² Ulrich Riehm, Knud Bohle and Ralf Lindner, *Electronic Petitioning and Modernization of Petitioning Systems in Europe: Final Report*. Berlin. Office of Technology Assessment at the German Bundestag, 2014.

¹³ Bernard Wright (ed.), *House of Representatives Practice*. Canberra, Department of the House of Representatives, 2012, p. 628.

¹⁴ Daniel Reynolds and George Williams, 'Petitioning the Australian Parliament: Reviving a Dying Democratic Tradition'. *Australasian Parliamentary Review*, 31(1), 2016, p. 78.

¹⁵ Ralf Lindner and Ulrich Riehm, 'Electronic Petitions and Institutional Modernization'. *JeDEM* 1(1), 2009, pp. 1-11; Christopher Carman, 'Barriers are Barriers: Asymmetric Participation in the Scottish Public Petitions System'. *Parliamentary Affairs*, 67(1), 2014, pp. 151-171.

¹⁶ Reynolds and Williams, 'Petitioning the Australian Parliament', p. 61.

These legislatures include the house of parliament discussed in this paper: the New South Wales (NSW) Legislative Assembly.

The NSW Legislative Assembly's standing and sessions orders set out the requirements for the submission and presentation of petitions. Petitions can only be presented by Members of the Legislative Assembly,¹⁷ and must follow rules as to their content and presentation.¹⁸ While the Assembly does not have a petitions committee or provide for e-petitions, it has introduced several substantive changes to its petition system over the past decade.

Since July 2009, the standing orders require the relevant NSW Government Minister to respond within 35 calendar days to a petition signed by 500 or more people.¹⁹ In May 2011, the House's sessional orders were changed so that petitions signed by 10,000 or more persons would be automatically set down as an Order of the Day for debate at 4.30pm on the Thursday of the next sitting week.²⁰ These standing orders remain in force as of the current Parliament.²¹ Figure 1 sets out the yearly July-June pattern of petitions in the NSW Legislative Assembly since the 2009 changes to standing orders (the figures for 2017-18 include only the period to 30 November 2017).

¹⁷ Department of the Legislative Assembly, Parliament of New South Wales, 'About Petitions'. Accessed at: <https://www.parliament.nsw.gov.au/la/petitions/pages/about-petitions.aspx>.

¹⁸ Department of the Legislative Assembly, *Consolidated Standing and Sessional Orders and Resolutions of the House*, Sydney: Parliament of New South Wales, 2016, SO 121-122.

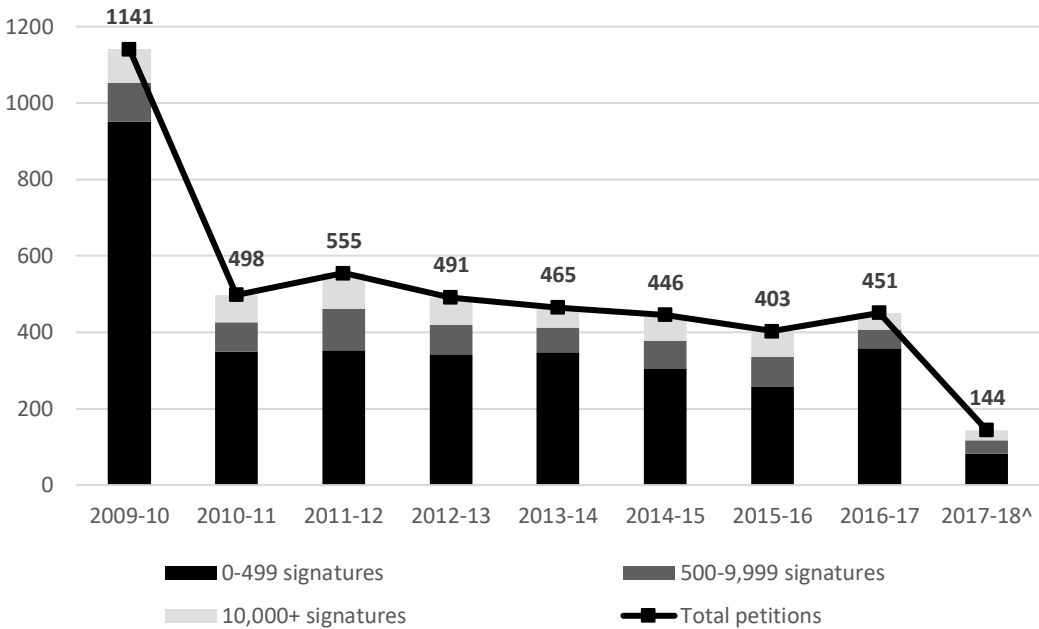
¹⁹ Department of the Legislative Assembly, *Consolidated Standing and Sessional Orders and Resolutions of the House*, SO 125.

²⁰ Department of the Legislative Assembly, *Consolidated Standing and Sessional Orders and Resolutions of the House*, SO 125A; Department of the Legislative Assembly, *Annual Report 2012-13*, Sydney: Parliament of New South Wales, 2013, p. 6. Accessed at:

<https://www.parliament.nsw.gov.au/la/departments/Documents/departments-of-the-legislative-assembly-annual-report-for-2012-13-images--text/Department%20of%20the%20Legislative%20Assembly%20Annual%20Report%202012-13.pdf>

²¹ Legislative Assembly, *Votes and Proceedings No 1*, Sydney, Parliament of New South Wales, 5 May 2015, pp. 45-46.

Figure 1. Petitions in the NSW Legislative Assembly, July 2009–November 2017



[^]July to November 2017.

Although institutional reforms may help increase political engagement, the actions of parliamentarians in their positions as ‘gatekeepers’ of the petition system may also help—or hinder—these reforms.²² Not all parliamentarians will wish to become involved with their petition systems, nor will others have the capacity to do so: such is the reality of an elected official with many responsibilities and limited resources. For parliamentarians who are involved though, the skills and support they can offer petitioners—time, effort, resources, experience—can play as important a role as the petition system itself. A parliamentarian who can guide petitioners through a potentially complicated and unclear process will likely enhance not only his or her personal standing with petitioners, but may also boost the reputation of the parliament itself as an institution that listens to, and can be trusted by, the wider community.

²² Christopher Carman, ‘The Process is the Reality: Perceptions of Procedural Fairness and Participatory Democracy’. *Political Studies* 58(4), 2010, p. 747.

ASSESSING FAIRNESS THROUGH A PROCEDURAL JUSTICE FRAMEWORK

One possible method of assessing the impact of reforms is to assess their fairness. For a political system already affected by a mistrustful community, reengaging the public requires reforms that must be *perceived* to be fair, as well as objectively so.²³ Should a person believe a system, such as a parliamentary petitions process, to be unfair, there is a risk that that person may develop negative views of the parliament as a whole, even if their grievances are limited to one element of the political system.²⁴

Assessing the fairness of a decision-making process can be undertaken using a framework of procedural justice.²⁵ Drawing on a range of literature, Bochel has identified six characteristics of procedural justice, including the following three 'perception' characteristics that represent individual judgements about an institution:²⁶

- **Treatment:** Perceptions of institutional legitimacy may be affected by a person's treatment under a system, rather than the outcome of a decision.²⁷
- **Legitimacy:** The legitimacy of authorities is connected to the legitimacy of the process by which strategies and plans are developed.²⁸ Behaviours such as informing affected parties and obtaining their consent to undertake actions have been identified as important antecedents for legitimacy.²⁹
- **Trust:** Actions that affect trust may include the perceived willingness of authorities to engage in public dialogue, explain and justify their decisions,

²³ Carman, 'The Process is the Reality', p. 746.

²⁴ Carman, 'The Process is the Reality', pp. 746-747.

²⁵ Catherine Bochel, 'Process Matters: Petitions Systems in Britain's Legislatures'. *Journal of Legislative Studies* 22(3), 2016, p. 371.

²⁶ Bochel, 'Process Matters', p. 372.

²⁷ Tom Tyler, 'The Psychology of Legitimacy: A Relational Perspective on Voluntary Deference to Authorities'. *Personality and Social Psychology Review*, 1(4), 1997 pp. 323-345, 326; Lynn Maguire and Allen Lind, 'Public Participation in Environmental Decisions: Stakeholders, Authorities and Procedural Justice', *International Journal of Global Environmental Issues*, 3(2), 2003, pp. 133-148, 134.

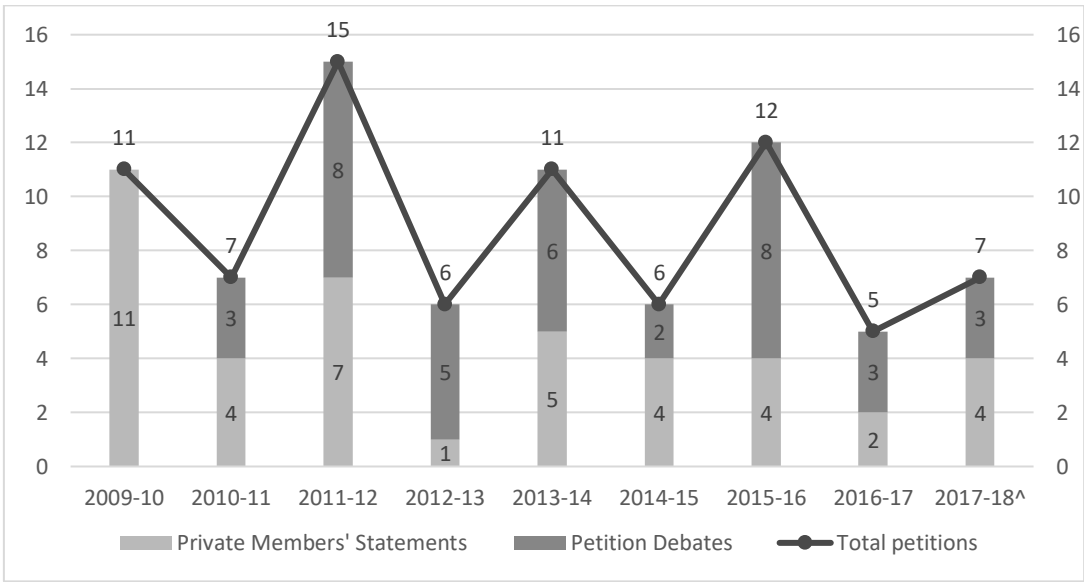
²⁸ Tyler, 'The Psychology of Legitimacy'.

²⁹ Jouni Paavola and Neil Adger, *Justice and Adaptation to Climate Change*. Tyndall Centre for Climate Change Research, Working Paper 23, 2002, p. 7. Accessed at: <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.119.2994&rep=rep1&type=pdf>

and address the concerns of citizens.³⁰

Using these characteristics, this paper analyses actions taken by Members of the Legislative Assembly in NSW and how they may affect petitioners’ perceptions of fairness. The paper uses case studies derived from a sample of 47 Private Members’ Statements and 33 debates on petitions that had signed by more than 10,000 persons, between July 2009 and November 2017 (see Figure 2).³¹

Figure 2. Private Members’ Statements and Petition Debates Included as Case Studies in the Research



^July to November 2017.

These case studies form an incomplete source of information with which to assess parliamentarians’ engagement within the petition system, since they do not allow analysis of petitioners’ attitudes. In addition, the analysis tht follows lacks a quantitative dimension. The main difficulty in performing a quantitative analysis using Private Members’ Statements and petition debates is that these information

³⁰ Marcia Grimes, ‘Organizing Consent: The Role of Procedural Fairness in Political Trust and Compliance’. *European Journal of Political Research*, 45(2), 2006, p. 306.

³¹ July 2009 was the month when the NSW Legislative Assembly’s Standing Orders were modified to require Ministers to respond to petitions signed by 500 or more persons.

sources are invariably curated by the parliamentarians themselves. A Member may choose to spend a proportion of their limited speaking time discussing actions relating to the perception characteristics listed above. However, the absence of this information in a Member's speech does not necessarily indicate limited engagement with petitioners: he or she may have simply decided to focus wholly on the petition subject rather than the 'behind-the-scenes' activities leading to the statement or debate. These choices by parliamentarians mean that simply counting instances of the different approaches to petitions found in their speeches is likely to be misleading. Despite these possible limitations, this analysis performs two useful functions:

- 1) Identifying potentially common Member actions or behaviours that can be used in future studies to assess participant and/or public opinion;
- 2) Determining what actions the Members *themselves* believe to be of benefit for petitioners and the petition system. Subsequent research could evaluate the outcomes of these actions.

Treatment

The case studies provide numerous examples of how Members of the NSW Legislative Assembly interact with petitioners throughout the petition process. These interactions indicate that petitioners' perceptions of treatment will be an important aspect of this petition system.

Many Members first became aware of petition issues when approached by their constituents. One Member was presented with a petition while attending a local community meeting,³² while another attended a protest march organised by a local community group, where he gained first-hand knowledge of the matter and the group's concerns.³³ Another Member appears to have taken up a petition following Twitter exchanges with a local constituent.³⁴ Other Members engaged directly with

³² Hansard, *NSW Legislative Assembly*, 22 June 2010, 24454 (Paul Gibson).

³³ Hansard, *NSW Legislative Assembly*, 10 March 2010, 21234 (Greg Smith).

³⁴ Hansard, *NSW Legislative Assembly*, 21 October 2014, 1537 (Gareth Ward).

petitioners, with one regional Member meeting a petition organiser in a café to discuss a matter and offer assistance.³⁵

Some Members took constituent engagement beyond these initial interactions. Prior to discussing the matter in the Legislative Assembly, one Member spoke to schoolchildren who were using public transport in order to canvass their views of the system and any challenges they had experienced.³⁶ Another Member attended community rallies related to the petition subject (opposition to a telecommunications tower).³⁷ A regional Member organised a meeting with school-aged petitioners to discuss their matter, as well as find out what they had learnt about government and the parliamentary process through their petitioning efforts.³⁸

Some Members do not appear to have provided further assistance to petitioners beyond the initial engagement and offer of petition sponsorship. However, in some cases Members took it upon themselves to perform further advocacy, as distinct from mere constituent engagement, in support of the petition's aims. Several examples saw Members making representations to the Government to advocate for the petitioners. Two Members made written representations to the relevant Minister to request meetings or further reviews of a decision,³⁹ while other Members directly approached ministers or organised private meetings to discuss an issue.⁴⁰

Being a Government parliamentarian may provide additional influence when undertaking such representations. One Government Member stated that he had approached his Transport Minister over electorate bus services and, using information provided by petitioners, persuaded the Minister to reinstate a bus service.⁴¹ Other examples of ongoing support include a Member helping to form a residents' action group, and also being involved in public rallies and approaching local

³⁵ Hansard, *NSW Legislative Assembly*, 23 October 2013, 24636 (Andrew Gee).

³⁶ Hansard, *NSW Legislative Assembly*, 27 March 2014, 28104 (Jamie Parker).

³⁷ Hansard, *NSW Legislative Assembly*, 1 September 2010, 25008 (Victor Dominello).

³⁸ Hansard, *NSW Legislative Assembly*, 22 September 2009, 17851 (Craig Baumann).

³⁹ Hansard, *NSW Legislative Assembly*, 16 March 2010, 21450 (Victor Dominello); Hansard, *NSW Legislative Assembly*, 2 September 2010, 25204 (Clover Moore).

⁴⁰ Hansard, *NSW Legislative Assembly*, 22 September 2009, 17858 (Daryl Maguire); Hansard, *NSW Legislative Assembly*, 22 September 2010, 17851 (Craig Baumann).

⁴¹ Hansard, *NSW Legislative Assembly*, 13 November 2009, 19630 (Allan Shearan).

media and radio stations.⁴² Another Member asked Questions on Notice and filed freedom of information requests for information about the petition issue.⁴³ A third Member, upon noticing an error in the petition format, sought support from the Government to ensure that the petition could be debated in the chamber.⁴⁴

One of the most common actions by Members in relation to the treatment of petitioners is public recognition of the petitioners. Indeed, many Members thanked individuals involved in distributing, collecting and/or signing petitions;⁴⁵ an arguably effective means of acknowledging these efforts. Members recognised individuals involved in forming petitions, thanking them by name and acknowledging their work.⁴⁶ Other forms of recognition included a Member noting the specific impacts that coal seam gas mining could have on his local Aboriginal community,⁴⁷ and occasions where Members quoted from petitioners directly to allow their voices to be heard.⁴⁸

If the perception of fair treatment is potentially as important, if not more important, to petitioners than the actual outcome, these types of actions may demonstrate to petitioners that Members will treat them and their concerns with support and respect.

Legitimacy

Informing citizens about a petition system is a simple, yet essential action to enhance legitimacy of that system. If the community does not know that a petition system

⁴² Hansard, *NSW Legislative Assembly*, 23 November 2011, 7774 (Tanya Davies).

⁴³ Hansard, *NSW Legislative Assembly*, 22 November 2017, 108 (Jodi Harrison).

⁴⁴ Hansard, *NSW Legislative Assembly*, 15 September 2015, 3622 (Jamie Parker).

⁴⁵ For example see: Hansard, *NSW Legislative Assembly*, 12 May 2010, 22627 (Dawn Fardell); Hansard, *NSW Legislative Assembly*, 13 May 2010, 22751 (Paul Pearce); Hansard, *NSW Legislative Assembly*, 12 September 2011, 5407 (Andrew Gee); Hansard, *NSW Legislative Assembly*, 18 February 2016, 6546 (Yasmin Catley).

⁴⁶ Hansard, *NSW Legislative Assembly*, 13 May 2010, 22751 (Paul Pearce); Hansard, *NSW Legislative Assembly*, 13 November 2009, 19630 (Allan Shearan); Hansard, *NSW Legislative Assembly*, 13 September 2012, 15215 (Andrew Stoner).

⁴⁷ Hansard, *NSW Legislative Assembly*, 15 March 2012, 9777 (Gareth Ward).

⁴⁸ For example see: Hansard, *NSW Legislative Assembly*, 16 March 2010, 21450 (Victor Dominello); Hansard, *NSW Legislative Assembly*, 12 May 2010, 22627 (Dawn Fardell); Hansard, *NSW Legislative Assembly*, 18 September 2014, 878 (Andrew McDonald).

exists, the system will not be used, nor viewed as a legitimate means of political participation. While parliamentarians are not the only group who can raise this awareness, their efforts are likely to be important nonetheless.

Various Members noted the efforts they had made to keep petitioners informed about the petition process. One Member kept copies of the petition in his electorate office for visitors to sign,⁴⁹ while other Members purported to initiate the petitions themselves.⁵⁰ Another Member used Facebook to inform the public about a petition, with his post shared more than 600 times by site users.⁵¹ Members also informed petitioners about different stages of the petition process. One Member outlined in detail the actions he had taken prior to making his Private Members' Statement:

On 2 June 2010, I submitted a petition to Parliament with more than 200 signatures, which sought the urgent implementation of pedestrian safety measures. On that day I also followed up my letter of 11 May 2010. On 28 June 2010, I informed each of the petitioners of my request for appropriate safety measures for children crossing Victoria and Marsden roads and my correspondence with the Minister to date. ... I will provide a copy of this speech to all those who signed the petition.⁵²

Another facet of this informational role is Members' ability to manage petitioner expectations, helping them understand the limitations of the petition system and problems that may be encountered. Most Members from the case studies spoke to the petition subject rather than the petitioning process, meaning that discussion of petitioner expectations was limited. Nevertheless, there were some examples in which Members noted their discussions with petitioners.

One Government Member stated that, although he had spoken to his Minister about the issue, the response had not been supportive. The Member conveyed this response to the lead petitioners, who expressed disappointment but determined to

⁴⁹ Hansard, *NSW Legislative Assembly*, 20 June 2013, 21882 (Richard Amery).

⁵⁰ Hansard, *NSW Legislative Assembly*, 8 August 2011, 3843 (Carmel Tebbutt); Hansard, *NSW Legislative Assembly*, 15 March 2012, 9790 (Lee Evans); Hansard, *NSW Legislative Assembly*, 15 November 2012, 17004 (Bruce Notley-Smith).

⁵¹ Hansard, *NSW Legislative Assembly*, 8 September 2015, 3230 (Greg Piper).

⁵² Hansard, *NSW Legislative Assembly*, 9 September 2010, 25647-48 (Victor Dominello).

continue their campaign.⁵³ Two other Members noted in Private Members' Statements that petitions they had received did not comply with the House standing orders. Nevertheless, they were continuing to lobby the Government to have the matters brought for debate or to the attention of the relevant minister.⁵⁴

Obtaining consent to undertake action is an important antecedent for legitimacy.⁵⁵ This occurred in one example, where a Member, having made a representation to a Minister regarding respite care, sent a copy of the Minister's response to the lead petitioner for consideration. The petitioner had responded expressing her concerns, which were noted by the Member in her speech.⁵⁶ However, there were few other examples of consent in the case studies. This may simply be a matter of Members' speeches focusing on the petition issue itself rather than background processes. On the other hand, because elected representatives hold the ultimate decision-making power within the Parliament,⁵⁷ it is also possible that many Members prefer to control the petition process rather than hand power to petitioners, and unilaterally choose which measures to use to promote a petition.

However, the latter scenario may not necessarily be problematic if petitioners are adequately informed about why a Member is taking particular actions. Reviewing these attitudes is not possible within the methodological framework of this analysis, which only explores the attitudes of Members.

Trust

Members engaged in public dialogue simply by making their speeches in the Legislative Assembly. However, Members also engaged in public dialogue outside the NSW Parliament. Several attended public meetings, summits or rallies dedicated to the petition issue;⁵⁸ another Member stated in her Private Members' Statement that

⁵³ Hansard, *NSW Legislative Assembly*, 19 October 2017, 56 (Christopher Gulaptis).

⁵⁴ Hansard, *NSW Legislative Assembly*, 15 September 2015, 3622 (Jamie Parker); Hansard, *NSW Legislative Assembly*, 4 August 2016, 70-71 (Anna Watson).

⁵⁵ Paavola and Adger, *Justice and Adaptation to Climate Change*, p. 7.

⁵⁶ Hansard, *NSW Legislative Assembly*, 29 May 2014, 29499 (Anna Watson).

⁵⁷ Bochel, 'Process Matters', p. 378.

⁵⁸ For example, see: Hansard, *NSW Legislative Assembly*, 17 March 2010, 21621 (Geoff Provest); Hansard, *NSW Legislative Assembly*, 24 September 2009, 18210 (Greg Piper); Hansard, *NSW Legislative Assembly*, 16 February 2016, 6365 (Jamie Parker).

she had been directly involved in a range of community activities, including the creation of a residents action group.⁵⁹ Other Members met directly with the local community to discuss petition matters,⁶⁰ or engaged with groups who were directly affected by a proposal or policy.⁶¹

Such actions by Members may demonstrate to petitioners that, in circumstances where Government decisions are perceived to be unfair, there are other Members who will listen to petitioners and perhaps advocate for their cause. Nevertheless, if the only Members involved in the petition system are those who agree with a petition yet are powerless to change a decision, the petitioning process has, for all the effort involved, little impact. In this respect, the involvement of Government Members in responding to concerns and justifying their decisions is crucial for increasing trust.

Although not required under the sessional orders, NSW Government Ministers and Parliamentary Secretaries have attended petition debates in the NSW Legislative Assembly and responded to petitioners' concerns. In a petition debate on the closure of a fisheries research centre, the Minister for Primary Industries outlined the factors justifying the closure, and promised that the relocation would consider the needs of staff and their families.⁶² Other Ministers explained what consultation processes were undertaken to make a decision;⁶³ summarised how new Government programs would operate;⁶⁴ and outlined due diligence measures for a new Government policy.⁶⁵

There will inevitably be some disappointment emerging from the petition process, as should be expected when petitioners do not wield the power to reverse a decision or force the government of the day to take an interest in their issues. Yet a system that encourages governments to justify their decisions, and/or address the public's concerns, gives petitioners a substantive outcome of some form. In combination with

⁵⁹ Hansard, *NSW Legislative Assembly*, 23 November 2011, 7774 (Tanya Davies).

⁶⁰ See section on Treatment.

⁶¹ For example: Hansard, *NSW Legislative Assembly*, 12 May 2016, 74 (Stephen Bromhead).

⁶² Hansard, *NSW Legislative Assembly*, 19 October 2011, 6783 (Katrina Hodgkinson).

⁶³ Hansard, *NSW Legislative Assembly*, 21 February 2013, 17877 (Kevin Humphries); Hansard, *NSW Legislative Assembly*, 13 August 2015, 2655 (Mark Speakman).

⁶⁴ Hansard, *NSW Legislative Assembly*, 22 August 2013, 22692 (Katrina Hodgkinson).

⁶⁵ Hansard, *NSW Legislative Assembly*, 23 March 2016, 8169-70 (Paul Toole).

the previously discussed measures supportive Members take to help petitioners, these actions may lead to increased levels of trust for both the Members and the political system itself.

CONCLUSION

Entrenched public mistrust in—and disengagement from—the political system is a challenge for Australia and other democratic societies; addressing this problem will require concerted efforts across political institutions and politicians.

As a longstanding formal avenue to convey the popular will to their elected representatives, parliamentary petition systems have seen reforms that seek to increase fairness, and in turn, increase public participation and trust in the system. Although parliamentary petition systems are but one aspect of the wider political system, the actions of parliamentarians within petition systems likely affect public perceptions of fairness.

A comprehensive quantitative survey showing how parliamentarians engage with and treat petitioners may help pinpoint what actions can persuade the public to trust and participate in the political system, and how often such actions occur. While this paper does not purport to identify effective (or ineffective) actions, the Members' actions and behaviours identified in this analysis may inform future studies that assess petitioner or public opinion of their elected representatives.

A Watershed in Committee Evidence Gathering: Victorian Parliament's Inquiry into the CFA Training College at Fiskville*

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* Double-blind reviewed article.

Abstract

In 2015-16 the Environment, Natural Resources and Regional Development Committee—a Joint Investigatory Committee (JIC) of the Parliament of Victoria—conducted an inquiry into the Country Fire Authority (CFA) Training College at Fiskville. The complexity of the inquiry led to this becoming the first JIC to table a report in Parliament about challenges faced when accessing documents from government agencies. The Committee's final report recommended that the Victorian Government's guidelines on how government agencies interact with parliamentary committees be amended, a recommendation that was accepted by the Government. Revised guidelines that, for the first time, dealt with the provision of documents to parliamentary committees, were issued in December 2017. This article considers the likely effectiveness of these guidelines in resolving the types of problems that arose during the Fiskville inquiry should they arise again in future inquiries. It argues that, notwithstanding the improvements brought about by the 2017 revised guidelines, JICs will need further powers if future inquiries that reach the level of complexity encountered by the Fiskville inquiry are to be conducted without hindrance.

¹ Legal Research Officer for the Environment, Natural Resources and Regional Development Committee from September 2015 – May 2016. The views expressed in this article should in no way be taken to represent the views of the Committee. The authors are grateful for the research assistance carried out by Jacob McCahon.

² Legal Research Officer for the Environment, Natural Resources and Regional Development Committee from March – September 2015. The views expressed in this article should in no way be taken to represent the views of the Committee.

INTRODUCTION

Joint Investigatory Committees (JICs) are established under the *Parliamentary Committees Act 2003* (Vic). The Act sets out the subject area that each is responsible for,³ the composition of the committees (generally a total of seven Members drawn from both houses, with membership from a range of political parties) and the procedures and powers governing committees. In the 58th term of the Victorian Parliament ten JICs were established. Some inquiries have been narrow in scope, such as the 2016-17 *Inquiry into lowering the probationary driving age in Victoria to seventeen* by the Law Reform, Road and Community Safety Committee. Others have addressed complex problems, such as the 2015-16 *Inquiry into abuse in disability services* by the Family and Community Development Committee, and the 2015-16 *Inquiry into portability of long service leave entitlements* by the Economic, Education, Jobs and Skills Committee.

More recently the Victorian Parliament has tasked JICs with inquiring into long-term systemic failures or wrongdoing. For example, in 2013 the Family and Community Development Committee tabled its report of its *Inquiry into the handling of child abuse by religious and other non-Government organisations*.⁴ This inquiry had commenced in April 2012, some months prior to the announcement, on 12 November 2012, of a national Royal Commission into Institutional Responses to Child Sexual Abuse. The Royal Commission ran for five years and produced a final report in 17 volumes⁵—a clear indication of the complexity of this subject.

The inquiry by the Environment, Natural Resources and Regional Development Committee that is the subject of this article falls into the more complex category. This was the 2015-16 *Inquiry into the Country Fire Authority (CFA) Training College at*

³ There is a provision in the *Parliamentary Committees Act 2003* (Vic) setting out the functions of each committee. For example, the functions of the Family and Community Development Committee are outlined in section 11, the functions of the Law Reform, Road and Community Safety Committee are outlined in section 13 and the functions of the Electoral Matters Committee are outlined in section 9A. The committees may change when a new term of Parliament commences.

⁴ Family and Community Development Committee, *Betrayal of Trust. Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations*. Parliament of Victoria. Tabled 13 November 2013.

⁵ Royal Commission into Institutional Responses to Child Abuse, *Final Report*, Commonwealth of Australia, 2017.

Fiskville. This complexity, including the broad scope of the Inquiry's terms of reference, led the Committee to seek access to an unprecedented amount of documentation from the Victorian Government—15-20,000 documents in total.⁶ The Committee's commitment to accessing these documents was unwavering in the face of many obstacles (see below). Part way through its deliberations, in December 2015, it saw fit to table a Special Report to Parliament specifically on the production of documents.⁷ It also made recommendations to the Government in its final report intended to prevent future inquiries from facing the same challenges.

The Committee's persistence in this regard, and its consequent recommendations, have proved to be very significant. Revised guidelines governing the provision of documents by government agencies to all future inquiries have been developed.⁸ The guidelines apply to Victorian Royal Commissions and Boards of Inquiry in addition to parliamentary inquiries.⁹

OVERVIEW

The article commences with an outline of the Fiskville Inquiry and explains why the Committee sought to access many documents from government agencies. It also outlines the nature of the challenges the Committee faced with accessing the documents. The article then examines the steps taken by the Committee to access the documents and to ensure that future JIC inquiries do not face similar challenges. Next, the article analyses the Government's response to the recommendation by the Committee (namely, the issuing of revised guidelines for government agencies appearing before and providing documents to parliamentary committees), the new content of the guidelines and how they differ from the previous guidelines, dated

6 Environment, Natural Resources and Regional Development Committee, *Inquiry into the CFA Training College at Fiskville Final Report*. Parliament of Victoria. Tabled 24 May 2016: 39 (hereafter *ENRRDC Final Report*).

7 Environment, Natural Resources and Regional Development Committee Inquiry into the CFA Training College at Fiskville Special Report on Production of Documents. Parliament of Victoria. Tabled 12 November 2015 (hereafter *ENRRDC Special Report*).

8 Department of Premier and Cabinet, *Guidelines for Appearing Before and Producing Documents to Victorian Inquiries*, Victorian Government, December 2017 (hereafter *2017 Guidelines*).

9 *2017 Guidelines*, see Part 2 'Types of Inquiries and their Powers'.

October 2002.¹⁰ The ability of the 2017 Guidelines to resolve the types of problems that arose during the Fiskville inquiry for future similarly complex inquiries is considered. The article concludes with some suggestions for further powers that may further strengthen the 2017 Guidelines.

THE FISKVILLE INQUIRY AND ACCESS TO DOCUMENTS

In December 2011, a newspaper article was published suggesting links between cancer and other diseases and firefighter training practices at Fiskville. The article placed particular emphasis on the views of the late Mr Brian Potter, a former Chief Officer of the CFA, who believed exposure to chemicals at the site had caused his cancer.¹¹ The CFA responded by announcing an independent inquiry into Fiskville chaired by Professor Robert Joy.¹² Professor Joy's appointment was criticised for several reasons, including that he was a former Deputy Chief Officer at the Environment Protection Authority (EPA).¹³

A second newspaper article was published in June 2012, raising questions about the quality of the recycled water used in training activities.¹⁴ A WorkSafe investigation followed¹⁵ and the United Firefighters Union raised concerns on behalf of its members.¹⁶ Due to concerns about contamination, the site was closed in March 2015. This occurred three months after the parliamentary inquiry, which had been announced on 9 December 2014,¹⁷ commenced deliberation.¹⁸

10 Department of Premier and Cabinet, *Guidelines for Appearing Before State Parliamentary Committees*, Victorian Government, October 2002 (hereafter *2002 Guidelines*).

11 R. Lamperd, 'Cancer Town'. *Herald Sun*, 6 December 2011. The content of this newspaper article was discussed in *ENRRDC Final Report*, p. 6.

12 Professor Robert Joy, *Understanding the Past to Inform the Future: Report of the Independent Fiskville Investigation*, 2012.

13 *ENRRDC Final Report*, p. 6.

14 R. Lamperd, 'Water Contamination Scare in Fiskville'. *Herald Sun*, 25 June 2012.

15 *ENRRDC Final Report*, p. 6. See Chapter 7 of the *Final Report* for more details about WorkSafe's involvement.

16 *ENRRDC Final Report*, p. 7.

17 Premier of Victoria, 'Fiskville Inquiry Will Tell Firefighters the Whole Truth', Media Release, 9 December 2014.

18 *ENRRDC Final Report*, pp. 23-26.

Given this background, the terms of reference for the inquiry, issued on 23 December 2014, were broad. They required the Committee to investigate wide-ranging topics over a long time frame. They also required an examination of a complex regulatory framework including a range of Victorian legislation (such as occupational health and safety law and environmental law)¹⁹ and regulatory bodies (such as WorkSafe and the EPA).²⁰ Matters to be addressed included pollution, contamination and unsafe activities (paragraph 1), health impacts on ‘employees, residents and visitors’ (paragraph 2) and the role of executive management both past and present (paragraph 3). All the foregoing terms of reference applied from 1970 (when the CFA opened the training centre) to the present; that is, to a period of more than 40 years. The Committee was also tasked with considering the prospect of the site being decontaminated (paragraph 4) and options for providing redress or justice to those who had been adversely affected (paragraph 5).²¹

The Committee employed the usual types of evidence gathering carried out by JICs, including:

- inviting submissions from individuals and organisations—the Fiskville inquiry received 450 submissions;²²
- public hearings where a range of witnesses give evidence—in the Fiskville inquiry this included people adversely affected by the practices, CFA management, scientific experts, representatives from regulatory agencies and experts on compensation schemes;
- evidence-gathering trips—as part of the Fiskville inquiry the Committee visited Canberra and Germany;²³ and

19 See particularly Environment, Natural Resources and Regional Development Committee, *Inquiry into the CFA Training College at Fiskville Interim Report*. Parliament of Victoria. Tabled 24 June 2015, p. 23-38 (hereafter *ENRRDC Interim Report*).

20 See particularly *ENRRDC Final Report*, Chapters 7 and 8.

21 *ENRRDC Interim Report*, p. vii.

22 A call for submissions was placed on the Committee’s website, newspaper advertisements were issued, and the *Interim Report* notes that ‘the Committee also wrote to a range of organisations inviting submissions, including government departments, local councils, and emergency management organisations’. *ENRRDC Interim Report*, p. viii.

23 There is very little experience in Australia of decontaminating and remediating sites similar to Fiskville. This was something that paragraph 4 of the Committee’s terms of reference required them to report on. The

- site visits.²⁴

It soon became apparent that a document discovery process would be needed to complement these strategies. Early in the inquiry the Committee heard evidence that individuals were having trouble accessing information from the CFA about whether their health might have been affected by training practices and by chemicals used in firefighting foams at the Fiskville training centre.²⁵ Therefore, from the outset the Committee resolved (in the words of the Chair) to ‘find out the truth’.²⁶ This led to the Committee requesting documents from the CFA, as well as a range of other regulatory agencies, including the local Council,²⁷ the EPA and WorkSafe.²⁸

Access to documents also became particularly important for addressing paragraph (3) of the terms of reference: ‘a study of the role of past and present executive management at Fiskville’. For this purpose, the Committee decided to access the minutes of the CFA Board meetings for the time frame being canvassed by the inquiry.²⁹ Some of the content in the minutes and their attachments contradicted the evidence the Committee heard during public hearings. A number of executives gave evidence during these hearings that they were not aware of contamination at Fiskville prior to 2011 (when the first newspaper article was published). For example, Mr Mick Bourke, Chief Executive Officer from September 2009 to February 2015, told the Committee that ‘[w]hen the story broke in 2011 it was like a bombshell in CFA, and people initially did not seem to want to put up their hand and say that there were things that could have been wrong at Fiskville’.³⁰ The Board minutes revealed that there had been some negotiations between 2008 to 2010 between Airservices Australia and the CFA about use of the Fiskville site,³¹ but that on 31 May 2010 Mr

Committee chose to visit Germany because it was considered to be ‘a world leader in decontaminating sites similar to Fiskville’. *ENRRDC Final Report*, p. 34.

²⁴ *ENRRDC Interim Report*, Chapter 5; *ENRRDC Final Report*, Chapter 2.

²⁵ *ENRRDC Interim Report*, p. vi.

²⁶ *ENRRDC Interim Report*, p. vi.

²⁷ Moorabool Shire Council.

²⁸ *ENRRDC Final Report*, p. 426.

²⁹ *ENRRDC Final Report*, p. 40.

³⁰ *ENRRDC Final Report*, p. 174. Other examples include Mr Euan Ferguson, Chief Officer from November 2010 to November 2015, and Mr Peter Rau, Officer in Charge at Fiskville from April 2005 to July 2008.

³¹ *ENRRDC Final Report*, pp. 175-77.

Bourke reported to the Board that Airservices had withdrawn from these negotiations because of 'issues of potential chemical contaminations at Fiskville'.³² This directly contradicted Mr Bourke's oral evidence.

The Committee's final report concluded that:

the documentary evidence shows an awareness of significant problems at Fiskville at all levels of executive management from the 1970s to December 2011. However, witnesses that appeared before the Committee at public hearings consistently claimed that they had a lack of knowledge.³³

The Committee formed the view that witnesses were claiming lack of knowledge about four areas of which they should have been aware, based on the minutes of CFA board meetings. These were (1) chemical contamination, (2) occupational health and safety, (3) dangerous goods storage and disposal and (4) concerns surrounding water supply and quality.³⁴

When referring to the value of the documents more broadly, the Committee described them as 'indispensable'.³⁵ The Committee noted that the documents had been used for a range of purposes, including:

to either verify or refute claims made in traditional sources of evidence relied upon by Parliamentary Committees (that is, submissions and transcripts of witnesses' evidence before the Committee). The documents have also been used to fill in gaps in the evidence. In some cases the documents provide the only source of non-anecdotal evidence for certain matters relevant to the inquiry.³⁶

JICs have broad evidence-gathering powers under the *Parliamentary Committees Act 2003*. Section 28(1) of the Act provides that a JIC 'has power to send for persons, documents and other things'. Prior to the Fiskville inquiry this power had proved to

³² ENRRDC Final Report, p. 177.

³³ ENRRDC Final Report, p. 194; See also generally Chapter 5.

³⁴ The information contained in the CFA Board documents about these four areas is outlined in Chapter 5 of ENRRDC Final Report, pp. 174-93.

³⁵ ENRRDC Final Report, p. 44.

³⁶ ENRRDC Final Report, p. 43.

be sufficient even in complex inquiries. The Family and Community Development Committee, when conducting the child abuse inquiry that also involved document gathering, did not experience any problems accessing information. That Committee noted in its final report:

The Committee did not need to resort to its powers to compel documents or witnesses. All of the organisations and individuals approached cooperated fully. Ultimately, no individuals or organisations refused a request to attend a hearing or to provide information.³⁷

In stark contrast to this, the Fiskville Committee faced multiple challenges. These were summarised in its final report as follows:

The Committee had to request certain documents multiple times, received inadequate responses to summonses and received multiple versions of the same documents (for example, a version containing redactions due to a potential claim of executive privilege, followed by a complete (un-redacted) version after the Victorian Government determined that it would not claim executive privilege over the material).³⁸

Additionally, the Victorian Government Solicitors Office (VGSO) informed the Committee in correspondence dated 11 September 2015 that Board papers for the first 26 years of the CFA's operations from prior to 1996 'no longer exist'.³⁹ After the Committee Chair asked for an explanation of why this was the case, the VGSO conceded on 25 September 2015 that the statement was inaccurate.⁴⁰

The major challenge faced by the Committee when attempting to access the CFA Board papers was the Government's claims of executive privilege over the content of some of them. Because of these claims, the VGSO redacted large parts of board papers, and refused to provide some documents in their entirety, because of the 'potential' for the executive to claim executive privilege over the content.⁴¹

³⁷ ENRRDC Final Report, p. 32.

³⁸ ENRRDC Final Report, p. 47.

³⁹ ENRRDC Special Report, p. 8.

⁴⁰ ENRRDC Final Report, p. 50.

⁴¹ ENRRDC Special Report, p. 10.

These claims of executive privilege led to significant delays. The Committee's Special Report noted that 'the VGSO also advised that the process to determine whether such a claim will be made is time consuming'.⁴² The claims of executive privilege ultimately resulted in the Committee requiring two extensions to the inquiry due date.⁴³

In the Committee's final report, the Committee reflected on the release of CFA Board papers after the executive had had an opportunity to decide whether it in fact wished to claim executive privilege or not. The Committee noted that the majority of the documents had eventually been provided to the Committee and 'of the minutes containing material redacted by the VGSO, the Government formed a contrary view about executive privilege in around 85 percent of cases'.⁴⁴

The Committee also expressed its displeasure at the redaction in one instance of material in one set of minutes that had been provided in full to a member of the public pursuant to a Freedom of Information request.⁴⁵ The Committee noted that it 'believe[s] that the VGSO should know that if material can be provided in full to a member of the public, there is no justification for providing a redacted version to a Parliamentary Committee'.⁴⁶

As noted above, the Board papers led to significant findings in the final report in response to the term of reference concerning the role of executive management both past and present (paragraph 3). The Committee's persistence was clearly justified. The way the Committee met the challenges it faced in accessing documents therefore merits more detailed consideration.

THE COMMITTEE'S RESPONSE

As noted in the Introduction, the Committee tabled a *Special Report on Production of Documents* in Parliament in December 2015. This was its first main response. The

⁴² ENRRDC *Special Report*, p. 10.

⁴³ ENRRDC *Final Report*, pp. 39 and 47.

⁴⁴ ENRRDC *Final Report*, p. 47.

⁴⁵ ENRRDC *Final Report*, p. 48.

⁴⁶ ENRRDC *Final Report*, p. 48.

second was to outline the challenges it faced in accessing the documents in the final report that was tabled in May 2016. The third was to make recommendations to the Government in that report aimed at ensuring that future JICs did not face the same challenges. Each of these will be considered in turn.

In many ways, the first response was the most attention-grabbing. It was unprecedented for a Victorian parliamentary committee to table a report dealing specifically with obstruction of evidence-gathering.⁴⁷ When tabling the Special Report, the Committee Chair expressed the Committee's 'disappointment' that this step had to be taken.⁴⁸ It was described by the Committee as necessary for the following reasons:

The Committee has promised to undertake a transparent inquiry. In view of its commitment to transparency, on 5 November 2015 the Committee unanimously determined a need to inform the Parliament of Victoria that the non-disclosure of CFA Board papers has implications for the Committee's capacity to adequately and transparently inquire into key aspects of the terms of reference for the inquiry.⁴⁹

The Special Report summarised the extensive correspondence that had taken place between the Committee and the VGSO,⁵⁰ listed the number of minutes that had been received by the Committee at that point,⁵¹ then outlined each of the following challenges that the Committee had experienced as follows:

- slow production of documents
- ad hoc production of documents
- the use of a filtering system for determining information to be produced

⁴⁷ There had been problems experienced by the Victorian Legislative Council with access to documents in 2007, but this did not result in the tabling of a special report. Rather, the Council had passed a motion. See G. Taylor, 'Parliament's Power to Require the Production of Documents—A Recent Victorian Case'. *Deakin Law Review*, 13(2), 2008, pp. 17-48.

⁴⁸ *ENRRDC Special Report*, p. vii.

⁴⁹ *ENRRDC Special Report*, p. 1.

⁵⁰ *ENRRDC Special Report*, pp. 4-5 and Appendix 1.

⁵¹ *ENRRDC Special Report*, Table 1.

- duplication of documents
- claims that existing documents no longer exist
- extensive redaction of material due to potential claims of executive privilege.⁵²

In short, it publicised the Committee's unanimous displeasure at the lack of cooperation by a government agency (the CFA) and its legal representative (the VGSO) with the inquiry. This resulted in further media attention to an inquiry that already had a high profile.⁵³ Most importantly perhaps, it was effective. The Board papers sought were supplied.

The Committee's second response—sections of its final report—went into further detail about these matters. The majority of Chapter 2—the Chapter outlining the inquiry process—was dedicated to the document discovery process. There was a heading about 'challenges associated with accessing CFA documents' followed by an eight-page discussion.⁵⁴ The challenges related to both the board minutes and accessing financial information.

Following the discussion, one of the Committee's findings was '[t]hat the Victorian Government Solicitor's Office was obstructive and uncooperative in the document discovery process'.⁵⁵ This is a serious finding for a committee to make in relation to a government agency's legal representative.

The Committee dedicated a further four pages of its final report⁵⁶ and formulated two recommendations with the purpose of 'addressing challenges with accessing documents', noting that:

If a similar inquiry arises in the future—that is an inquiry that requires the Parliamentary Committee to access documents in order to address the Terms of Reference provided by the Parliament—there needs to be

⁵² *ENRRDC Special Report*, p. 5.

⁵³ D. Gray, 'CFA Blasted by Parliamentary Committee over Fiskville'. *The Age*, 12 November 2015; J. Edwards, 'Victoria's CFA Denies it Refused to Give Fiskville Evidence to Parliament'. *ABC News*, 12 November 2015; R. Lamperd and A. White, 'CFA Refuses to Hand over Fiskville Inquiry Files'. *Herald Sun*, 12 November 2015.

⁵⁴ *ENRRDC Final Report*, pp. 46-53.

⁵⁵ *ENRRDC Final Report*, p. 53, Finding 18.

⁵⁶ *ENRRDC Final Report*, pp. 54-57.

increased clarity surrounding the provision of documents to Parliamentary Committees.⁵⁷

These two recommendations amount to the third element of the Committee's response to these issues.

The first recommendation (*Recommendation 2* in the Report)⁵⁸ concerned proposed amendments to the *Victorian Model Litigant Guidelines*, which apply to Government lawyers during litigation.⁵⁹ The Government judged this recommendation to be irrelevant. In its response to the Fiskville inquiry report, it made the following comments about this recommendation.

The *Model Litigant Guidelines* relate to litigation and the conduct of Government agencies in dealing with claims made by citizens/private entities, rather than appearances before, and the production of documents to, Parliamentary Committees.⁶⁰

The Government chose instead to focus its response to the Committee's other main recommendation on this subject (*Recommendation 3* in the Report), which was as follows:

That the Department of Premier and Cabinet amend the Guidelines for Appearing Before State Parliamentary Committees so that they contain some standards for conduct when a Parliamentary Committee requests information and documents. The standards should reflect relevant principles contained in the Model Litigant Guidelines.⁶¹

The *Guidelines for Appearing Before State Parliamentary Committees* were out-dated—they were issued in October 2002 and pre-dated the 2003 Act that currently regulates the operation of JICs. The Committee observed that the 2002 'Guidelines

⁵⁷ ENRRDC Final Report, p. 54.

⁵⁸ ENRRDC Final Report, p. 56.

⁵⁹ The guidelines stem from Appendix B to the Commonwealth's *Legal Services Directions*, issued pursuant to section 55ZF of the *Judiciary Act 1903* (Cth). See generally G. Appleby, 'The Government as Litigant'. *University of New South Wales Law Journal*, 37(1), 2014, pp. 94-124.

⁶⁰ Victorian Government, *Victorian Government's Response to the Environment, Natural Resources and Regional Development Committee's Inquiry into the CFA Training College at Fiskville*, 24 November 2016, p. 4.

⁶¹ ENRRDC Final Report, p. 57.

do not encourage agencies to provide information in a timely and cooperative fashion' and provided only a few brief references to the provision of documents to JICs by government agencies.⁶²

The Victorian Government acted on this recommendation (*Recommendation 3*). The next section of this paper notes this response, compares the revised (2017) Guidelines with those they replace, and considers their likely effects. The discussion provides an assessment of whether the 2017 Guidelines are likely to address the types of obstacles faced by the Committee during the Fiskville inquiry. It also analyses the likely impact of the revised Guidelines on future inquiries by JICs with particular emphasis on complex inquiries.

THE REVISED GUIDELINES

The Victorian Government response to the Fiskville inquiry report (issued 6 months after the final report that is, 24 November 2016) made the following comments about the Committee's recommendation to update its Guidelines:

The Government is currently revising and updating its Guidelines for Appearing Before State Parliamentary Committees to reflect relevant principles of the Model Litigant Guidelines. [...]

Therefore, the revised Guidelines will:

- promote early engagement with inquiries to minimise the potential for misunderstandings;
- include standards of conduct for responding to requests for documents that reflect relevant principles of the Model Litigant Guidelines; and
- encourage departments and agencies to consider other options available to provide inquiries with the information they need where documents are subject to claims of executive privilege.

The revised Guidelines are expected to be released in early 2017.⁶³

⁶² ENRRDC *Final Report*, p. 56.

⁶³ Victorian Government, *Victorian Government's Response*, p. 4.

The new Guidelines, entitled ‘Guidelines for appearing before and producing documents to Victorian inquiries’ became available in December 2017’.

COMPARISON OF THE 2002 AND 2017 GUIDELINES

The first difference to be observed between the two guidelines is a matter of scope. The 2002 Guidelines were predominantly confined to parliamentary inquiries, with only a brief discussion about appearance before Victorian Royal Commissions included at the end of the document.⁶⁴ The 2002 Guidelines had not been updated to align with the introduction of the *Inquiries Act 2014* (Vic). That Act provides for Boards of Inquiry and updated the framework governing Royal Commissions. The 2017 Guidelines have been expanded and provide guidance on dealing with Boards of Inquiry and Royal Commissions established under the 2014 Act, in addition to Parliamentary inquiries. The guidance provided relates both to appearances before committees at public hearings and to provision of documents to all three types of inquiries.

As the focus of this article is parliamentary inquiries, it will not deal with the Guidelines about Boards of Inquiry and Royal Commissions, other than to note that there are distinct differences between these three types of processes and the clear distinctions made in the Guidelines are welcome.⁶⁵

The second difference is that the 2017 Guidelines go into significantly more detail about the provision of documents to parliamentary committees. In the 2002 Guidelines, references to the provision of documents tend to envisage documents being referred to, or requested, during a public hearing. For example, they included a heading ‘What Documents Should be Disclosed in Committee Hearings?’⁶⁶ In the 2017 Guidelines, there is an entire Part (Part 3) entitled ‘Requests for documents’ that provides direction about requests made prior to public hearings, in addition to some brief references to requests for documents during hearings.⁶⁷ There is also a

⁶⁴ 2002 Guidelines, pp. 23-25.

⁶⁵ See, for example, guidance on answering questions that may incriminate the witness. 2017 Guidelines, paragraphs 127-131.

⁶⁶ 2002 Guidelines, paragraph 12.

⁶⁷ 2017 Guidelines, paragraph 132.

heading in this Part about requests for documents that details how the Model Litigant Guidelines apply. This encourages compliance with principles such as ‘acting fairly’, ‘dealing with requests promptly’ and considering the inquiry’s resources when determining how to provide documents.⁶⁸

The third difference is that guidance is provided in the 2017 version on privileges claimed by the executive. The 2002 Guidelines contained a section entitled ‘Can a witness claim public interest immunity?’ and defined this as ‘a traditional legal doctrine which allows Government to prevent the disclosure of certain evidence in legal proceedings if it is in the public interest to keep that evidence undisclosed’.⁶⁹ The Guidelines went on to list the types of documents and oral evidence over which immunity may have been claimed during a parliamentary committee inquiry.⁷⁰ There was no reference to ‘executive privilege’ in the 2002 Guidelines.

In contrast, the 2017 Guidelines clarify that public interest immunity only applies in legal proceedings and ‘executive inquiries including a Royal Commission or Board of Inquiry’.⁷¹ With respect to parliamentary committee inquiries however, the relevant type of privilege is executive privilege.⁷² The latter is not precisely defined in the Guidelines. They contain broad-brush statements such as ‘[e]xecutive privilege is a privilege held by the Executive Government’⁷³ and ‘[i]t is similar to public interest immunity, but applies in the context of parliamentary committee inquiries (as opposed to litigation before the courts and executive inquiries such as Royal Commissions)’.⁷⁴ On the other hand, the Guidelines helpfully contain two separate appendices, one on ‘Executive Privilege’ (Appendix A) and another on ‘Public Interest Immunity’ (Appendix B). Each lists the types of information over which respective claims might be made. The Guidelines also clearly distinguish between provision of documents and oral evidence in relation to both public interest immunity and executive privilege (the relevant paragraphs are provided at the end of each of the

⁶⁸ 2017 Guidelines, paragraph 36.

⁶⁹ 2002 Guidelines, paragraph 66.

⁷⁰ 2002 Guidelines, paragraph 71. There is also a reference to Cabinet processes at paragraph 46.

⁷¹ 2017 Guidelines, paragraph 69.

⁷² 2017 Guidelines, paragraphs 49 and 69.

⁷³ 2017 Guidelines, Appendix A.

⁷⁴ 2017 Guidelines, paragraph 49.

two appendices). Further discussion about the guidance on executive privilege in relation to the problems faced in during the Fiskville inquiry is provided below.

A fourth difference between the 2002 and 2017 Guidelines is that the level of autonomy granted to public officials or individual departments interacting with parliamentary committees is reduced. The 2017 Guidelines introduce new processes for coordinating government agency input to inquiries where there is more than one agency involved. The Guidelines specify that the Department of Premier and Cabinet (DPC) will nominate a 'lead department that will be responsible for coordinating the Government's response to requests for documents made by the committee'.⁷⁵ The Guidelines detail the duties of the lead department, such as writing to the chair of the committee,⁷⁶ seeking Cabinet approval for claims of executive privilege⁷⁷ and considering ways to provide a committee with as much information as possible where claims of executive privilege are involved.⁷⁸

The 2002 Guidelines did refer to a 'lead agency', but they did not provide any guidance as to that agency's role. The Guidelines simply provided that '[w]here more than a single Department (not including DPC) is involved, officials must inform DPC and co-ordinate involvement in committee hearings with the lead agency (where DPC is not the lead agency)'.⁷⁹

The 2017 Guidelines provide more detail about when to seek legal advice than the 2002 Guidelines. A heading in the 2017 Guidelines entitled 'When to seek legal advice' is followed by four paragraphs about getting advice about documents.⁸⁰ The Guidelines note that in some cases executive privilege claims will be clear and legal advice will not be required.⁸¹ However, they also state that '[w]here there is any uncertainty', advice is required.⁸² If an agency is considering presenting a committee with evidence in a way that provides it with the information it needs but does not

⁷⁵ 2017 Guidelines, paragraph 44.

⁷⁶ 2017 Guidelines, paragraph 45.

⁷⁷ 2017 Guidelines, paragraph 53.

⁷⁸ 2017 Guidelines, paragraph 55.

⁷⁹ 2002 Guidelines, paragraph 32.

⁸⁰ 2017 Guidelines, paragraphs 30-42.

⁸¹ 2017 Guidelines, paragraph 41.

⁸² 2017 Guidelines, paragraph 42.

reveal information that is subject to a privilege claim (such as by 'making a presentation to the committee that excludes sensitive material'), legal advice is required.⁸³

The 2017 Guidelines also envisage situations where an official may need to ask the committee's permission to seek legal advice during a hearing, such as if considerations relating to 'secrecy provisions of Acts' or 'court orders or sub judice issues' arise,⁸⁴ or if the witness is concerned that they are being asked to provide a document that may incriminate them,⁸⁵ or to give evidence that may incriminate them.⁸⁶

There was a total of four references to obtaining legal advice in the 2002 Guidelines. Two of these related to claims of public interest immunity, with one paragraph advising that legal advisors or the VGSO can provide 'a more detailed understanding of the above exemption provisions'.⁸⁷ A third concerned information that might be covered by a court order,⁸⁸ and the fourth related to an individual getting 'independent legal advice' if they felt their evidence may incriminate them.⁸⁹

The more detailed specifications as to when legal advice is required, and the involvement of a lead agency, may impact the timeliness of provision of information to committees, a point that will be returned to below.

THE 2017 GUIDELINES AND THE FISKVILLE INQUIRY

Given this background, it is natural to ask whether and to what extent the 2017 Guidelines address the concerns that arose during the Fiskville inquiry. They do so in two ways. The first is the explicit reference included in the Guidelines to the Model Litigant Guidelines. The second is the clarification of the scope of executive privilege

⁸³ 2017 Guidelines, paragraphs 55-56.

⁸⁴ 2017 Guidelines, paragraph 117.

⁸⁵ 2017 Guidelines, paragraph 67.

⁸⁶ 2017 Guidelines, paragraph 131.

⁸⁷ 2002 Guidelines, paragraph 73. See also paragraph 68.

⁸⁸ 2002 Guidelines, paragraph 75.

⁸⁹ 2002 Guidelines, paragraph 96.

and the process to be followed when claims of executive privilege are made. These need to be weighed against the new requirements to seek legal advice in a range of circumstances.

The Committee recommended that principles from the Model Litigant Guidelines be incorporated into the Guidelines for agency's appearing before parliamentary Committees. The key principles mentioned by the Committee are:

2(a): Act fairly in handling claims and litigation

2(c): Deal with claims promptly and not cause unnecessary delay

2(g): Where it is not possible to avoid litigation, keep the costs of litigation to a minimum.⁹⁰

The 2017 Guidelines refer explicitly to these three principles.⁹¹ They add that the provision of documents should be done in such a way that government agencies 'foster cooperation', avoid acting 'in an inflexible manner', consider 'alternative options' where claims of executive privilege are to be made and ensure 'timely provision of information to inquiries and communicating with inquiries early on about any potential difficulties in responding within the requested timeframe'.⁹²

As noted above, the 2002 Guidelines were silent on executive privilege, the source of the majority of the obstacles faced during the Fiskville inquiry. It is therefore a significant improvement to have a definition of the scope of the privilege⁹³ and details about the process to be followed when a claim of executive privilege may be made over documents.⁹⁴ Welcome, too are guidelines about how to proceed when a claim in relation to documents is sustained, as well as when it is not,⁹⁵ and the process if privileged matters arise during oral evidence in a public hearing.⁹⁶

⁹⁰ *ENRRDC Final Report*, p. 55.

⁹¹ *2017 Guidelines*, paragraph 36.

⁹² *2017 Guidelines*, paragraph 37.

⁹³ *2017 Guidelines*, Appendix A.

⁹⁴ *2017 Guidelines*, paragraphs 49-52.

⁹⁵ *2017 Guidelines*, paragraphs 53-61.

⁹⁶ *2017 Guidelines*, paragraphs 123-126.

Importantly, however, the 2017 Guidelines suggest that agencies redact privileged content in documents and provide them to the parliamentary committee⁹⁷ while a Cabinet submission is prepared to resolve the claim of executive privilege.⁹⁸ However, one of the major problems faced by the Fiskville inquiry was receiving a redacted version of documents, only to receive the entire document after the Government determined that the potential claim of executive privilege was not upheld. This occurred in 85 percent of cases where a redacted version was initially received.⁹⁹ Unless there is a significant improvement in the assessment process, so that the VGSO identifies potential claims of executive privilege that align better with the actual claims of executive privilege, delays to committee inquiries will not be reduced.

The definition of the scope of executive privilege in the 2017 Guidelines may assist this process. During the Fiskville inquiry the VGSO would not provide the Committee with details about the types of privilege claims—only that there were potential claims. The Committee noted in its Special Report that ‘[d]espite requests for information about the specific nature of executive privilege the state may claim over the CFA Board papers, no advice has been forthcoming from the VGSO’.¹⁰⁰

The Committee’s final report gave two examples of material that had been redacted from the CFA Board minutes in the first instance, then later provided to the Committee after it was determined that there was no claim of executive privilege over the content. One of these related to a meeting between the Minister and the CFA Chief Officer and the other related to approval of some amendments to Regulations by the relevant Minister.¹⁰¹ These are both matters that are unlikely to be covered by any of the examples in the 2017 Guidelines. It is therefore possible to be cautiously optimistic that the Guidelines may result in content of this nature not being redacted during future inquiries.

It was noted in the previous section that the 2017 Guidelines require legal advice to be obtained in a variety of circumstances, particularly in relation to potential claims

⁹⁷ 2017 Guidelines, paragraph 52.

⁹⁸ 2017 Guidelines, paragraph 53.

⁹⁹ ENRRDC Final Report, p. 47.

¹⁰⁰ ENRRDC Special Report, p. 11.

¹⁰¹ ENRRDC Final Report, p. 48.

of executive privilege. Much will depend on how the VGSO responds. The Fiskville inquiry made the following finding about the VGSO: '[t]hat the Victorian Government Solicitor's Office was obstructive and uncooperative in the document discovery process'.¹⁰²

There were many reasons for this finding, but there are three particularly pertinent examples. The first is that incorrect information was provided to the Committee about legal expenditure versus expenditure on remediation in response to a summons, as follows:

The VGSO advised the Committee that they had erroneously:

- Included expenditure that was not associated with Fiskville
- Included remediation expenditure as part of the total spent on legal expenses.¹⁰³

The second (noted earlier) is that the VGSO refused to provide the Committee with CFA Board minutes pursuant to a claim of executive privilege when those same minutes had already been provided to the Committee by the CFA directly.¹⁰⁴ The third (also noted earlier) is that the VGSO advised the Committee that the meeting papers for all meetings between 1970 and 1996 'did not exist'. When the Committee questioned this, they VGSO advised that they had located the papers and retracted the claim.¹⁰⁵

The principles from the Model Litigant Guidelines that have now been incorporated into the government agency guidelines *may* ameliorate these concerns with the VGSO. The VGSO has been required to abide by the Model Litigant Guidelines in litigation since they were introduced in 2001 and it should therefore be familiar with the requirements.

However, the primary source of enforcement of the Model Litigant Guidelines is a pronouncement or cost order by a court.¹⁰⁶ When it comes to the Guidelines for

¹⁰² ENRRDC Final Report, p. 53, Finding 18.

¹⁰³ ENRRDC Final Report, p. 53.

¹⁰⁴ ENRRDC Final Report, p. 48.

¹⁰⁵ ENRRDC Special Report, p. 9.

¹⁰⁶ Z. Chami, 'The Obligation to Act as a Model Litigant'. *AIAL Forum*, 64, 2010, pp. 55-56.

provision of documents to parliamentary committees, it remains an open question as to what will be the result of non-compliance with the principles imported from the Model Litigant Guidelines.

There is one further and major gap in the Guidelines. They do not provide a mechanism to resolve an impasse where the executive refuses to provide a JIC with a document that the latter considers necessary for its inquiry and is potentially not covered by privilege, but the JIC cannot assess the privilege claim or the relevance to the inquiry because they cannot view the contents. That is, the executive remains the sole arbiter in deciding whether content is withheld. The Guidelines contain the same flaw that Boughey and Weeks identify at the Commonwealth level when writing about Senate powers: '[a]llowing ministers to be the sole judges of whether or not release of a document is in the public interest has obvious implications for the ability of Parliament to hold them to account'.¹⁰⁷

ADDITIONAL POWERS FOR JICS

There are two key areas for improvement to the powers of JICs in the aftermath of the Fiskville inquiry: first clarifying the operation of parliamentary privilege¹⁰⁸ as it applies to requests for documents over which there is a Cabinet-in-confidence or broader executive privilege claim; and second, providing committees with powers for dealing with failures to respond to a request for documents.

These matters could be addressed by drawing from the experience of other jurisdictions where there is greater clarity—particularly New South Wales (NSW) (see next paragraph). Alternatively, a solution may be found in Victoria by borrowing from the approach of the Victorian Auditor-General's Office (VAGO).

¹⁰⁷ J. Boughey and G. Weeks, 'Government Accountability as a "Constitutional Value"', in R. Dixon (ed.), *Australian Constitutional Values*. Oxford: Hart Publishing, 2018, p. 110.

¹⁰⁸ For an overview of parliamentary privilege and its interaction with other privileges, such as executive privilege, see R. Macreadie and G. Gardiner, 'Research Paper An Introduction to Parliamentary Privilege'. Parliamentary Library of Victoria, No.2 August 2010. For an explanation on the powers of the Victorian Parliament to deal with breaches of its privileges, see J. Waugh, 'Contempt of Parliament in Victoria'. *Adelaide Law Review*, 26(1), 2005, pp. 29-53.

There is more clarity surrounding disputes over documents in NSW, a matter over which there has been a High Court decision.¹⁰⁹ NSW also has an ‘independent legal arbiter’ mechanism that allows a ‘Queen’s Counsel, Senior Counsel or a retired Supreme Court judge’ to make a legal assessment of the ‘validity of a claim for privilege’ when the Legislative Council is seeking documents over which a claim of privilege is made.¹¹⁰ For a variety of reasons however, this is not a model that is transferable to Victoria (Boughey and Weeks highlight that the Senate’s and NSW legislature’s powers ‘rest on different foundations’).¹¹¹ A specifically Victorian solution is therefore required.

A possible solution would be to borrow from the well-enshrined, approach used for the audits conducted by the VAGO. There are some similarities in the approach adopted by VAGO and JICs. However, the powers of the Auditor-General and staff under the *Audit Act 1994* (Vic) (Audit Act) provide explicit and better-defined powers over access to documents than those in the *Parliamentary Committees Act 2003*, even when read in conjunction with the 2017 Guidelines.

Under the Audit Act, VAGO has specific powers over documents, including those for which executive privilege is claimed. Specifically, section 11 of the Audit Act provides a VAGO auditor with the power to request and copy documents that are Cabinet-in-confidence in draft form and, importantly, documents that are held by a person although they do not belong to them. This distinction is important, because it extends the power of auditors to request and receive documents that might otherwise be protected as not being controlled or owned by the public servant or entity.

In fulfilling the obligation to disclose these documents to the VAGO, a public servant does not need to comply with the obligations that would otherwise apply in releasing documents (including Cabinet-in-confidence and any other secrecy requirement or restriction on the release of documents imposed by an enactment or rule of law).¹¹²

¹⁰⁹ *Egan v Willis* (1998) 195 CLR 424.

¹¹⁰ A. Twomey, ‘Executive Accountability to the Senate and the NSW Legislative Council’. *Australasian Parliamentary Review*, 23(1), 2008, p. 261.

¹¹¹ J. Boughey and G. Weeks ‘Government Accountability’, p. 111. This was also the conclusion of a Senate Committee inquiry on the subject: Senate Finance and Public Administration References Committee, *Independent Arbitration of Public Interest Immunity Claims*. Commonwealth of Australia, 2010.

¹¹² *Audit Act 1994* (Vic), s 12.

Additionally, the Audit Act has an offence section that makes it an offence to fail to produce documents requested by the VAGO.¹¹³ The construction of the section provides that the offence and penalties can be applied to both a public entity (defined as a body corporate) and to individual public servants.¹¹⁴

Clearly, there are differences in the powers available to JICs and VAGO auditors that are justified by the substantive difference in the type of investigations conducted by them. VAGO investigations are narrower in scope and audits do not extend to investigating questions of policy, policy implementation or government malfeasance. Indeed, it can be argued that importing VAGO powers would be an inappropriate expansion of parliamentary power, primarily because VAGO powers, while wider and deeper, are more narrowly focused. Therefore, providing these types of powers to JICs could unduly affect government decision-making. It would allow members of JICs to debate policy decisions as they are made.

Nevertheless, the recent move towards referring to JICs complex inquiries with a focus on identifying and dealing with systemic and individual failure, as seen in the *Inquiry into the handling of child abuse by religious and other non-Government organisations* and the Fiskville inquiry, clearly require changes to the powers of JICs if JICs are to successfully conduct similar inquiries in the future.

The proroguing of Parliament and the JICs for the 2018 Victorian election provides a new opportunity to review the statutory and policy settings that regulate JICs and introduce changes. These could include amendments to the *Parliamentary Committees Act 2003*, to clarify existing powers and to provide new powers to ensure that future inquiries undertaken by JICs are not subjected to the same challenges faced during the Fiskville inquiry.

CONCLUSION

The Fiskville inquiry, with its focus on document discovery, is the highest profile and most recent example of the challenges that can be faced by JICs. The challenges for JICs undertaking inquiry work is due, in part, to the traditional tension that exists

¹¹³ *Audit Act 1994* (Vic), s 14.

¹¹⁴ *Audit Act 1994* (Vic), s 14(1).

between the parliament exercising an oversight and review function over the executive branch and its performance. This function, as exercised by a JIC, forms part of the broader tension in the parliament-executive relationship that is an essential aspect of the separation of powers inherent in a Westminster system.

One possible interpretation of the actions of the Government during the Fiskville inquiry is that they were aimed at deterring investigation of possible executive government failure. If that is correct, the question of whether these actions to avoid oversight were an appropriate exercise of power within the context of the Westminster tradition is important and requires further investigation. Such investigation is beyond the scope of this article.

What can be addressed here is the question of whether the Fiskville inquiry has changed the way that JICs and executive government interact, particularly when the inquiry is into long-term systemic failure or wrongdoing. Will the updates to the Guidelines ensure that a JIC has adequate and timely access to documents that are necessary for it to complete its inquiries?

The answer is somewhat mixed. The December 2017 Guidelines do provide greater clarity and direction for public servants. However, the executive branch remains in control of how documents are, if at all, provided to JICs. It also retains complete control over how it interprets the operation of its own privilege with respect to those documents.

Thus, while recognising that the new Guidelines are a significant improvement on the earlier Guidelines, they do not overcome all the challenges that faced the Fiskville inquiry—an inquiry that subjected the executive government to scrutiny concerning potential policy or operational failure in important matters. Improvements are required to better manage access to documents as JICs carry out their oversight and investigation role. This article has presented some options for further consideration.

Trust and Political Behaviour

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INTRODUCTION: THE DECLINE IN TRUST

Trust is the most important asset in politics. Trust can generate community and business confidence, leading to economic growth and improved political success for an incumbent government. The more a government is trusted, the more people and business will generally spend and invest, boosting the economy. People are also more likely to pay their taxes and comply with regulations if they trust government. Trust promotes a social environment of optimism, cohesion and national prosperity.

When trust is lost, it is difficult to win back. Where it is eroded, a general malaise can develop that is destructive to the essential fabric of society and operation of democracy. Unfortunately, in Australia and internationally, there has been a growing erosion of trust in politicians and in politics. People are losing trust in institutions including governments, charities, churches, media outlets and big businesses. In a recent Essential Poll, 45 percent of those surveyed said they had no trust in political parties, 29 percent had no trust in state parliaments and 32 percent had no trust in federal Parliament.²

Since 1969, when Australians were first surveyed about their trust in politicians, the proportion of voters saying government in Australia could be trusted has fallen from 51 percent to just 26 percent in 2016, while the number of voters who believe 'people in government look after themselves' has increased from 49 percent to 75

¹ An earlier version of this paper was presented at the Australasian Study of Parliament Group Conference held in Brisbane on 18-20 July 2018.

² Essential Report, Trust in Institutions. 4 October 2017. Accessed at: <http://www.essentialvision.com.au/trust-in-institutions-10>

percent.³ Australians increasingly believe politicians do not make decisions in the public's best interests, but instead favour their own agendas and self-interest.

Levels of trust in government vary around the world. Trust is generally high in Nordic countries and Germany, and low in other established democracies. Analysing global political trust is difficult, as illiberal regimes such as Uzbekistan, China, Azerbaijan, Qatar, Singapore, Indonesia and Malaysia score surprisingly high on levels of trust. This may be because public dissent is more dangerous in these countries or due to high economic growth. Generally, democratic regimes are judged on democratic principles, especially levels of corruption.⁴

Indian Prime Minister Narendra Modi leads one of the most trusted governments in the world, with almost three quarters of Indians saying they have confidence in their national government. Switzerland and Indonesia also enjoy high levels of trust in their government at 82 percent. This compares to only one third of Americans and 43 percent of Australians.⁵

Since 2010, there has been a considerable decline in the popularity of both major parties and the party system in Australia. The 2018 Edelman Trust Barometer showed Australians' average trust in government fell to 35 percent in 2018 from 45 percent in 2016, a fall of 10 percent, similar to Russia and Canada.⁶ The proportion of voters who consistently vote for the same party has declined to its lowest level to date.⁷ This suggests people are making more conscious decisions than in the past when voting for the person or party they want representing them.

³ S. Cameron, and I. McAllister, *Trust, Parties and Leaders: Findings from the 1987–2016 Australian Election Study*. Paper presented as a lecture for the Senate Occasional Lecture Series at Parliament House, Canberra, 25 August 2017. Accessed at: https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/~media/19FA6C4F1A7C46709BB85701CAAE030F.ashx

⁴ T.W.G. van der Meer, 'Political Trust and the "Crisis of Democracy"', in *Oxford Research Encyclopaedia of Politics*, 8 January 2017. doi: 10.1093/acrefore/9780190228637.013.77. Accessed at: <http://politics.oxfordre.com/view/10.1093/acrefore/9780190228637.001.0001/acrefore-e-9780190228637-e-77>

⁵ A. Gray, *A Question of Confidence: The Countries with the Most Trusted Governments*. World Economic Forum. 15 November 2017. Accessed at: <https://www.weforum.org/agenda/2017/11/the-countries-with-the-most-and-least-trusted-governments/>

⁶ Edelman, 2018 Edelman Trust Barometer Global Report, 12 February 2018. Accessed at: http://cms.edelman.com/sites/default/files/2018-02/2018_Edelman_Trust_Barometer_Global_Report_FEB.pdf

⁷ Cameron and McAllister, *Trust, Parties and Leaders*.

When trust in established political parties is damaged, new unknown and untried political parties can emerge. If people distrust the system, they may embrace charismatic leaders or protest parties, potentially leading to increased political instability. We have seen this in the conservative political arena in Australia. Pauline Hanson's One Nation, Cory Bernardi's Australian Conservatives and Dick Smith's Sustainable Australia have evolved and become more popular, largely due to widely shared public disillusionment with traditional political parties. Members of these new parties argue the traditional alternatives no longer represent their views and are unduly influenced by big business (especially mining and property development), unions and overseas interests. People have lost trust in conventional governments acting in their long-term best interests, and seek alternatives that better represent their views and beliefs.

Italy is another good example. Recent world events including refugee crises have had a large impact and many Italians have become sceptical of their relationship with the European Union, especially rules forcing open borders. The resultant unregulated immigration has cost Italy financially while many Italians have continued to struggle since the global economic crisis. This has contributed to a lack of trust in government and paved the way for a newly elected Italian Government full of Eurosceptics who are carefully listening to popular sentiment, a scenario that may become increasingly common throughout the democratic world.

President Trump won the US presidential election by appealing to widespread disillusionment with conventional politics and telling people they could trust him due to his patriotism and apparent success. However, Americans are losing trust in his ability to tell the truth about what is happening in government, with US average trust in government currently at 33 percent.⁸

The UK's separation from the EU, popularly known as Brexit, was also influenced by low levels of trust in government. Many UK citizens no longer trusted the EU Parliament to make decisions on their behalf. They wanted to take back control of government. Brexit may be a costly decision, but many in the UK believe it will better serve their future interests.

⁸ Edelman, 2018 Edelman Trust Barometer.

INFLUENCES ON TRUST

Public perceptions of trust are influenced by:

1. Parliamentary and other institutional frameworks, which can provide protections and encourage an environment conducive to building trust.
2. People's socialisation and public mindset.
3. The actual behaviour of politicians.

Each of these three factors influences each other and the overall systemic level of trust in politics. This paper examines each of them, particularly focusing on the third, with examples from federal, state and local government.

Institutional protections

The first of the three main factors that influence trust in politics are parliamentary and other institutional frameworks. Strong checks and balances that allow for public involvement and scrutiny need to be enforced by parliaments to counter potentially undue influence by wealthy individuals, big business, unions and foreign interests.

If the public loses trust in individual politicians or political parties, their residual trust in political institutions such as parliaments will generally enable a democracy to continue to operate reasonably. Parliaments provide an environment for building trust. They do this through their transparent, accountable and ethical processes that mitigate the risk of inappropriate behaviour of politicians and parties within the parliamentary system.

Relevant institutional protections include anti-corruption laws, fundraising or donation laws, regulation of lobbyists, open government measures, as well as accountability oversight by Ombudsmen, Auditor-Generals, anti-corruption bodies and parliamentary committees. Such measures were covered in considerable detail in my 2016 ASPG conference paper, which highlighted areas where institutional protections at a parliamentary level should be reinforced through reform to increase trust.⁹ Recommendations included a federal ICAC, fixed election cycles, tighter and

⁹ J.R. O'Dea, Out of the Bear Pit—A Perspective from NSW. Paper presented at Australasian Study of Parliament Group Annual Conference, Adelaide, South Australia, 5-7 October 2016. Accessed at: <https://www.aspg.org.au/wp-content/uploads/2017/07/Paper-ODea-Jonathan.pdf>

more consistent donation laws, improved parliamentary processes and greater public expenditure transparency.

Sometimes trust in institutions relies on effective communication. When media outlets do not publish confidence-inspiring information, more 'newsworthy' but potentially damaging information or events may dominate the news and erode trust. Parliaments arguably should become more proactive in their dissemination of trust-promoting information to the public and not rely on traditional media support.

Late last year the NSW Government reiterated its commitment to transparency by embracing new technology to empower people with accurate information. It introduced a draft Model Code of Meeting Practice, which was recently open for consultation with the local government sector. It focuses on improving transparency and public involvement in council meetings and the decision-making process, by proposing mandatory webcasting of ordinary meetings by all NSW Councils. The NSW Parliament currently webcasts all parliamentary sittings, but this could extend to web/podcasting of committee hearings to help increase community confidence in elected representatives.

Public mindset and socialisation influences

Individual and group perceptions of public figures and institutions have significant influences on political trust. Every individual has a unique combination of cultural, socio-economic and educational backgrounds, with varied life experiences that shape their attitudes towards politicians and political institutions.

In the Australian context, it seems urban dwellers, religious people, professionals and managers, highly educated people, males, as well as those with a higher self-perceived socio-economic status all express greater trust in MPs and public officials.¹⁰ Interestingly, individuals with larger social networks tend to have lower levels of political trust, believing the treatment people receive from public officials depends on whom they know.

¹⁰ X. Huang, Who Tends to Trust in Australia? An Empirical Analysis of Survey Data. Paper presented at TASA 2012 Conference Proceedings: Emerging and Enduring Inequalities. Annual Conference of The Australian Sociological Association, The University of Queensland, 26-29 November 2012. Accessed at: <https://tasa.org.au/wp-content/uploads/2012/11/Huang-Xianbi1.pdf>

A majority of Australians believe elected politicians have low and declining ethical standards of honesty and integrity. Museum of Australian Democracy and Institute for Governance and Policy Analysis surveys found those who identified with the political right-wing, the politically engaged and those who spoke a language other than English were substantially more likely to assess elected politicians' ethical standards as high. Older Australians and those on a low income were more likely to rate their standards as low. Younger people, those aligned with the political left, Indigenous people and those who speak a language other than English were also significantly more likely to say these standards are improving.¹¹

A lack of parliamentary representation from traditionally under-represented groups continues to contribute to an erosion of trust in politicians. The fact that women, young people and people from diverse cultures are not well represented in parliaments has been another top reason cited by Australians for the steady decline in citizen trust in governments since 2007.¹²

In a modern democracy, citizens play an important role in scrutinising the actors and mechanisms of government. Political awareness, healthy scepticism and sensible critique of decisions are all traits that strengthen representative democracy. However, a more dangerous cynical malaise of disengagement and active hostility towards politicians and the political system increasingly characterises the public arena.

There are a number of external economic factors that also affect levels of trust in politicians and governments worldwide. As a general rule, trust increases with better property rights, more extensive labour market regulations, lower levels of corruption, higher levels of education and income, and lower unemployment. India, China and Indonesia all enjoy high levels of trust in government. They also share a trending reduction in poverty levels and a rapidly expanding middle class. They believe their lives are getting better as governments are responding well to their needs.

Australia has a highly educated population with solid property rights, extensive labour market regulations, comparatively low levels of perceived corruption, low

¹¹ M. Evans, M. Halupka and G. Stoker, *How Australians Imagine Their Democracy: The 'Power of Us'*. Institute for Governance and Policy Analysis, University of Canberra, 2017. Accessed at: http://www.governanceinstitute.edu.au/magma/media/upload/publication/408_Democracy100-report-IGPA.pdf

¹² Evans, Halupka and Stoker, *How Australians Imagine Their Democracy*.

unemployment rates and relatively high incomes and growth prospects. Yet trust in politicians and government is low. Why? It could be because of perceived cost of living issues in Australia. The inability to buy a house, the high cost of electricity, wage stagnation, property sales to foreign owned entities, limited employment opportunities for young people and financial difficulties for self-funded retirees all contribute to lifestyle challenges and potentially a lack of trust in government. People question whether the government is listening to them.

Political behaviour

In the digital age of instant gratification and denigration, it is tempting for politicians to pursue short term and minor wins over more substantial long-term strategic governance plans. The 24/7 media cycle constantly demands new content for publication. An absence of policy announcements may be viewed as government inaction. However, many of Australia's problems are complex and multifaceted and cannot be solved by politicians expressing a thought bubble in less than 280 characters. They require intelligent, sober analysis and patient perseverance.

Despite the seductive appeal of a short-term media focus, a lack of serious policy discussion and thoughtful, collaborative action ultimately undermines public trust in politicians to deliver. This dynamic is further complicated by the age-old attraction of masking a lack of substance with bravado and a lack of direction with spin. Some would argue Donald Trump has epitomised this art with his campaign slogan 'Make America Great Again' and his unconventional leadership. Trump's celebrity and political rise capitalised on a mounting sense of public alienation from the 'Washington elites' and disengagement from highly polarised media outlets. This populist phenomenon serves as an omen for democracies that do not enjoy the trust of their citizens.

The influence of social media on political trust cannot be understated. 'Fake news' investigations have revealed that Russian automated social media accounts spread misinformation to up to 126 million Americans on Facebook both during and after the 2016 US presidential election.¹³ There is likewise a growing threat of players

¹³ O. Solon and S. Levin, 'Divisive Russian-Backed Facebook Ads Released to the Public'. *The Guardian*, 2 November 2017. Accessed at: <https://www.theguardian.com/technology/2017/nov/01/facebook-ads-russia-us-election-fake-news-released-public>

attempting to manipulate Australian elections and destabilise our democracy through micro-targeting voters with emotional messages on social media.¹⁴

In March 2018 it was revealed the data analytics firm used in both the Brexit campaign and Trump's election campaign, Cambridge Analytica, harvested millions of Facebook profiles of US voters. It then used this data to build a software program to predict and influence voter behaviour. This allowed the development of a marketing campaign which could identify swinging voters, target them and ultimately send messages which resonated with them.¹⁵

Former Facebook executive, Chamath Palihapitiya, recently said, 'The short-term, dopamine-driven feedback loops that we have created are destroying how society works: no civil discourse, no co-operation, misinformation, mistruth'.¹⁶ The paradox of the digital age is that people have access to more information than ever before in human history, yet are more entrenched in their opinions.¹⁷

The very structure and engineering of social media platforms can often reward misleading or inconsequential viewpoints to the detriment of other reasoned perspectives. Fifty-two percent of Australians indicate that they get some of their news through social media and a growing 17 percent say that social media is their main source of news. However there is discord between the method of news consumption and trust, as only 24 percent of Australians think they can trust social media news most of the time.¹⁸

¹⁴ N. Miller, "'Targeting Trust': How Russia, and Soon China, Will Undermine Us', *Sydney Morning Herald*, 15 June 2018. Accessed at: <https://www.smh.com.au/world/europe/targeting-trust-how-russia-and-soon-china-will-undermine-us-20180615-p4zlm1.html>

¹⁵ C. Cadwalladr and E. Graham-Harrison, 'Revealed: 50 Million Facebook Profiles Harvested for Cambridge Analytica in Major Data Breach'. *The Guardian*, 18 March 2018. Accessed at: <https://www.theguardian.com/news/2018/mar/17/cambridge-analytica-facebook-influence-us-election>

¹⁶ Quoted in A. Wang, (2017, December 13). Social Media Destroying Society with "Dopamine-Driven Feedback Loops": Ex-Facebook VP'. *The Sydney Morning Herald*, 13 December 2017. Accessed at: <http://www.smh.com.au/world/social-media-destroying-society-with-dopaminedriven-feedback-loops-exfacebook-vp-20171212-h03jfo.html>

¹⁷ G. Coombes, 'Trust in the Socialized Age'. Blog post, 24 February 2017. Accessed at: <https://www.edelman.com/post/trust-socialized-age/>

¹⁸ M. Liddy, 'Trust in the News is Up—But There's Still Only a 50-50 Chance You'll Trust Me on That'. ABC News, 15 June 2018. Accessed at: <http://www.abc.net.au/news/2018-06-14/trust-in-news-rising/9867178>

People who consume a lot of media often trust government less than those who use media less or not at all.¹⁹ This is a particularly challenging environment for the promotion of political trust. Yet it remains vital to communicate the integrity and vision of politicians for contemporary politics to successfully address the complex issues of modern society. The most effective way to accomplish this is for politicians and parliaments to effectively work with the media to deliver positive key messages to the electorate.

Brexit promised a similar refrain to Trump's 'Take Back Control', as well as controversial 'Leave' bus advertisements pledging to fund the NHS with the £350 million allegedly otherwise sent to the EU. After an apparent failure to deliver the funds promised for the NHS, those within the 'Leave' camp, including UK Foreign Minister Boris Johnson and Nigel Farage, later disowned their words by insisting it was 'wilful distortion' to interpret their advertisement as promising to give £350 million to the NHS. They said they could not guarantee the funds would be allocated to public health.²⁰ In the wake of this and struggling EU negotiations, dissatisfaction within both the 'Remain' and 'Leave' camps continues to grow, sowing political mistrust and uncertainty amongst British voters.²¹ Though exaggerated promises and overblown rhetoric can quickly capture public imagination and turn the tide of opinion polls, the truth generally prevails in the long run.

Australians believe the rise of the career politician has also contributed to the steady decline in citizen trust in government since 2007.²² Work experience outside of the political realm educates aspiring politicians in public social norms and values, and exposes them to differing points of view. The echo chambers of ministerial and

¹⁹ J. Pietsch and A. Martin, 'Media Use and Its Effect on Trust in Politicians'. *Australasian Parliamentary Review*, 26(1), 2011, pp. 131–141.

²⁰ K. McCann, 'Nigel Farage: £350 Million Pledge to Fund the NHS was 'a Mistake'. *The Telegraph*, 24 June 2016. Accessed at: <http://www.telegraph.co.uk/news/2016/06/24/nigel-farage-350-million-pledge-to-fund-the-nhs-was-a-mistake/>; J. Lichfield, 'Boris Johnson's £350m Claim is Devious and Bogus. Here's Why'. *The Guardian*, 18 September 2017. Accessed at: <https://www.theguardian.com/commentisfree/2017/sep/18/boris-johnson-350-million-claim-bogus-foreign-secretary>

²¹ A. Matthews-King, 'Budget 2017: NHS Trusts Given Extra £350m for Entire Winter, Despite Brexit Bus Promising £350m a Week'. *The Independent*, 22 November 2017. Accessed at: <http://www.independent.co.uk/news/health/budget-2017-nhs-funding-trust-winter-brexit-bus-promise-350-million-leave-eu-hospitals-staff-a8069481.html>

²² Evans, Halupka and Stoker, *How Australians Imagine Their Democracy*.

political offices, unions and party rooms often reinforce preconceived beliefs and can discourage robust discussion. It is therefore important politicians possess varied life and work experiences. A more inclusive and democratic candidate selection process might encourage preselection of more diverse, well-rounded political candidates that truly represent the communities they live in, and who are committed to acting in the best interests of their constituents over themselves.

There is no doubt the constant turnover of Prime Ministers in Australia over the last decade, especially where instigated by internal divisions, has further contributed to public disillusionment and loss of trust in the political system.

EXAMPLES OF BEHAVIOURAL CHARACTERISTICS

Some attitudes and behaviours of politicians threaten to undermine the community's trust in them and parliaments. Desired behavioural characteristics that engender and cultivate public trust include: acting with integrity and honesty, demonstrating openness and transparency, delivering competent and fair performance, and collaborating in the public interest.

This paper will now examine the importance of these types of behaviours in building trust, with reference to recent Australian political history.

Acting with integrity and honesty

Personal integrity is vital for the modern public figure. The essence of integrity is staying true to one's promises, values and beliefs, even under mounting pressure to capitulate.

The perceived loss of integrity suffered by former Prime Minister Julia Gillard over the carbon pricing issue severely impacted Australians' trust in her leadership and irrevocably damaged her political standing. Then Opposition Leader Tony Abbott and conservative media outlets unearthed a damning 2010 pre-election press conference where she had emphatically declared, 'There'll be no carbon tax under the Government I lead'.²³ From an initial explanation that carbon pricing was 'effectively

²³ 'PM Says No Carbon Tax Under Her Govt'. *The Sydney Morning Herald*, 16 August 2010. Accessed at: <http://www.smh.com.au/breaking-news-national/pm-says-no-carbon-tax-under-her-govt-20100816-126ru.html>

like a tax', to her admission that it was indeed a 'carbon tax', public support for the scheme eroded from 43 percent at the time of her election to 34 percent by the time of implementation.²⁴

Abbott gained cut-through to the Australian public with a simple slogan, 'She lied', and Gillard was dubbed 'Juliar' by radio shock jock Alan Jones. The damage to her reputation contributed to her downfall and replacement by a resurgent Kevin Rudd in June 2013. Similarly, at the 2007 National Climate Change Summit, Kevin Rudd declared that climate change was the 'the great moral challenge of our generation'.²⁵ He later abandoned this ideal due to political pressure, undermining his credibility as Prime Minister before he lost office the first time. Economist Ross Gittins insightfully commented on the fracturing of public trust: 'If ever there was a case where the quest for personal, commercial and party advantage is damaging our trust in politicians and the media, it's the unending brawling over the carbon tax.'²⁶

Abbott then inflicted self-damage once he became Prime Minister by breaking his election promises to reduce the national deficit with 'no cuts to education, no cuts to health, no change to pensions, no change to the GST' and 'no cuts to the ABC or SBS'.²⁷ The first Hockey-Abbott budget decreased spending for education, health, pensions, the ABC and SBS, and proposed GST changes. This generated a strong public backlash.²⁸ In 2014, the Edelman Australia Trust Barometer dropped from 56 percent at the time of Abbott's election to 49 percent after the budget, the third largest decline of trust in government in the world that year.

The public questions the integrity of politicians who trigger by-elections during a parliamentary term without sufficient justification. In that respect, State Premiers should help establish appropriate behavioural standards. Former NSW Premiers Mike

²⁴ S. Crosby, *The Trust Deficit*. Carlton: Melbourne University Press, 2016.

²⁵ T. Wright, 'The Greatest Challenge of Our Time Now in the Freezer'. *The Sydney Morning Herald*, 27 April 2010. Accessed at: <https://www.smh.com.au/politics/federal/the-greatest-challenge-of-our-time-now-in-the-freezer-20100427-tp8t.html>

²⁶ R. Gittins, 'If Trust is Lost, Relationships Fracture and All May Not Be Forgiven'. *The Sydney Morning Herald*, 20 July 2011. Accessed at: <http://www.smh.com.au/federal-politics/political-opinion/if-trust-is-lost-relationships-fracture-and-all-may-not-be-forgiven-20110719-1hn1f.html>

²⁷ 'No Cuts to the ABC or SBS: Abbott'. SBS, 30 January 2014. Accessed at: <https://www.sbs.com.au/news/no-cuts-to-the-abc-or-sbs-abbott>

²⁸ Crosby, *The Trust Deficit*.

Baird and Kristina Keneally resigned from Parliament upon losing their leadership positions. This caused costly and inconvenient mid-term by-elections in their seats, arguably breaching commitments to constituents and diminishing public trust. In contrast, former Premiers Barry O'Farrell and Nathan Rees completed their terms as Members of Parliament after they lost the NSW leadership. Their approach better reflects the integrity of politicians honouring an election commitment to serve a local electorate.

Politicians are empowered to make decisions in the best interests of the public and it is crucial that governance is not corrupted by undue influences. While bad behaviour is certainly not the preserve of any particular political party, the corruption headlines surrounding the behaviour of former NSW Labor Ministers, especially Eddie Obeid and Ian McDonald, had a devastating effect on trust levels in NSW politics.

Obeid, a NSW Member of the Legislative Council, used his factional leadership power to guide policy, fundraise, and control pre-selections and MP promotions to the frontbench. Diary entries by Obeid presented to the ICAC hearings showed a revolving door of developers, union bosses, and business figures meeting with him.

Obeid was shown to have influenced the State Maritime Authority over Circular Quay leases without revealing his family interests in a number of these leases. Consequently Obeid was sentenced to five years jail for misconduct in public office. The public was justifiably angry at his advancing private business dealings through his parliamentary position, but some trust in the parliamentary system was restored when he received a jail sentence.²⁹

In March 2017 former Minister Ian McDonald was found guilty of criminal misconduct and sentenced to 10 years jail over his decision to grant a mining licence to a company run by a former union boss. McDonald, Obeid (and one of Obeid's sons) have all also been charged with conspiracy over their alleged involvement in this coal deal. The hearing is set for March 2019 and is predicted to take 6 months.³⁰

²⁹ M. Whitbourn and K. McClymont, 'Eddie Obeid and Son Moses Charged over \$30 Million Coal Deal'. *The Sydney Morning Herald*, 19 July 2016. Accessed at: <https://www.smh.com.au/national/nsw/eddie-obeid-and-son-moses-charged-over-30-million-coal-deal-20160706-gpzyvcv.html>

³⁰ N. Chettle and R. Stuart, 'Ian Macdonald Jailed for 10 Years for Misconduct in Public Office, John Maitland Also Imprisoned. ABC News, 2 June 2017. Accessed at: <http://www.abc.net.au/news/2017-06-02/macdonald-and-maitland-jailed-over-mining-licence-deal/8580914>

Corruption has potentially dire effects on public trust, and politicians must strive to always act with integrity, consistent with strong public expectations of accountability and honesty.

Demonstrating openness and transparency

Politicians should be inclusive and sincere. They are elected in good faith and should act openly to retain trust. A positive example of this was when then NSW Premier Mike Baird went to the 2015 election with a plan to divest electricity infrastructure and use the proceeds to improve transport, health, education and other government services and infrastructure. He was honest and upfront about the Government's intention and the electorate rewarded him by re-electing the Coalition Government, despite the unpopularity of the long term lease of the 'poles and wires'.³¹

However, when Mike Baird unexpectedly banned greyhound racing in NSW he was not as open in indicating the Government's intention before announcing a decision. In response, the electorate was not kind and this decision led many in NSW, including some in his own Government, to lose trust in him. As the saying goes, 'trust takes years to earn, seconds to break and forever to repair'.

Information should be disseminated through both traditional and online media to convey justifications for multibillion dollar government decisions, especially in light of competing priorities. It is also important for politicians to be inclusive. They should listen to, and represent, the diversity of people and views within their electorates. Actively listening to community views and genuinely engaging with the public generally leads to higher levels of trust and goodwill, and enables politicians to discern policies more likely to achieve positive outcomes for a broader cross-section of the community.

Consensus conferencing or citizens' juries are examples of intensive public engagement strategies that invest significant resources into representative groups of citizens reaching a deliberated outcome. It is not always practicable or necessary to use such mechanisms, but a transparent process can help to consider complex issues affecting a particular community.

³¹ M. Wade and S. Nicolls, 'Mike Baird's Electricity Dilemma: Popular Premier Selling a Toxic Electricity Privatisation Policy'. *The Sydney Morning Herald*, 7 June 2015. Accessed at: <https://www.smh.com.au/national/nsw/mike-bairds-electricity-dilemma-popular-premier-selling-a-toxic-electricity-privatisation-policy-20150306-13x13f.html>

As Chair of the NSW Public Accounts Committee in 2012, I led an inquiry into the Economics of Energy Generation. As part of this inquiry the Committee accepted a proposal from newDemocracy to use deliberative democracy processes as part of the Committee's stakeholder engagement. The Committee collaborated with the newDemocracy Foundation to run citizens' policy juries comprising randomly selected voters. They heard evidence from experts, deliberated and made findings which were incorporated into the Committee's final report to Parliament. The citizens' jury findings valuably informed the Committee of the public's educated views on different types of energy generation and other aspects of managing electricity, including demand management initiatives. Other parliamentary committees could incorporate this type of deliberative process in future inquiries and encourage citizens to be more active in the decision-making process. Using citizens' juries in committee proceedings allows groups of citizens to constructively work together by engaging with policy experts and legislators to learn, innovate and recommend solutions both from and for their communities.³²

In 2016, newDemocracy oversaw a large public deliberation in South Australia on nuclear waste storage, encouraging non-government organisations or businesses to work with Government and the community to consider policy issues. Two thirds of the citizens' jury rejected the Nuclear Fuel Cycle Royal Commission's finding and refused South Australia storage of high-level nuclear waste 'under any circumstances'. The Premier subsequently abandoned the proposal in June 2017. This behaviour engendered trust by including the public in the decision-making process and delivering on their preferred outcome.³³

Genuine public engagement allows a clear representation of wider community views, above the partisan views of those with vested interests. Inclusion is integral to the success of generating public trust in politicians. One way to promote this is through blockchain technologies, which are increasingly being touted as efficient, safe and revolutionary in their ability to securely register and store votes. Some argue the introduction of this technology will enable citizens to enjoy a more interactive

³² Legislative Assembly, NSW Public Accounts Committee, *The Economics of Energy Generation*. Report no. 6/55, November 2012.

³³ South Australia's Nuclear Citizen's Jury, South Australia's Citizen's Jury on Nuclear Waste. *Final Report*, November 2016. Accessed at: <http://assets.yoursay.sa.gov.au/production/2016/11/06/07/20/56/26b5d85c-5e33-48a9-8eea-4c860386024f/final%20jury%20report.pdf>

relationship with their parliaments and potentially allow the public to digitally vote on individual Bills.

More conscience votes of parliamentarians could be guided by a popular vote, as occurred with the same sex marriage plebiscite. These types of votes could be administered with the use of blockchain voting. If everyone was able to participate in conscience votes, maybe trust in government would increase overall. However, while this might be democratically progressive, certain risks warrant careful consideration within the parliamentary framework. For example, it may lead to budget over-expenditure and selective interest groups might unduly generate vote swaying via social media, direct email communication and vote trading.

Delivering competent and fair performance

It is essential for politicians to demonstrate they can deliver under pressure, through competent and fair performance. Former Prime Minister Kevin Rudd and Treasurer Wayne Swan's economic management during the global financial crisis is a good example. After the global downturn from December 2008, a \$10.4 billion stimulus package was introduced, which included cash handouts for eligible Australian individuals, and a second stimulus package of \$41.5 billion occurred in February 2009.

Nobel Prize winner and former World Bank Chief Economist, Joseph Stiglitz, commended Australia on the size, design, timing and distribution of the stimulus packages.³⁴ Australia was the only advanced economy to not experience a technical recession during the tumultuous global upheaval, in part due to the Government's apparently competent financial management. This increased the public's trust in the Government's leadership, and partly explains Rudd's popularity at the time.

The current NSW Government practises sound economic management, in contrast with the 'budget black hole' left by the previous Labor Government.³⁵ For four years up to July 2018, the CommSec *State of the States* report ranked NSW in first place, having inherited a ranking from NSW Labor of last place of all the states and territories. Competent economic management demonstrates a government's

³⁴ Crosby, *The Trust Deficit*, p. 128.

³⁵ S. Nicholls, 'Labor "Cooked the Books"'. *The Sydney Morning Herald*, 29 March 2011. Accessed at: <http://www.smh.com.au/nsw/state-election-2011/labor-cooked-the-books-20110328-1cdjl.html>

commitment to the well-being of NSW citizens, which is reciprocated through a higher level of trust in government. The elected Members who serve in a government should also maintain effective oversight over public servants, ensuring the public service efficiently manages and delivers outcomes that are in the public interest.

Fairness and delivering on promises is vital for trust. The NSW solar scheme implemented by the NSW Labor Government in 2010 was unsustainable and heavily criticised by the NSW Auditor General as financially irresponsible and subject to cross subsidies.³⁶ The way the scheme was handled by the new O'Farrell Government in 2011 honoured the promised policy despite pressure to scale it back. Many NSW residents had made a large financial commitment to purchase solar panels under the scheme and the Government recognised the faith many people placed in the policy. The new Government met the prior Government's commitment to those who had already signed up, but reduced potential benefits for those who entered new contracts. This fairly allowed more people to pursue solar solutions and responsibly managed the future of the industry, while not retrospectively removing rights.

Collaborating in the public interest

An effective government is underpinned by collaboration at all levels of the political system. Co-operation across the political spectrum and alignment between different levels of government generally leads to effective policy outcomes. When the public observes politicians from all backgrounds dealing with each other in good faith on key issues, they are more inclined to trust the democratic workings of government and politicians themselves.

The recently established Board of Treasurers formed across all states and territories signifies a collaborative approach to Australia's financial management. The inaugural meeting held in November 2017 discussed productivity reforms, health and education funding and the States' relationship with the Commonwealth.³⁷ This federal group promotes constructive dialogue between states and territories and with the Federal

³⁶ NSW Auditor General (2011). Special Report, Solar Bonus Scheme. NSW Audit Office.

³⁷ NSW Treasury, Board of Treasurers. Accessed at: <https://www.treasury.nsw.gov.au/board-treasurers>.

Government. The Board should help improve the quality of decision-making by respective treasuries across Australia and increase the level of public trust.

There has also been a strong partnership between federal and state governments during the transition to the new model of disability services delivery, with the National Disability Insurance Agency and National Disability Insurance Scheme (NDIS). NSW was the first state to sign up to the NDIS and more than 85,000 people in NSW are now benefitting from the scheme, with capacity for up to 140,000 people when fully operational.³⁸ Comprehensive planning and ongoing collaboration between different levels of government assists a successful transition to individualised NDIS funding packages. Ultimately, the aim of delivering well-informed, integrated care for people with disabilities and support for their families and carers will be better served through a coordinated process.

Although it may take longer and use extra resources to reach consensus decisions using collaborative methods, the public is more likely to appreciate politicians' coordinated efforts to reach robust solutions and trust them to govern well. So collaboration can be a key attribute of a trustworthy politician.

CONCLUSION

The decline of trust in parliaments, politics and politicians is worth serious consideration. Though institutions and the public's experiences and perceptions play a large role in this decline, the attitudes and behaviours of politicians themselves ultimately underpin the fabric of trust between people and government. Model politicians exhibit trust-building behaviours of acting with integrity and honesty, demonstrating openness and transparency, delivering fair and competent performance and collaborating in the public interest.

By acting in a trustworthy manner, politicians can show the Australian public they are fit to govern, legislate and represent the best interests of the public. Parliaments also play an important part in engendering trust by passing measures to foster economic prosperity, address governance risks and fairly assist disadvantaged people. To

³⁸ NSW Family and Community Services, 'NSW the First State to Complete the Rollout of the NDIS', 1 July 2018. Accessed at: <https://www.facs.nsw.gov.au/about/media/releases/archive/nsw-the-first-state-to-complete-the-rollout-of-the-ndis>

regain the trust, confidence and respect of the community, we need demonstrated action and changes in behaviour that resonate with grassroots community members. If Australian politicians and parliaments increasingly adopt these behaviours, a consequent rise in political trust should strengthen the social fabric of society and promote our progress as a nation.

Chronicles

From the Tables – July 2017 to June 2018

Glenn Ryall

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AUSTRALIAN HOUSE OF REPRESENTATIVES

Matters relating to section 44 of the Constitution and consequent by-elections

Matters relating to s 44 of the Constitution and the citizenship status of Members and Senators continued to affect both Houses of the Commonwealth Parliament in the latter half of 2017 and 2018. In the House of Representatives, by-elections were held in December 2017 in the divisions of New England and Bennelong following the disqualification of the Hon Barnaby Joyce and the resignation of Mr John Alexander OAM over questions around their citizenship status. Mr Joyce was successful in the New England by-election and was sworn in on 6 December, the second last sitting day for 2017. Mr Alexander was successful in the Bennelong by-election and was sworn in when the House met in February.

On 4 December 2017, the House agreed to a resolution requiring each Member to provide a statement in relation to citizenship to the Registrar of Members' Interests, by no later than 9 am the following day. A similar resolution regarding a citizenship register for Senators had earlier been agreed to by the Senate during a Senate-only sitting on 13 November. The statement was to include the Member's declarations as to Australian and foreign citizenship, relevant considerations and evidence, as specified in the resolution. The resolution provided for the Registrar to publish the register and any alterations or additions on the Parliament's website. The resolution also provided that referral of a Member to the Court of Disputed Returns could be moved without notice by a Minister or the Manager of Opposition Business. The Citizenship Register was published on the Parliament's website late on the afternoon of 5 December.

On 6 December, the Manager of Opposition Business, pursuant to the resolution described above, moved to refer certain questions regarding the citizenship of nine

Members (including Government Members, Opposition Members and one minority party Member) to the Court of Disputed Returns. Debate ensued and when the question was put, a division was called and the numbers for the 'ayes' and 'noes' were equal. The Speaker gave his casting vote with the 'noes' in accordance with the principle that decisions should not be taken except by a majority.

Immediately following defeat of this motion, the Manager of Opposition Business moved a further motion, pursuant to the same resolution of the House, to refer certain questions regarding the place of the Member for Batman (Mr David Feeney) to the Court of Disputed Returns. The motion carried on the voices. The following day, the Speaker presented a copy of his letter and attachments to the High Court relating to the reference regarding the qualification of Mr Feeney.

The Member for Batman, Mr Feeney, resigned from the House on 1 February 2018, prior to the High Court, sitting as the Court of Disputed Returns, considered the matters referred to it by the House on 6 December 2017. The Court subsequently ruled that Mr Feeney's seat was vacant by reason of s 44(1). On 7 February, the Speaker issued a writ for the by-election with the polling date of 17 March 2018. Ms Ged Kearney was elected as the new Member for Batman and sworn in on 26 March.

Following the decision of the Court that Senator Katy Gallagher was incapable of being chosen or sitting as a Senator under s 44(1), the Members for Braddon, Fremantle and Longman informed the House of their intention to resign because of the relevance of the decision to their own circumstances. None of these Members, or the Member for Mayo, appeared in the Chamber or voted in a division after announcing their intention to resign.

The Members for Braddon, Fremantle, Longman, and the Member for Perth (who had signalled his intention to resign the previous week for different reasons) formally resigned on 10 May. In announcing their resignations, the Speaker said he would consult with party leaders in the usual way and inform the House of the dates fixed for by-elections. The Member for Mayo submitted her resignation on 11 May.

On 18 June 2018, the Speaker informed the House that he had issued writs on 15 June for the election of Members for the divisions of Braddon, Fremantle, Longman, Mayo, and Perth. The Speaker stated the rolls would close on 22 June, nominations on 5 July, and the date of polling would be 28 July 2018.

Passage of the Marriage Amendment Bill

On 4 December 2017 a message from the Senate was reported transmitting for the concurrence of the House the Marriage Amendment (Definition and Religious Freedoms) Bill 2017. Following the bill's introduction, the House granted leave for the second reading debate to take place immediately.

Standing orders were suspended on the next two days to enable the House to sit beyond its usual sitting hours, so as to enable as many Members who wished to contribute to the second reading debate on the bill to do so. The second reading debate concluded on the morning of 7 December when the Member for Leichhardt (Mr Warren Entsch) summed up the debate. In total, 125 Members contributed to the debate on the second reading of the bill, which went for over 21 hours.

Following the consideration in detail stage, the Prime Minister was granted leave to move the third reading immediately. He briefly addressed the motion, as did the Leader of the Opposition and the Member for Melbourne (Mr Adam Bandt). The question that the bill be read a third time was put and a division was called. There being only four Members voting with the 'noes' the Speaker declared the question carried and the bill was read a third time.

Division retaken after Government loses vote on floor of the House

On 4 December, the House considered a message from the Senate regarding a Senate resolution calling on the Government to 'accept New Zealand's offer to resettle 150 refugees and negotiate conditions similar to the United States refugee resettlement agreement.' The Senate requested the concurrence of the House in the resolution.

The Leader of the House moved that the resolution be disagreed to. During the ensuing debate, the Member for Melbourne (Mr Bandt) moved an amendment that the resolution of the Senate be agreed to. At the conclusion of debate, the question on the amendment was put and carried on division with 73 'ayes' and 72 'noes', with Government Members voting 'no'. The Leader of the House moved immediately that the House divide again in accordance with standing order 132.

The Manager of Opposition Business raised a point of order, claiming that there had been no confusion, error or misadventure, as required by the standing order. The Speaker stated that he did not concur. Following a closure of debate, the motion that the House divide again was carried on division.

Prior to the House dividing again on Mr Bandt's amendment, the Speaker stated that the Members who had missed the vote should explain to the House that they did so

through one of the reasons provided in the standing orders. The two Government Members each apologised to the House for missing the vote due to misadventure. The question on the amendment was accordingly put a second time, and negatived on division. The question on the original motion—that the resolution be disagreed to—then carried on division.

AUSTRALIAN SENATE

Referrals of Senators to the High Court

The High Court, sitting as the Court of Disputed Returns, considered an unprecedented number of referrals in relation to the eligibility of Senators under section 44 of the Constitution (see Table 1). Questions arose relating to the qualifications of Senators under s 44(i) of the Constitution, which prohibits ‘foreign allegiances’ and disqualifies any person who ‘is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power’.

Table 1. Referrals of Senators to the High Court, 2016 and 2017

Senator	Date referred	Constitutional provision	Outcome
Culleton	7 Nov 2016	s 44(ii): conviction for offence 1+ years imprisonment	Disqualified
Day	7 Nov 2016	s 44(v): direct or indirect pecuniary interest with Commonwealth	Disqualified
Canavan	8 Aug 2017	s 44(i): subject or citizen of a foreign power	Not disqualified
Ludlam	8 Aug 2017	s 44(i): subject or citizen of a foreign power	Disqualified
Waters	8 Aug 2017	s 44(i): subject or citizen of a foreign power	Disqualified
Roberts	9 Aug 2017	s 44(i): subject or citizen of a foreign power	Disqualified
Nash	4 Sep 2017	s 44(i): subject or citizen of a foreign power	Disqualified
Xenophon	4 Sep 2017	s 44(i): subject or citizen of a foreign power	Not disqualified
Parry	13 Nov 2017	s 44(i): subject or citizen of a foreign power	Disqualified
Lambie	14 Nov 2017	s 44(i): subject or citizen of a foreign power	Disqualified
Kakoschke-Moore	27 Nov 2017	s 44(i): subject or citizen of a foreign power	Disqualified
Gallagher	6 Dec 2017	s 44(i): subject or citizen of a foreign power	Disqualified

In late October 2017, the High Court made orders and delivered its judgment on questions concerning the qualification of the six Senators (and one Member of the House of Representatives) referred to the High Court in August and September. In November, Senator Stephen Parry, the President of the Senate, received advice from the British Home Office that he held British citizenship by descent. He resigned his office and his seat in writing to the Governor-General, as provided for by s 17 of the Constitution. On 14 November, Senator Jacqui Lambie made a statement to the Senate outlining similar circumstances and resigned her place. Both matters were referred to the High Court, in the same manner and form as other recent cases.

In the final sitting fortnight of 2017 there were two further referrals. Senator Skye Kakoschke-Moore resigned in light of information she had received from British authorities while preparing material for the new citizenship register. Questions relating to the resulting vacancy were referred to the Court on 27 November. Questions relating to the qualification of Senator Katy Gallagher under s 44(i) were referred to the Court on 6 December after she made a statement to the Senate about the steps she had taken to renounce British citizenship in advance of the 2016 election and the delay in authorities confirming her renunciation.

The focus of these matters was the prohibition on Senators and Members holding a foreign citizenship *from the time they nominate as candidates for election*. The question engaged by Senator Gallagher's case is whether a person is eligible to stand for election where the person has taken all necessary steps to renounce, but foreign law—or, possibly, foreign bureaucracy—has not operated to effect a change in status prior to the date of nomination.

In a further demonstration of the scope of operation of section 44, Senator Jim Molan was declared elected, after the High Court found that the candidate first identified in a special count of New South Wales ballots to replace former Senator Fiona Nash was incapable of being chosen, as she had recently accepted an appointment to the Administrative Appeals Tribunal. The Court's reasons confirmed that *a Senate election is not concluded if it returns an invalid candidate, but continues until a Senator is validly elected*. Any disqualification which arises in the meantime—in this case, appointment to an office of profit under the crown, contrary to s 44(iv)—renders the candidate incapable of being chosen.

The case in relation to Senator Gallagher was determined on 9 May 2018, with the Court deciding that Senator Gallagher should be disqualified by reason of s 44(i), and that the vacancy should be filled by a special count of the ballot papers. In reaching its decision, the Court held that the relevant foreign law setting out the process for renunciation must operate to irremediably prevent a candidate from nominating for

election. It is not sufficient for a person to have made reasonable efforts to renounce.

Rotation of Senators

Section 13 of the Constitution provides that after a double dissolution election, the Senate must divide State Senators into two classes, those receiving three year terms and those receiving six year terms, to re-establish the normal rotation of the Senate in half-Senate elections.

Following the unprecedented number of disqualifications discussed above, there was conjecture that the form of the court order declaring Senators elected may have had the effect of granting the incoming Senator the term (that is, the three or six year term) that the Senate allocated to the ineligible candidate. However, this would have undermined the principle adopted by the Senate in a resolution made on 31 August 2016, following the 2016 election (consistent with resolutions following previous double dissolution elections), that the longer terms be allocated to the Senators first elected in the count.

The Senate moved to remedy any uncertainty about Senators' terms by revisiting the resolution made on 31 August 2016. The subsequent resolution, agreed by the Senate on 13 February 2018, does two things:

- it operates as an order for the production of documents, requiring that results reports of the special counts undertaken by the Australian Electoral Commission be tabled in the Senate; and
- it provides that the section 13 resolution passed in 2016 operate by reference to the latest results report for any State.

In doing so, it preserves the principle that the longer terms be allocated to the Senators first elected in the count. It also effectively asserts the conventional view that the division of the Senate is a matter for the Senate itself.

Passage of a private Senators' bill

Also of significance during this reporting period was the passage of a private Senators' bill to allow same-sex marriage. This bill was only the 16th private Senators' bill to pass both Houses in the Commonwealth Parliament's 117 years.

Events prior to the passage of the bill were unusual. In early August 2017, the Government sought to revive its own bill—the Plebiscite (Same-Sex Marriage) Bill 2016—which had been defeated at the second reading stage in November 2016. The Government bill would not have amended the law to allow same-sex marriage itself; instead, it would have established the legislative framework for, and authorised federal spending on, a compulsory, in-person vote in a national plebiscite that would ask Australians: ‘Should the law be changed to allow same-sex couples to marry?’. The Government’s proposal to revive the bill was defeated on 9 August on an equally divided vote (in accordance with s 23 of the Constitution equally divided votes in the Senate are resolved in the negative).

After the Senate declined to further consider the Government’s plebiscite bill, the Government determined that it would rely on existing legislation and funding mechanisms to conduct a voluntary postal survey instead. Given that this option did not involve the passage of authorising legislation, the funding mechanism and legislative authority for the voluntary survey was challenged in the High Court. The challenges were unsuccessful and the survey went ahead, with the results being announced on 15 November 2017 (61.6 percent in favour of changing the law; with a turnout of 79.5 percent).

The day after the announcement of the survey result, a cross-party private Senators’ bill—the Marriage Amendment (Definition and Religious Freedoms) Bill 2017—was introduced, debated for several hours and given precedence over all other bills. The bill passed the Senate the following week, with sittings extended to accommodate lengthy debate. The bill was described by its proponents as a compromise arrived at following the report of the Senate Select Committee which examined a Government exposure draft bill earlier in the year. A number of technical and consequential amendments were agreed to, but the many substantive amendments which sought to expand or restrict the bill’s operation were rejected. In particular, there was substantial opposition to amendments dealing with matters outside the sphere of marriage itself, some of which may be taken up through a broader review of laws connected to religious freedoms. The same amendments met the same fate in the House the following week, and the Act was assented to on 8 December and commenced the following day.

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

Report on procedures for election of a territory Senator

On 15 February 2018, the Standing Committee on Administration and Procedure reported on its review of Continuing Resolution 9, which provides for the procedures to be followed by the Assembly in the event of a casual vacancy occurring in relation to an ACT Senator. This followed the High Court decision that led to the disqualification and resignations of a number of Senators and Members of the Australian Parliament due to ineligibility to serve under s 44 of the Australian Constitution (see above).

The Committee noted that it appears that the Assembly has one of the more robust procedures to select a Senator when compared to practices in other state and territory legislatures. It also found that, in many ways, the requirement for a statutory declaration to be presented to the Legislative Assembly when choosing a Senator mirrors the requirement of a candidate at a general election when that person must declare that they are qualified under the Constitution and the laws of the Commonwealth to be elected as a Senator or Member of the House of Representatives, as the case may be. The Committee noted that one could argue that the only changes that need to be made to the process are for the individuals and parties involved to undertake more rigorous checks before that declaration is made – either at the casual vacancy or general election stage.

Independent Integrity Commission—Report of Select Committee

On 31 October 2017 the Select Committee on an Independent Integrity Commission presented its report. The Committee, which was chaired by a Minister, recommended that an ACT anti-corruption and integrity commission be established by the end of 2018. The model proposed is based on similar state models, particularly those in NSW and Victoria, and would be overseen by an Assembly committee.

Anti-Corruption and Integrity Bill 2018

On Wednesday 6 June 2018 the Leader of the Opposition presented a bill for an Act to establish the Anti-Corruption and Integrity Commission and for other purposes. Subsequently the Chief Minister, by leave, moved a motion to establish a five Member Select Committee on an Independent Integrity Commission 2018 to examine

a draft Government bill and the Leader of the Opposition's bill. The Committee was chaired by a Greens Minister and was required to report by 31 October 2018.

NEW SOUTH WALES JOINT HOUSE REPORT

Aboriginal Languages Bill 2017

The Aboriginal Languages Bill was the first bill of its type in any state in Australia to recognise the importance of Aboriginal languages. The bill was introduced into the Legislative Council on 11 October 2017 by the Minister for Aboriginal Affairs, the Hon Sarah Mitchell MLC.

A number of unprecedented or unusual procedures were agreed to by the House in recognition of the historic significance of the bill. Once the House had agreed to the initial motion for leave to introduce the bill, the President left the Chair while proceedings took place to commemorate the bill, including a welcome to country and smoking ceremony in the parliamentary forecourt. A message stick ceremony was then held in the chamber with a number of elders and stakeholders speaking about the significance of Aboriginal languages and the bill. The final speaker handed the message stick to Minister Mitchell and the message stick ceremony participants took seats in the President's Gallery to the left and right of the President.

Upon the President taking the Chair and the House again being in session, the President invited two Aboriginal elders to take chairs on the dais while the bill was being debated. Pursuant to the resolution of the House, Minister Mitchell then invited Dr Ray Kelly, an academic researcher in Indigenous languages, to firstly translate into Dhungutti her acknowledgement of the traditional owners and later to speak to the significance of the bill.

Once the bill had been debated and passed by the Council it was sent to the Legislative Assembly for concurrence, accompanied by the message stick. The message stick was placed on the table beside the mace during the bill's passage through the Assembly and was later returned to the Council with the message stick and assented to on 24 October 2017.

175th anniversary of the first elections in NSW

On 20 June 2018 the Parliament of NSW and the NSW Electoral Commission celebrated the 175th anniversary of the first elections in New South Wales.

Two Private Members' Bills receiving assent

The first half of 2018 saw two bills introduced by private Members in the Legislative Council pass both Houses and receive assent, the first private members' bills to do so since 2014.

The Public Health Amendment (Safe Access to Reproductive Health Clinics) Bill 2018 was introduced by Ms Penny Sharpe (Australian Labor Party) and was co-sponsored by Mr Trevor Khan (The Nationals). The bill establishes safe access zones of 150 metres around reproductive health clinics that provide abortions and creates offences within the zones designed to protect the safety and privacy of those accessing services as well as clinic staff. The bill received assent on 15 June.

The Modern Slavery Bill 2018, the first of its kind in Australia, was intended to combat modern slavery through the establishment of an Anti-Slavery Commissioner. The bill was also intended to raise awareness of modern slavery, detect and expose risks of modern slavery in supply chains and provide assistance and support to victims.

The bill was introduced by Mr Paul Green of the Christian Democratic Party. The bill had been developed by the Parliamentary Working Group on Modern Slavery, a cross-party group comprising Mr Green and Mr Trevor Khan (The Nationals), Mr Matthew Mason-Cox (Liberal Party) and Mr Robert Brown (Shooters, Fishers and Farmers Party), which was formed in an attempt to implement the findings of the report of the Select Committee on Human Trafficking in New South Wales. The bill received assent on 27 June.

NEW SOUTH WALES LEGISLATIVE ASSEMBLY

Request for access to in camera evidence taken by a Legislative Assembly Committee

On 23 May 2018, the Deputy Speaker informed the House that the Speaker had received correspondence from the Counsel Assisting the Coroner of Western Australia requesting access by officers of the Coroner's Court of Western Australia to the *in camera* evidence taken before the Legislative Assembly Select Committee upon Prostitution, which was in operation between 1983 and 1986. The Deputy Speaker advised that access to the in camera evidence had been requested to assist the Coroner's inquest into the death of Ms Shirley June Finn.

The House resolved to grant leave to officers of the Coroner's Court of Western Australia to inspect the *in camera* evidence taken before the Select Committee upon Prostitution, on condition that:

1. The evidence be inspected in Parliament House.
2. Any information obtained be used by the Coroner's Court of Western Australia to pursue appropriate further inquiry without revealing to any person other than the Coroner and officers of the Coroner's Court of Western Australia the contents of the *in camera* evidence, and its contents not be made public.
3. Before adducing into evidence of the inquest any evidence taken before the Select Committee upon Prostitution, the Coroner seek leave of the Legislative Assembly.

Electoral Funding Bill 2018

On 17 May 2018 the Minister for Planning, Minister for Housing, and Special Minister of State introduced the Electoral Funding Bill 2018. The object of the bill was to make provision for the disclosure, capping and prohibition of certain political donations and electoral expenditure for state parliamentary and local government election campaigns, and for the public funding of state parliamentary election campaigns. The bill passed both Houses on 23 and 24 May, with amendments, and received assent on 30 May.

NEW SOUTH WALES LEGISLATIVE COUNCIL

Permanent display of message stick in Legislative Council chamber

During the second reading debate on the Aboriginal Languages Bill 2017 a number of Members reflected on the significance of the message stick ceremony and suggested that the message stick should be displayed permanently in the chamber. The President, on behalf of the House, commenced consultation with the Aboriginal Languages Establishment Advisory Group and the NSW Coalition of Aboriginal Regional Alliances on the appropriate means by which to have the message stick placed on permanent display in the Parliament.

As a result, on 21 June the House resolved that the message stick would reside in a display cabinet to be recessed into the northern wall of the Council chamber. The

House also resolved to authorise the placement of the message stick on the Table during proceedings on the opening of Parliament or during other special occasions at the discretion of the President. On these occasions an Aboriginal Language group, selected on a rotational basis, will be invited to nominate an elder from that group to remove the message stick from its display cabinet, briefly address Members in their language from the Bar of the House and then hand the message stick to the Usher of the Black Rod for placement on the Table.

Establishment of Selection of Bills and Regulation Committees

Following recommendations of the Select Committee on the Legislative Council Committee System, which reported in December 2016, two new committees were appointed on a trial basis for 2018: the Selection of Bills Committee and the Regulation Committee.

The Selection of Bills Committee would consider all bills introduced into either House and report on whether any bill should be referred to a standing committee for inquiry and report. The Regulation Committee could inquire into and report on any regulation, including the policy or substantive content of a regulation, and trends or issues that relate to regulations. The committees were to table reports evaluating the effectiveness of the trial by the last sitting day in November 2018.

Orders for Papers and 'Cabinet information'

In 2018, a series of orders for papers brought to the fore the issue of the Legislative Council's power to require the production of a class of documents which have been classified by the executive government as 'cabinet information'.

In March, the House ordered that the Government produce documents relating to the Sydney stadiums redevelopment strategy. The return did not include business cases for the redevelopment of the stadiums, even though the government agency Infrastructure NSW had published summaries of the business cases on its website. In response to queries from Members, the Government advised that the relevant agencies or ministers did not 'hold any additional documents that are lawfully required to be provided in accordance with the terms of the resolution'.

Two further orders for papers followed in April and May, relating to the relocation of the Powerhouse Museum and an independent report on the out-of-home-care system (the Tune report). Both orders were very narrow in scope, requesting only the draft and final business case for the relocation and the Tune report. The fact that these documents existed was public knowledge, but they had not been released

publicly by the Government. In both cases, no documents were provided in the returns and the accompanying responses again stated that the agencies held no documents lawfully required to be provided.

In subsequent proceedings in the House the Leader of the Government in the Legislative Council stated that it was the Government's position that 'the power of the House to compel the production of documents does not extend to Cabinet information. Accordingly, even if otherwise covered by the terms of an order, Cabinet documents are neither identified nor produced in response to an order'.

This led, on 5 June, to the passing of a motion that noted the failure of the Government to comply with the previous three orders of the House and again ordered the production of the Tune report and the Powerhouse Museum and Sydney stadiums business cases by 9.30 am the next day. The motion also censured the Leader of the Government in the Legislative Council and ordered that if the documents were not provided the Leader of the Government would be required to attend in his place at the Table and provide an explanation.

The documents were not produced in compliance with the order. However, when the Leader of the Government was called on to provide an explanation he stated that the documents would be provided by the Department of Premier and Cabinet by 5.00 pm on Friday 8 June 2018.

When the documents were provided, the accompanying correspondence asserted the documents were Cabinet documents and that the Legislative Council had no power to require such documents to be provided, and that in this case the Government decided to produce the documents on a voluntary basis.

On 21 June, the House agreed to a motion rejecting both the claim that the documents had been provided voluntarily and the Government's apparent use of the *Government Information (Public Access) Act 2009* definition of 'Cabinet information' when responding to orders for papers, noting that reliance on this definition was likely to have led to a much broader class of documents being withheld from production to the House. The motion further stated that the House does have the power to require the production of Cabinet documents such as those produced on 8 June (that is, business cases for capital projects and consultant reports on areas of government administration) and that the test to be applied in determining whether a document falls within this category, is, at a minimum, that articulated by Spigelman CJ in *Egan v Chadwick*.

Establishment of two new 'super committees'

On 15 March 2018 the Legislative Council resolved to establish two new standing committees—a Public Accountability Committee and a Public Works Committee. The motions were each moved by Mr Robert Brown, of the Shooters, Fishers and Farmers Party, and agreed to on division (21 ayes, 18 noes). The media immediately described these committees as 'super committees.'

The role of the Public Accountability Committee is to inquire into and examine the public accountability, financial management, regulatory impact and service delivery of government departments, statutory bodies or corporations. The committee is modelled on the Legislative Assembly Public Accounts Committee, and may examine consolidated financial statements and general government sector financial statements, financial reports of statutory bodies and Auditor General's reports to Parliament.

The Public Works Committee is to inquire into and report on any public works to be executed (including works that are continuations, completions, repairs, reconstructions, extensions or new works) where the estimated cost of completing such works exceeds \$10 million.

Both committees have a non-government majority and a non-government chair, and a wide reaching self-referencing power to inquire into and report on the expenditure, performance or effectiveness of any government department, statutory body or corporation. The resolutions appointing the committees include a requirement to inquire into future arrangements for ongoing scrutiny by the Legislative Council of the matters covered by their remit.

NEW ZEALAND HOUSE OF REPRESENTATIVES

General election

The general election was held on 23 September 2017. Turnout as a percentage of enrolled electors (92.4 percent of New Zealanders were enrolled to vote) was 79.8 percent, which was the highest turnout since 2005.

On election night, National won 46.0 percent of the vote (58 seats) while the Labour Party won 35.8 percent of the vote (45 seats). The other parties that were re-elected to Parliament were New Zealand First (NZ First) with 7.5 percent of the vote (9 seats), the Green Party of Aotearoa/New Zealand (Greens) with 5.8 percent (7 seats), and ACT New Zealand won 0.5 percent (1 seat). No other party qualified for a seat in

Parliament by winning either an electorate seat, or more than 5 percent of the party vote.

The final election results were announced two weeks after election day. This was to allow for the large number of special votes to be counted, along with other appropriate checks. After the special votes were counted, the final allocation of seats in the House was announced. National remained the largest party, but with a reduction of two seats in the final result, with those seats being transferred—one each to Labour and the Greens. The representation for the two remaining parties, ACT and NZ First, was unchanged from election night.

First ‘truly MMP Government’

No party or self-identified group of parties secured enough seats to govern on election night. NZ First began negotiations with National and Labour. National and NZ First could form a majority, as could Labour, NZ First and the Greens. There was speculation about the Greens negotiating with National to create another possible majority, but the Greens Party Leader quickly ruled this out.

After two weeks of negotiations, NZ First Leader Rt Hon Winston Peters announced his party would enter into a formal coalition with Labour. Accordingly, the Governor-General, Rt Hon Dame Patsy Reddy, appointed Rt Hon Jacinda Ardern as Prime Minister, with Mr Peters as Deputy Prime Minister. The new Government is supported on issues of confidence and supply by the Green Party.

A number of Members and commentators declared this the ‘first truly MMP Government’ as the party with the most seats was not in Government. The former Prime Minister, Rt Hon Bill English, who became the Leader of the Opposition, vowed that National would be ‘the strongest Opposition party that Parliament has seen’.

Two parties not returned to Parliament

The 52nd Parliament has the fewest parties (five) since New Zealand adopted MMP. Two incumbent parties that contested the election, the Māori Party and United Future, failed to have candidates returned to Parliament. Both parties had been Government support parties since 2008.

Changes to Standing Orders implemented

The new Parliament was convened with an amended set of standing orders. The Standing Orders Committee presented its report on the review of the standing orders

on 26 July 2017, with the House adopting the recommendations in the report on 10 August. The amendments to the standing orders took effect on the dissolution of the 51st Parliament.

One of the changes was to the structure of select committees. The number of subject select committees was reduced from 13 to 12, and a new approach was recommended for committee membership to be calculated on a more strictly proportional basis. While the Standing Orders Committee had unanimously suggested that the total number of seats on subject select committees should be reduced from about 125 to 96, the National Party decried this to be 'anti-democratic'. Disagreement on this point was aired in the media until a compromise was unexpectedly reached during the election of the Speaker (see below).

The Standing Orders Committee's report bolstered the role of select committee chairpersons as presiding officers who must regard the interests of the House as paramount. The report included a set of expectations for effective chairing of committees, which is now regarded as a 'job description' for this essential role. As a result of a cross-party agreement, five of the 12 subject select committees are now chaired by Opposition Members, which is a higher proportion than ever before.

Other notable changes to the standing orders included a rewriting of the rules for financial scrutiny debates to reflect a sector-based approach that has been trialled in recent years, and a new procedure for debating international treaties that the government intends to implement through primary legislation. The Standing Orders Committee also suggested improvements to legislative scrutiny, better accommodation of family needs in parliamentary life, and the development of an online parliamentary noticeboard for Members to publish notices about community events or milestones or significant achievements by constituents.

Outcome of review into the suitability of the Auditor-General

The Officers of Parliament Committee initiated a review of the suitability of Martin Matthews continuing as the Controller and Auditor-General, following information about his handling of a fraud case when he was Secretary for Transport. Sir Maarten Wevers, a former senior public servant, was appointed to lead the review on behalf of the Committee.

Sir Maarten completed his review at the end of June, and provided his draft report to the Clerk of the House. In the interests of natural justice, Mr Matthews was provided with a copy of the report and provided comment, which the Committee then considered.

During this consideration, Mr Matthews tendered his resignation in writing from his position as Controller and Auditor-General with immediate effect. The Committee promptly concluded its consideration on this matter, and presented a report to the House detailing the process it had followed.

Boosting public engagement via electronic petitions and committee livestreaming

In its effort to give New Zealanders greater access to parliamentary processes, New Zealand Parliament has added an electronic petitions system, live-streaming and video-conferencing services to its suite of public engagement tools.

In March 2018 the New Zealand Parliament launched its electronic petitions system. Before each petition goes live it is checked by the Office of the Clerk to ensure it conforms to the rules of the Parliament. Changes are agreed with the petitioner before the petition is published on the New Zealand Parliament website and the petitioner can collect signatures.

In June 2018 the New Zealand Parliament launched livestreaming and video conferencing from some select committee rooms, making it easier for people living outside Wellington or people with disabilities to talk to select committees. The videoconference service allows livestreaming anywhere in the country. It not only allows those people wanting to talk to a committee to engage but allows interested parties to view public committee hearings, through the subject committee's Facebook page. The video-conference facility is able to connect via PC, tablet, Android or Apple devices.

Celebrating diversity of New Zealand Parliament

The Parliament has been recognising the diversity of languages throughout New Zealand by celebrating Samoan Language Week and permanently interpreting oral question time each sitting day into New Zealand Sign Language.

New Zealand celebrated the importance of the Samoan language in New Zealand life from 27 May to 2 June 2018. The theme for Samoan Language Week / Vaiaso o le Gagana Samoa was 'Alofa atu nei. Alofa mai taeao – Kindness given. Kindness gained.' Events were held across the country celebrating New Zealand's third most commonly spoken language. It is the first of seven weeks set to celebrate Pacific languages this year.

On 10 May 2018, Parliament introduced permanent New Zealand Sign Language interpretation during oral question time. The Parliament has featured New Zealand Sign Language interpretation during oral questions in New Zealand Sign Language Week since 2014, on Budget Day each year for the Budget Statement presented by the Minister of Finance and speeches from party leaders, and for some other significant events, such as the opening of Parliament. New Zealand Sign Language interpretation was also made available during the first reading of the Election Access Fund Bill on 16 May 2018.

NORTHERN TERRITORY LEGISLATIVE ASSEMBLY

40th anniversary

The Northern Territory Legislative Council met from 1948 to 1974, before it was replaced by the Legislative Assembly. 2018 marked the 40th anniversary of limited self-government for the Territory, which was granted from 1 July 1978. The usual 1st of July fireworks were the order of the day on Territory Day 2018 (the Northern Territory is the only Australian jurisdiction permitting the sale of fireworks to the public, restricted to use on this one day of the year).

Membership profile

As of June 2018, the Northern Territory Cabinet consisted of 67 percent women (six out of nine Ministers). The Legislative Assembly has 48 percent women Members (12 of 25). The Aboriginal population of the Northern Territory is approximately 30 percent, and Aboriginal Members have been elected to each of the 13 Assemblies convened since 1974. Six Members with Aboriginal heritage serve in the 13th Assembly (2016-2020), the same proportion (24 percent) as served in the 12th Assembly (2012-2016). At the 2016 election there were 16 candidates with known Aboriginal heritage, and at the previous 2012 election there were 20 candidates with known Aboriginal heritage. More than 12 percent of all MLAs over the existence of the Northern Territory Assembly have been Aboriginal people.

Languages spoken in the Assembly

The Northern Territory Standing Orders Committee has an ongoing reference (which lapses on 31 December 2018) to receive submissions about the operation of Standing Order 23A, introduced in the 12th Assembly after considerable controversy about

Aboriginal language spoken during an interjection and matters relating to alleged disorder.

Standing order 23A requires an oral translation to be provided in English before a Member may speak in another language. The Member for Nhulunbuy has argued for the procedure to be reversed to permit speaking in a different language prior to providing a translation in English.

QUEENSLAND LEGISLATIVE ASSEMBLY

New Parliament

Queensland's new electoral boundaries came into effect and in December 2017, 93 Members were declared elected. Twenty three new MPs and one returning Member from the 54th Parliament took their seats in the 56th Parliament, including the Queensland Parliament's first Torres Strait Islander Member, Ms Cynthia Lui MP, Member for Cook. Table 2 shows the composition of the 55th and 56th Parliaments:

Table 2. Membership of the 55th and 56th Queensland Parliaments

Party	55th Parliament (at November 2017)	56th Parliament (at June 2018)
Government (Australian Labor Party)	42	48
Opposition (Liberal National Party)	41	39
Crossbench:		
Katter's Australian Party	2	3
Queensland Greens	0	1
Pauline Hanson's One Nation	1	1
Independents	3	1
Total	89	93

Changes to sessional orders

On 15 February 2018, the House adopted Sessional Orders for the 56th Parliament. The Leader of the House advised the changes would allow more efficient use of the House's time. Significant changes include sitting hours from 9.30am on all days (previously the House did not sit on Wednesday mornings which were dedicated to

committee meetings) and automatic adjournments at 7pm on Tuesdays and Wednesdays and 6pm on Thursdays. The changes include a reduction in the number of opportunities and time allocated to Private Members' Business. The sessional orders in the previous hung Parliament introduced increased opportunities and time allocated to Private Members' Business.

A number of other measures were introduced in relation to time limits (for example, a 50 percent reduction in the time to speak to motions, second reading debates and specified business where no questions may be put or divisions called; that is, Private Members' Statements, matters of public interest and adjournment debates).

Criticism of the new sessional orders

The removal of dedicated committee time on Wednesday mornings means most committee meetings now take place on Mondays and some regional Members have complained that this requires travel on Sundays, impacting on the time they can spend with family and in their electorates. The Opposition considers the new sitting hours do not provide sufficient time for debate, operate to gag them from fully considering legislation and are generally insufficient to progress the Government's legislative agenda.

An apparent tactic of the Opposition, in demonstrating their view of the inoperability of the Sessional Orders, has been to have many of its Members speak in the second reading and on each amendment in consideration in detail stage of bills. This has resulted, on one occasion, in the House suspending the sessional orders to extend the sitting beyond the time for the automatic adjournment, so as to ensure the passage of a contentious bill. The Government has also used the allocation of time orders (guillotine motions) to set time limits around the passage of bills through each stage. The Leader of the House and Attorney General, the Hon Yvette D'ath, flagged further reform in the form of a regular allocation of time order for each sitting week.

A further issue that arose in relation to the new sessional orders was dealing with the time for automatic adjournment coinciding with a division. When this occurred, the Speaker ruled that the division must conclude, as it would be a nonsense for the House to be unable to reach a decision on a question because the time for the automatic adjournment had arrived. To prevent the issue recurring, a minor amendment was made to move the Private Member's Motion debate back one hour.

Committees

The 56th Parliament established seven new portfolio committees that cover government portfolios, in accordance with s 26A of the Constitution of Queensland. Functions of the committees are prescribed in sections 92–95 of the *Parliament of Queensland Act 2001* and include examination of legislation including subordinate legislation and consideration of public works and public accounts.

The composition of the Legislative Assembly determines the membership and operation of portfolio committees. In the 56th Parliament, portfolio committees have six members: three Government and three non-Government, with a Government chair. Chairs in the 56th Parliament have a casting vote in the event of a vote being equal.

SOUTH AUSTRALIAN HOUSE OF ASSEMBLY

Bill of special importance: Budget Measures Bill 2017

On 22 June 2017, the Treasurer introduced the Budget Measures Bill under suspension of Standing Orders. The bill proposed that major banks operating in South Australia be required to pay a quarterly levy of 0.015 percent on bonds and deposits greater than \$250,000, excluding mortgages and ordinary household deposits. It also contained other changes, including a levy on foreign real estate investors, payroll tax relief and stamp duty relief for apartment purchases.

Due to its majority and support of two Independent members of Cabinet, the Government anticipated safe passage of the bill through the House of Assembly. Passage through the Legislative Council was less certain due to limited support from crossbench Independents.

The bill was referred to as a 'money bill' and the Legislative Council was unable to amend it as it does with other bills. The Legislative Council did, however, return the bill with suggested amendments printed in erased type, which are not deemed to form part of the bill under section 62(4) of the *Constitution Act 1934*.

The Government remained committed to the bill but lacked the support of the Legislative Council. In August, the Government was considering a range of options including removal of the levy or replacement with another revenue measure, reintroduction of the bill with or without amendments, or declaring the bill a 'Bill of Special importance' pursuant to section 28A of the Constitution Act (which allows the Governor to dissolve the House of Assembly and issue a writ or writs for a general

election on a date other than that contemplated by s28 if, and only if, a bill of special importance passed by the House of Assembly is rejected by the Legislative Council).

In November, the Legislative Council returned the bill, requesting amendments to remove the bank levy from the bill. The House disagreed to the amendments and sent the bill back to the Council. The Government did not pursue the matter saying it would go to the electorate to seek a mandate for the levy and to expose the 'breach of convention' by the Council. The bill was subsequently laid aside in the Council prior to the end of the session.

Removal of 'fairness' provision from the Constitution Act 1934

Following the dinner break on 30 November 2017, the last scheduled sitting day prior to the State election, the House received the Constitution (One Vote One Value) Amendment Bill from the Legislative Council. The purpose of the bill was to remove the so-called fairness clause in the Act, which required the Electoral Districts Boundaries Commission to ensure that 'if candidates of a particular group attract more than 50 percent of the popular vote... they will be elected in sufficient numbers to enable a government to be formed.' The clause also included a provision that a 'group' of candidates need not necessarily be from the same party, but may also include candidates whose political stance is such that there is reason to believe that they would, if elected in sufficient numbers, be prepared to act in concert to form a government.

After the fairness clause was enacted in 1991, the Liberal Party had a higher state-wide vote in all but one election (2006) but only formed government on one occasion (1993). A boundary redistribution in 2016 saw the Commission apply the fairness provision, in concert with other redistribution principles in the Act, to realign districts nominally in favour of the Liberal Party. The Labor Party challenged the redistribution in the Supreme Court on the grounds that it offended the principle of 'one vote, one value'. However, the Supreme Court dismissed the appeal and upheld the redistribution.

The Constitution (One Vote One Value) Amendment Bill was a Government bill introduced into the Legislative Council. The Council passed amendments proposed by a Member of the Council to remove the fairness clause. The Government's original approach was to conduct a referendum on the determination of electoral boundaries but the amendments negated the need for a referendum. On receipt of the bill, the Government advised the House that legal advice had been obtained from the Solicitor-General that a referendum was not required to remove the fairness clause

from the Act. (The fairness clause had been inserted after three-quarters of South Australian electors voted in favour of the measure at a referendum in February 1991.)

As it was the last sitting day, the Government was keen to see the bill passed. It suspended standing orders to enable passage through all stages without delay. Following heated debate in the House, which lasted over five hours and included application by the Government of the guillotine under standing order 114(a), a practice rarely used in the House, the bill was passed.

While the Liberal Party indicated that they would consider challenging the legality of the amendments following the 2018 State election, some legal commentators have suggested that it is arguable that the referendum provisions in the Act do not apply to the fairness clause.

TASMANIAN HOUSE OF ASSEMBLY

Some reflections on the opening of Parliament 2018

A general election for the House of Assembly was held on 3 March 2018, with the resulting make-up of the 25-member House being Liberal 13 (down from 15 in the previous Parliament); ALP 10 (up from seven); and Tasmanian Greens two (down from three). The Liberals having won a majority of seats (and incidentally, 50.26 percent of the primary vote), a Liberal Government was commissioned.

Opening Day was scheduled for 1 May. This day is perhaps the greatest Parliamentary day: touchstones of ancient traditions are acknowledged; the democratic will of the electorate is fulfilled with the swearing in of Members (on this occasion, with seven new faces amongst the membership); and for the first time, the number of women exceeded men in the House (13/12). There was great anticipation and excitement about the place. The atmosphere was buoyant and positive.

Opening Day is the most scripted and predictable of days. There are nine components of the day:-

1. Ecumenical Service
2. Proclamations read and opening by Commissioners
3. Members sworn
4. Election of Speaker

5. House adjourns for presentation of Speaker/military guard inspection/band etc
6. Resumption at 3 p.m. for Vice Regal Opening
7. Reception for Members and official guests
8. Programmed appointment of Committees; commencement of the Address-in-Reply, with speeches by the mover and seconder of the motion; and
9. Adjournment.

Bearing in mind the operation of the Hare-Clark electoral system for the House of Assembly, the importance given to returning a 'strong majority government' is a perennial appeal from both major parties, invariably accompanied by the undertaking that 'no deals' would be done with minority parties to secure Government. Given that the Liberals were returned with a majority of seats, a new ministry was announced and the Government's nominee for Speaker was also announced. The nominee was Mr Rene Hidding, a Minister in the previous Government and the longest serving Member of the House, who had first been elected in 1996.

Members were sworn in, Codes of Ethical Conduct and Race Ethics made, in and in accordance with standing order 5, the Clerk called for any nominations of a Member to 'take the Chair of this House as Speaker'. The Premier sought the call and duly nominated Mr Hidding, with the nomination seconded by the Deputy Premier and nomination accepted by the nominee. When the question 'Are there any further nominations?' was asked, the Leader of the Opposition sought the call and nominated the Liberal Member for Denison, Ms Sue Hickey. The nomination was seconded by the Leader of the Greens and, to the surprise of many, was accepted by Ms Hickey. A secret ballot was conducted, with the result being: Ms Hickey, 13 votes; Mr Hidding 12 votes. Ms Hickey was then conducted to the Chair. She acknowledged the honour conferred upon her and took the Chair.

This is not the first time the Government's nominee for Speaker has not been elected despite the Government holding a majority of seats. In 1992 (in the 35 member House), an alternative member of the party holding Government was elected in similar circumstances, when Mr Graeme Page was elected by 18 votes to 17, defeating the late Hon Michael Hodgman QC (the father of the current Premier). In 1992, the Government also had a majority of two on the floor (18 Liberals to 16 Labor and Greens combined). The similarities end there. Mr Page had had 16 years' experience in the House; had been Deputy Chair of Committees; and had significant experience as a Member and chair of standing and select committees. Ms Hickey, the

newly elected Speaker in 2018, was first elected to the House at the 2018 election and had spent perhaps 30 minutes in the Chamber. The numbers on the floor are even when the ALP and the Greens vote together, with the Speaker having the casting vote.

VICTORIAN LEGISLATIVE ASSEMBLY

Government calls for Cabinet documents to be tabled

On 29 March 2018, the Assembly, on a motion moved by the Minister for Public Transport, agreed to call for planning documents from the previous Parliament. The motion required the current Premier to produce the documents, which could have potentially included confidential ministerial papers, and documents protected as Cabinet-in-confidence and by legal professional privilege. The documents covered a period when the current Leader of the Opposition had been Minister for Planning in the previous Government.

Advancing the Treaty process with Aboriginal Victorians Bill 2018—arrangements in the House

On 28 March 2018, the Advancing the Treaty process with Aboriginal Victorians Bill 2018 was introduced into the Legislative Assembly. The bill aimed to advance the process of treaty making between Aboriginal Victorians and the state. It provided for the creation of a new representative body, which will work with the Government on future treaty negotiations.

For its introduction, standing and sessional orders were suspended to allow six elders to sit on the floor of the House and for Victorian Treaty Advancement Commissioner Jill Gallagher AO and Chair of the Aboriginal Treaty Working Group Mick Harding to address the Legislative Assembly. After being amended in the Assembly, the bill passed the Legislative Council and received Royal Assent on 3 July 2018.

Budget assented to without passing the Council

Victoria's Appropriation Bill for the 2018–19 financial year received royal assent without passing through the Council. The bill passed the Assembly with relatively little debate, 44 Members having spoken on the bill. Debate on the second reading of the bill commenced in the Council; however, s 65 of the *Constitution Act 1975* required that the bill be presented to the Governor for the royal assent after one

month of passing the Assembly. It is only the second time this had occurred since the provision was inserted into Victoria's Constitution in 2003.

VICTORIAN LEGISLATIVE COUNCIL

Voluntary Assisted Dying Bill 2017

On Friday 20 October 2017, the Voluntary Assisted Dying Bill 2017 was transmitted from the Legislative Assembly and read a first time. The second reading was made an Order of the Day for the next day of meeting. Debate commenced on Tuesday 31 October and continued for a total of 13 hours and 48 minutes over Thursday 1 and Friday 2 November. The House agreed to the motion for the bill to be read a second time on Friday 2 November on division with 22 ayes to 18 noes.

On Tuesday 14 November, the Committee of the Whole commenced consideration of the bill. The bill was considered for 47 hours and 21 minutes over three sitting days (five calendar days). During that time, the Government declared seven one-hour extensions and sat past midnight into the next day twice:

- On Thursday 16 November, the House commenced at 9.30 am and adjourned at 12.04 pm on Friday 17 November; and
- On Tuesday 21 November, the House commenced at 12.00 pm and adjourned at 4.12 pm on Wednesday 22 November.

The bill was passed with 39 amendments on Wednesday 22 November 2017, all of which were agreed to by the Legislative Assembly. Royal Assent was given on 5 December 2017.

There were a number of significant procedural aspects to debate on this bill, including:

- the Deputy President standing down from duties in the chamber (concerning certain allegations of impropriety in his electorate office) meant that two Acting Presidents shared the duty of chairing the Committee of the Whole, but without the powers of sanctioning Members available to the Deputy President. This caused great difficulty during often heated Committee proceedings;
- the closure motion is rarely used in the Council but became a more prominent procedure during this Committee of the Whole; and

- the President has a deliberative vote on all matters. The President rarely participates in debates or committee stages and never from the Chair. The President participated in the Committee of the Whole from the floor and was subject to some adverse interjections and heated words from those opposed to his position.

Firefighters Bill—Extended Good Friday sitting and discontinuation of pairs agreement

The Firefighters' Presumptive Rights Compensation and Fire Services Legislation Amendment (Reform) Bill 2017 was introduced into the Council on 8 June 2017. The bill had two distinct purposes—to provide a rebuttable, presumptive right to compensation for both career and volunteer firefighters in respect of certain cancers and to reform the structure of the Victorian fire services.

Debate on the bill was deferred until a Select Committee had inquired and reported. The Committee's report was tabled on 22 August 2017 and the Government's response to the report was tabled on 7 September 2017. Debate on the second reading resumed on 7 September, but the bill was not brought back on for further debate until 27 March 2018. After a lengthy debate including failed attempts by non-Government Members to postpone debate, the bill passed the second reading on division and progressed to the Committee of the Whole stage on the Thursday afternoon before Good Friday. Consideration of the bill continued until midnight. A motion to extend the sitting past midnight was agreed to on division.

Shortly after this, a motion to report progress was put by an Opposition Member who objected to the extended sitting into Good Friday on religious grounds. A second Opposition Member also objected. During a lengthy procedural debate, the Government offered pairs to Members of the Opposition for reasons of religious observance. The motion to report progress was defeated. Two Opposition Members accepted pairs and the House continued in the committee stage of the bill.

At 11.00 a.m. on Good Friday, over 20 hours after the Committee of the Whole stage commenced, the bill passed with amendments, the report was adopted (on division) and the third reading question was put. During the division on this question, the two Opposition Members who had not attended the chamber since midnight, as per the pair arrangement, entered the chamber to vote on the Third Reading. Given that the paired Government Members were absent, the effect was that the bill was defeated 18 to 19.

Following points of order, the President noted that pairs are not a formal procedure of the House and are not covered by standing orders. Accordingly, the points of order were dismissed. No further pairing agreements have been entered into in Council since this occasion.

Attracting hard-to-reach inquiry participants using online surveys

As part of its inquiry into career advice activities in Victorian schools, the Economic, Education, Jobs and Skills Committee used an online survey to encourage students and recent school leavers to share their views on the topic. The Committee is examining how well career advice is meeting the needs of Victorian students and how school career advice can be improved. A SurveyMonkey survey was created, asking multiple choice and open-ended questions of young people and of teachers and school career advisers.

The Committee used the survey results to scope the inquiry topic and identify areas for focus during public hearings. The results highlighted a wide discrepancy between young people and teachers on career advice considered to be useful. The Committee also found the responses to the survey were more candid than the evidence provided in submissions, which could have been due to the survey's anonymity.

The survey was open for eight weeks and attracted 594 responses; 485 of these were considered valid. Respondents were evenly split between young people (247) and teachers or career advisers (238). A campaign advertising the survey ran through the Parliament of Victoria's Facebook and Instagram accounts, attracting an audience of 65,991 people and resulting in 21,590 engagements (such as likes, shares and video views).

WESTERN AUSTRALIAN LEGISLATIVE ASSEMBLY

Recommended expulsion of a Member

On the final sitting day for 2017, the Premier moved that the Procedure and Privileges Committee 'consider and report back to the House ... whether there have been any breaches of privilege in relation to any statements made to the House by the Member for Darling Range'.

The issue arose initially from media reports that the Member, Mr Barry Urban, wore a police service medal that he was not entitled to wear. As the issue progressed in the media, doubts were also raised about Mr Urban's academic qualifications. In a

personal explanation to the House, Mr Urban's comments raised more questions than were answered. The Premier, who until that point had publicly supported him, felt the explanation was not sufficiently comprehensive, and referred the matter to the Procedure and Privileges Committee.

On 8 May 2018, the Committee tabled its report, *Misleading the House: Statements Made by the Member for Darling Range*, in which it found that the Member had deliberately mislead the House on multiple occasions about his education history and previous military service. The Committee also found he deliberately sought to deceive the Committee by providing to it a forgery of a degree from the University of Leeds, as well as providing deliberately misleading testimony and submissions. By doing so, the Committee found that he had committed a gross and aggravated contempt of Parliament and recommended his expulsion from the Legislative Assembly, and that the seat of Darling Range be declared vacant by reason of such expulsion.

The Speaker stressed that the Committee did not make the decision lightly, and that the expulsion of a Member is a serious action and one that must never be taken without the strongest justification. Immediately after the report was tabled, Mr Urban rose and resigned as the Member for Darling Range, hence avoiding becoming the first Member to be expelled from the Parliament of Western Australia.

However, the matter did not end there. On the next sitting day, the Speaker tabled a letter he had received from the Commissioner of Police, in which the Commissioner advised that he had instructed the major fraud squad to commence a criminal investigation into the actions of the now former Member. The Commissioner requested to be provided with 'any documentation and evidence in relation to the Committee's determination'. The Speaker sought advice from the Clerk as to any issues of parliamentary privilege in answering the Commissioner's request, and undertook to table that advice at the earliest opportunity.

In the course of a subsequent debate regarding the House endorsing the Committee's recommendations, the Opposition attempted to move an amendment that the Attorney General report to the House whether he was 'of the opinion that there are reasonable grounds for securing a conviction against the former Member for Darling Range under section 57 of the *Criminal Code*'. The amendment was defeated, but highlighted that giving false evidence before Parliament is a criminal offence in Western Australia, punishable by up to seven years' imprisonment. In defeating the amendment, the Government argued that it was imprudent to run parallel investigations, given that the Police Commissioner had already indicated he was conducting a criminal investigation.

On 15 May 2018, the Speaker tabled advice from the Clerk, which revealed there were competing claims for the evidence held by the Committee as, in addition to the request from the Commissioner of Police, the former Member for Darling Range had requested the return of his medals and other documents he supplied to the Committee. The advice recommended that the Speaker seek clarification as to which criminal offences the Commissioner of Police was investigating before any further decision be made, as that had a direct bearing upon what evidence could be provided to the police. If the police confirmed they were investigating whether Mr Urban had committed a criminal offence under s 57 of the *Criminal Code*, that is, giving false evidence to a House or committee, then the Clerk's view was that parliamentary privilege was, by necessary implication, abrogated. In other words, the section would be ineffectual if parliamentary proceedings could not be used to pursue the offence.

The Clerk also highlighted the more difficult issue of how evidence given to the Committee by other witnesses should be handled. Under Legislative Assembly Standing Order 308:

Any witnesses examined by the Assembly or a committee are entitled to the protection of the Assembly in respect of their having given evidence and anything that may be said in their evidence.

It was the opinion of the Clerk that the abrogation of parliamentary privilege implicit in s 57 of the *Criminal Code* did not extend to the evidence given by witnesses to the Inquiry other than Mr Urban. In other words, irrespective of what criminal offence was under investigation, witnesses to the Inquiry were still entitled to the protection of parliamentary privilege. The Clerk recommended that any action taken in response to the Commissioner of Police's request take the form of a resolution of the House directing the Committee, so as to convey the full authority of the House.

On 13 June 2018 the Leader of the House gave notice that he would move a motion to provide all of the Committee's evidence to the Commissioner of Police. After much behind the scenes discussion between the Clerks, the Speaker, the Government and Opposition, the motion was moved in an amended form. It read:

That this House, in response to the request of the Commissioner of Police to the Speaker dated 9 May 2018, directs the Procedure and Privileges Committee to confer with the Commissioner of Police and to provide to the commissioner the evidence and documentation the committee considers –

is relevant to the commissioner's investigations;

does not breach parliamentary privilege; and

is consistent with the House's obligation to protect witnesses, provided to the committee in relation to the inquiry referred to the committee concerning statements made to the Legislative Assembly by the former Member for Darling Range.

The motion therefore gave the Committee the ability to liaise with the Commissioner of Police in determining what evidence is provided, while providing protection to the witnesses who had assisted the Committee or provided evidence during the inquiry.

WESTERN AUSTRALIAN LEGISLATIVE COUNCIL

A truncated sitting year in 2017

It was an interesting and unpredictable first year of the 40th Parliament, which opened in May. The Labor Government held only 14 of the 36 seats in the Legislative Council, could only guarantee 13 votes (since the President was a Labor Member). With the uncertain support of the four Greens Members, the Government was still one vote short of a majority of 17 votes. The other five parties hold 18 votes and could and did vote in a myriad of ways. The outcome was 25 divisions, two tied divisions (resolved in the negative) and six Government defeats, including a vote that caused a \$400 million hole in the Government budget.

Most of the truncated sitting year was dominated by debate on the Address-in-Reply, Loan Bill 2017 (seeking a record \$11 billion), Supply Bill 2017 and Budget Estimates, during which few unique procedural issues arose. A relative flurry of activity in the final sitting weeks of our House resulted in 21 bills being passed by the Parliament in 2017. This is lower than the average of 38 bills each year in the last Parliament and 60 bills per year previously. While no bills have been defeated to date, motions to amend were common and four of the 22 bills considered by our House were amended. There is an unpredictable mixed record of voting. In the 25 divisions, the Greens voted with the Government 17 times, the Liberals 10 times, and the Nationals five times. Two of the three One Nation Members voted with the Government four times, as did the Shooters, Fishers and Farmers and Liberal Democrat Members, with the other One Nation Member voting with the Government six times.

An early indication of how the numbers could be used against the Government was when it lost control of the business of the House, losing a vote that amended the order of business to move order of the day number 2 (an Opposition disallowance motion) to be order of the day number 1 for the next sitting of the House (the vote

was 13 ayes, 20 noes). This was followed by a further loss to the Government when the order of the day, the *Road Traffic (Vehicles) Amendment Regulations (No. 2) 2017*, was disallowed (the vote was 20 ayes, 11 noes), immediately resulting in a \$10 million per annum loss to the state budget.

This was a relatively small inconvenience to the Government compared with the effect of the House twice disallowing measures in the *Mining Amendment Regulations (No 2) 2017* to impose a gold royalty increase (the votes were 17 to 16 and 15 to 14) which left a \$400 million hole in the state budget over the forward estimates. These disallowance motions raised a procedural issue relating to the order in which separate notices of motions to disallow the same instrument can be moved, if Members from two parties independently advise the Clerk of their intention to move a notice of motion to disallow the same instrument on the same day. The President gave the call to the Members in the order that the Clerk received the motions (after the instrument was gazetted).

Ongoing unpredictability in 2018

In the first six months of 2018, the House amended six of the 11 bills it passed and referred five bills to committees (these were mainly uniform bills). The outcome of divisions in the House, where there is a non-Government majority, remains unpredictable. In March, the House, against the Government's wishes, amended the order of motions to be debated to prioritise debate on the Government's decision to close a number of regional educational facilities. Debate was accompanied by the WA Country Women's Association (CWA) marching on Parliament to protest cuts to regional education; the first CWA protest in its 94 year history.

In April 2018, the Standing Orders were amended to introduce an Acknowledgement of Country to be read after prayers at the commencement of each day's sitting. It is understood that the Western Australian Parliament was the last parliament in Australia to introduce the reading of an Acknowledgement of Country.

Book Reviews

***New Directions for Law in Australia: Essays in Contemporary Law Reform*, edited by Ron Levy, Molly O'Brien, Simon Rice, Pauline Ridge and Margaret Thornton. Canberra: ANU Press, 2017. pp. xiv + 661. RRP \$70.00 (print version).**

Bob Debus

Former Attorney General and Minister for Environment in New South Wales.

Proof exists that Law Reform Commissions can still discharge a distinct and effective role in the reform of law and legal policy. In February 2017, some months after the essays that make up this important book were presented at an Australian National University Conference, the Attorney General issued terms of reference for an inquiry by the Australian Law Reform Commission (ALRC) into the incarceration rate of Aboriginal and Torres Strait Islander peoples. Judge Matthew Myers was appointed part time Commissioner, an expert advisory panel of academics and practitioners was installed, discussion paper drawing together the findings of previous inquiries was issued in July, 149 consultations were undertaken in the community, 121 submissions were received and by December an incisive and plainly written report analysing the causes and including 35 recommendations for reducing the rate of incarceration was delivered.

The ALRC Report is a blueprint for any Government seriously concerned to address the most recalcitrant problem of social justice in our society. It recommends the establishment of a new Aboriginal-controlled body that will promote 'justice reinvestment', that is, the diversion of resources now used in the criminal justice system to provide instead for 'community-led, place-based initiatives that address the drivers of crime and incarceration'. It supports the expansion of community-based sentencing options and recommends that courts give overt recognition to the 'unique systemic and background factors' of Aboriginal people when they are making sentencing decisions.

In doing so, the Report recognises that at present the law irresistibly oppresses the lives of many Aboriginal communities and that its reform can only be effective if conventional legal assumptions about authority and retribution are in significant

degree reconceptualised to take account of the historic circumstance, the social conditions and the cultural differences that Aboriginal people experience.

In this regard, the Report vindicates observations made by Professor Margaret Davies of Flinders University in the opening chapter of the book under review concerning changing presuppositions around the nature of the law and its reform. It justifies also the sensible if despairing argument of Professor Lorana Bartels of the University of Canberra in her contribution: that all criminal law policy should 'henceforth be focussed around the central issue of whether any proposed reform will increase or decrease our prison population'.

We are confronted by a paradox. On the one hand the activity of Law Reform Commissions has been much reduced in recent decades by governments indifferent to the benefit of expertise and hostile to an expansive public sector. On the other hand the numbers of Law Schools has been substantially growing and the cohort of legal academics capable of providing critical support to the range of institutions that might drive law reform has significantly increased. *New Directions for Law in Australia* collects over 50 essays to demonstrate the point.

The section concerned with commercial and corporate law addresses issues of high relevance to contemporary society: the reform of tax laws to overcome inequality; better protections for those working in the 'gig economy'; the mitigation of the risks of mortgage lending; the reform of whistleblower laws in the private sector generally and the legal profession specifically. The chapter by Russell Miller explains the sometimes difficult but generally encouraging progress in the simplification and modernisation of competition and consumer law reform driven particularly by the Productivity Commission.

Professor Grantham of the University of Queensland has written a decisive critique of the state of corporations law. He shows how the particular forms of regulation adopted in the Corporations Act are making a complex body of statutory and public law ever more private. Policy goals remain 'public regarding' but actual regulatory procedures rely not on 'direct prescription backed by sanctions and imposed by external regulators such as the courts' but upon internal self-regulation. This is a confounding problem because 'as a user guide or statement of first recourse for those involved in [the day to day operations of] the corporate enterprise, the Act may as well be written in Sanskrit'. I trust that this contribution has been drawn to the attention of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry established in late 2017.

Some sections of the book are necessarily more diverse: one section deals with a dozen aspects of possible private law reform and another with a dozen public law

reform topics, although data privacy is a notable omission from both. A section dealing with ethics, practice and education in the legal profession deserves separate consideration.

The section concerning environmental law deals with issues in a critical realm. Australia's system of environment law is complex but not comprehensive. It is often inconsistent, often poorly enforced and it also fails often to recognise Aboriginal rights and interests in the land. It is certainly not suited to deal with the unprecedented crises of habitat destruction and climate change with which we and our children are now faced. In that context, Professor McDonald of The University of Tasmania discusses principles to be adopted for a resilient and adaptive system of future environmental law and governance that is able to respond flexibly to change. And Paul Martin, Amanda Kennedy and Jacqueline Williams of the Centre for Agriculture and Law at the University of New England discuss the kinds of measures that need to be introduced to establish a 'process of continuous improvement in the effectiveness of our legal arrangements for rural biodiversity protection'.

Perhaps anticipating the later and sensational revelations about the mismanagement of water resources on ABC Four Corners, Professor Holley of the University of New South Wales sets out the principles of governance and regulation that need to be adopted to entrench the National Water Reforms of recent years and Virginia Marshall discusses Indigenous rights to water as a human rights question. Professor Stoianoff of the University of Technology Sydney examines the slow progress toward the incorporation of Indigenous knowledge into environmental management. Professor Watson of the University of South Australia begins the whole section arguing radically that we need to move beyond recognition through native title laws to consider the incorporation of the Indigenous law that has always existed to manage the land into the mainstream.

The importance of issues such as these to the future health of our society is inversely matched at the present time by the recalcitrance of the political circumstances afflicting the whole field: government sponsored environmental law reform has been stifled. However academic lawyers have in this context again demonstrated the potent contribution they are able to make, in this case constituting themselves as if they were a Law Reform Commission.

In late 2017, fourteen of Australia's leading environmental lawyers, including several contributors to the book under review, published a Blueprint for the Next Generation of Australian Environmental Law (see <http://apeel.org.au/>). Their proposal is accompanied by eight technical papers suggesting comprehensive changes to laws, regulations and not least to institutional arrangements for the administration of the

law. ‘There is a limit,’ they say, ‘to what laws can achieve, but they are an essential part of any robust system of environment governance. Environmental laws should effectively enable the protection, conservation, management and where needed, restoration of our national heritage. The effectiveness of our environmental laws must be founded on the values of integrity, transparency and accountability, in both their formulation and enforcement. These laws must also be kept up to date, so that they continue to reflect our ever- changing environmental, social and political conditions’.

It is hard to think of a better description of principled reform of the law of the kind supported by New Directions for Law in Australia. We might hope that this publication will become a regular event.

***In Search of Consensus: New Zealand's Electoral Act 1956 and its Constitutional Legacy*, by Elizabeth McLeay. Wellington: Victoria University Press, 2018. pp. 254. RRP \$40.00**

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How much is there to learn from the story of a statute enacted sixty, and repealed twenty-five, years ago? Quite a lot sometimes, as Elizabeth McLeay shows in *In Search of Consensus: New Zealand's Electoral Act 1956 and Its Constitutional Legacy*. The book is not only a history of a constitutional innovation that has had perhaps unexpectedly lasting consequences for New Zealand. It also raises broader questions about the development and endurance of constitutional reform.

Professor McLeay explains that the Electoral Act 1956 was not self-evidently destined to become the sort of law about which books are written. It was, in the first instance, a fairly low-key response to ongoing dissatisfaction with certain aspects of election administration under the then-existing legislation. Yet political stars aligned to make it something more than a humdrum piece of technical legislation. Both the governing National Party and the Labour Opposition saw an opportunity to use this enactment to settle at least some of their longstanding partisan disputes, and agreed on a compromise that would transform the Electoral Act 1956 into a constitutional landmark.

The compromise consisted in introducing Section 189, a provision that entrenched some aspects of the Electoral Act 1956 by requiring either a three-quarters majority in Parliament or the concurrence of the voters at a referendum for their amendment. These were notably the duration of the parliamentary term, the definition of the population to which electoral representatives would be allocated, the criteria determining an individual's entitlement to vote, and the composition of the commission drawing the boundaries of electoral districts. Some of these matters had previously been the subject of partisan manipulation by both Labour and National, which Professor McLeay details; on others, there existed consensus, but also fear of partisan manipulation in the future.

As Professor McLeay points out, the entrenching provision was, symbolically, a remarkable innovation in a political culture imbued with orthodox ideas of parliamentary sovereignty and flexible constitutionalism subject to ongoing legislative control. Professor McLeay reviews the statements of both academics (cautiously favourable to revising the orthodoxy) and National Party politicians (quite reluctant). Such, indeed, was the power of the old ideas that it was widely agreed that, legally speaking, the entrenching provision would not be effective. It was thought constitutionally impossible to entrench the entrenching provision itself: a future Parliament must be free to escape its fetters. (This was described as a ‘single’ as opposed to a ‘double’ entrenchment.) The authority of the entrenchment would be entirely moral.

Yet the conjuring trick worked: no Parliament after 1956 legislated either to repeal or in violation of Section 189, or of its successor, Section 268 of the Electoral Act 1993 (subject to a possible, but doubtful, violation I shall mention below). Professor McLeay reviews the various instances in which amendments to entrenched provisions were carried by the requisite special procedures, and some in which proposed reforms were abandoned because their proponents failed to obtain the Opposition’s assent. There is now, Professor McLeay writes—and, in light of the evidence she provides, one would be hard-pressed to disagree—a convention that the entrenching provision will be complied with. Its authority is thus a matter of constitutional, not only political, morality.

Why have these seemingly unlikely developments—first, the introduction of a legislative provision contradicting, if only symbolically, the untrammelled supremacy of Parliament, and then its crystallisation into convention—occurred? Professor McLeay points to the abolition the upper house of New Zealand’s Parliament, the appointed Legislative Council, as the indispensable precipitating event that focused politicians’ minds on constitutional issues. It also starkly illustrated the power of an executive supported by a majority of the House of Representatives (then elected on a first-past-the-post basis) to force through fundamental constitutional change. Once enacted, Section 189 changed the paradigm of electoral reform. Whereas previously both Labour and National governments had manipulated the electoral system to their advantage, the entrenching provision and its requirement of consensus elevated bi-partisanship (including, on occasion, bi-partisanship at the expense of other political actors!) into an attractive ideal, which has lost none of its force in the intervening decades.

Professor McLeay highlights, however, a paradox. For a law that was meant to constrain political actors, and succeeded perhaps beyond expectation in doing so, the

Electoral Act 1956 was passed in a manner that illustrated rather than circumscribed the powers of parliamentary majorities. The bill that would become the Electoral Act was introduced and passed first reading without Members of Parliament knowing its contents; a mere two weeks later, it received Royal Assent. The select committee that studied the bill, and which was responsible for introducing what became Section 189, received very few outside submissions, none of them from citizens or constitutional experts. The idea of a referendum on the new legislation, floated by the Prime Minister, was abandoned. Professor McLeay is sharply, and understandably, critical of this legislative process.

Despite this reservation, Professor McLeay appears to admire the achievement of the framers of the Electoral Act 1956. They may not have practised what they preached, but they have persuaded their successors to do constitutional politics differently. Professor McLeay places their accomplishment in its political, intellectual, and historical contexts, and makes a convincing case for the significance of their legacy. If her book has a weakness, it is that it leaves the reader to reflect on his or her own about whether the making and endurance of the Electoral Act 1956 might teach us anything about politics other than New Zealand, and times other than the 1950s. Some of the issues New Zealand was then facing are live in other jurisdictions. For example, there is controversy in the United States over whether total population or the number of citizens should count when determining the size of Congressional districts, and controversy in some Canadian provinces over the permissible size discrepancies among constituencies. Why do not politicians there find mutual disarmament as attractive a solution as those in New Zealand did? What might—or how might the voters contrive to—change their minds? It would have been interesting to know what Professor McLeay thinks about this. That said, she did not set out to offer lessons in comparative law or politics, and it is perhaps unfair to fault her for this.

Another omission, and perhaps a more surprising one, is that of the ongoing litigation in which prisoners assert that the Electoral (Amendment) Act 2010, which disenfranchised them, was enacted in violation of Section 268 of the Electoral Act 1993. This claim has so far been rejected by both the High Court and the Court of Appeal, but both accepted that it was justiciable. (A decision of the Supreme Court still pending.) In this respect, one of the expectations and hopes of the authors of the Electoral Act 1956—that their use of single entrenchment would keep the courts out of constitutional debates—may at last have been dashed. Indeed, in argument before the Supreme Court (which probably took place too late for Professor McLeay to take account of it), the Government appeared to concede that, if Parliament had in fact legislated in violation of entrenchment, the resulting statute would be invalid.

However much they were attached to parliamentary sovereignty, the authors of Section 189 may thus have planted the seeds of its subversion in New Zealand.

These quibbles aside, Professor McLeay's book is both informative and thought-provoking. It should be of interest not only to aficionados of New Zealand's history and theorists of parliamentary sovereignty, but also to those, across and beyond the Commonwealth, who are interested in the law of democracy and in constitutional reform.

***Opening Government, Transparency and Engagement in the Information Age*, edited by John Wanna and Sam Vincent. Canberra: ANU Press, 2018, pp. xii + 165. RRP \$45.00 (print version).**

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Opening Government, Transparency and Engagement in the Information Age is a timely publication, due to trust in government having declined in recent years. The contributors to this volume discuss how trust in and the legitimacy of government can be improved by the successful embracing of modern information technology (IT). The contributors include a former Tasmanian Premier, a former New Zealand (NZ) Minister, chief digital officers and several senior scholars.

In a comprehensive introduction, John Wanna identifies the benefits of transparency, including it being an enabler, improving accountability and being a promoter of confidence and assurance. He acknowledges that western governments have slowly transformed themselves from secrecy to relative openness.

Wanna also cautions about some of the drawbacks of transparency, including its clash with privacy, commercial-in-confidence and security in some circumstances. He concludes, 'transparency is an aspirational ideal, but not free from risks and unintended consequences.

The editors have divided the fourteen contributions into three sections. Part 1 deals with governing in the information age towards better accountability. Of its four contributions about engagement, two examine how IT can be used to facilitate better two-way communications between government and the community. David Bartlett promotes the provision of a platform by government on which citizens and experts can contribute to jointly produce outcomes. He states that this contribution model via platforms is now a feature of private sector models, such as TripAdvisor. The concept of co-contribution is a recurring theme throughout the volume.

Colin McDonald states that government must transform its IT and communications to create end to end business processes rather than stand-alone offerings by individual government entities. He also highlights the need for citizen centrality but

acknowledges the difficulty of overcoming silos, which he sees as being deeply embedded in government structures. This transformation, he says, needs to be promptly completed to prevent disengagement from government.

The two other engagement contributions focus on practical examples of community engagement, one about NZ social welfare reform by Paula Bennett, the other about climate change in Australia by Ron Ben-David. The former engagement is lauded as a success, while the latter is lamented as a failure. The difference between these outcomes is explained by the contrasting processes pursued. The NZ process was focused on a specific problem and worked towards a clear outcome. The Australian consultation was all embracing and lacked sufficient focus.

In the first of the other two contributions in Part 1, writing about the NZ Key Government, Oliver Hartwich identifies four Ps—preparation, patience, pragmatism and principle—as the reasons for both its policy implementation and electoral success. He briefly compares this success with the recent performance of Australian, United Kingdom and German Governments. In contrast, Anne Tiernan identifies the loss of public service corporate memory and authority as major contributors to Australia’s political culture being broken. She argues that there needs to be a rebalancing of roles between partisan ministerial advisers and the professional public service, if the deficiencies in the Australian governmental system are to be satisfactorily addressed.

Part 2 deals with building trust through civic engagement. It opens with a long contribution by E. Allan Lind about the relationship between transparency, trust and public value. Lind’s key message is that the perception of being treated fairly by government, whatever the outcome of the engagement, fosters trust in government and a feeling of inclusion. Therefore, Lind argues that government should train its staff not only to administer its laws and policies correctly but also in a respectful, clear and engaging manner.

Stephen Mayne, Tanjia Aitarnurto and Dominik Hierlemann then discuss three community engagement exercises in Melbourne, Finland and Germany respectively. In Melbourne, the citizen jury process was employed, while in Finland crowd sourcing was implemented and in Germany, a combination of face-to-face and on-line consultation was utilised. Each of the exercises had similarities, in that they had high level backing and were genuine.

The most successful was undertaken by Melbourne City Council, which received comprehensive practical advice, which it acted upon. The crowd sourcing technique generated a good range of ideas. However, a second process was required to translate the ideas into advice, which could be used in policy-making and legislation

drafting. The crowd sourcing consultation sponsored by a Minister stalled, when the Minister changed portfolios, which suggests such consultations may be better sponsored, as a second one was, by civil servants, due to their greater longevity in positions. The German consultation was successful in that it engaged a wider cross-section of the community, but expectations had to be toned down and disagreements managed.

Part 3 deals with transparency and data management. These final four contributions outline the potential benefits of the latest IT and how government is utilising it.

Philip Evans states artificial intelligence is allowing sense to be made of big data, including about people's mobility due to mobile phone monitoring, which can be used to create new products. Some of these new products are mashups, which can be created by combining information from two web servers. Evans believes that government can create new products from the big data it holds to better engage with its citizens.

Tamati Shepherd and Erma Ranieri write from the Commonwealth and South Australian perspectives about how these two Australian governments are actively engaging with their citizens to transform their communications and services. Shepherd states that government needs to behave like a retail provider rather than a traditional department. She uses the co-redesign of a child support app between the users and government to illustrate this. In South Australia, Ranieri writes that new IT products are created through collaboration, including with industry and citizens.

As well as referring to the benefits that will be derived from a new payment system being put into place by the Australian Reserve Bank, Marie Johnson draws attention to some of the downsides of government embracing new IT systems. She writes about past problems, such as government introducing on-line systems but retaining paper forms. She also warns the digital transformation will disrupt tertiary education delivery and many jobs.

Overall, this volume is thought provoking and challenging. It presents opportunities for government, identifies pitfalls and emphasises that government needs to transform quickly and successfully, if it is to regain from the community some of the trust, which it has lost in recent years.

***Double Disillusion: The 2016 Federal Election*, edited by Anika Gauja, Peter Chen, Jennifer Curtin and Juliet Pietsch. Canberra: ANU Press, 2018, pp. xxix + 690. RRP \$75.00 (print version).**

Hiroya Sugita

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It has been a wonderful tradition of Australian political science to produce a comprehensive review after each federal election. A long-awaited volume on the 2016 double dissolution election finally hit the book shops in April 2018 and it is truly a mighty book. I'd like to acknowledge the effort and hard work by the editors, Anika Gauja, Peter Chen, Jennifer Curtin and Juliet Pietsch, in organising 41 contributors to produce a book of this calibre.

The first review of an Australian federal election I read was *The Greening of Australian Politics*, edited by Clive Bean, Ian McAllister and John Warhurst for the 1990 election. *The Greening of Australian Politics* has around 230 pages and nine chapters, while *Double Disillusion* has 690 pages and 30 chapters. This massive increase, I suppose, symbolically illustrates changes in electoral contests and contexts in Australia. For example, election analysis now requires separate chapters on minor parties *and* Independents. By 2016, the policy areas to be covered have multiplied. On-line activists such as GetUp! have joined the ranks of interest groups. Analysis on the media cannot be confined to traditional legacy media. Separate chapters are necessary for online media outlets as well as social media.

Double Disillusion also has kept the series' tradition of having a witty title, building upon *The Greening of Australian Politics*, *The Politics of Retribution* (for the 1996 election) and *Mortgage Nation* (for the 2004 election). This time, a witty title is assisted by the excellent choice of cover photo by Mike Bower of press gallery journalist Laura Tingle during the 2016 Leaders Debate.

For me, the major interests concerning the 2016 election centre on the facts that this was the first double dissolution election since 1987 and the first election after major changes to the Senate electoral system since 1984. The 2016 election was also the third consecutive election in which the defending Prime Minister was not one who

had won the previous election. The 2016 election also saw the aggregate share of first preference votes for major parties reduced to its lowest ever level. I read the book interested in and seeking answers to the following questions:

- Why was the election result so close just one term after the landslide in 2013 and under the leadership of a supposedly charismatic and popular Prime Minister against supposedly uninspiring and unpopular Leader of Opposition?
- Who were the winners?
- What implications can we draw from the result?
- Was there any change to Australia's persistently high level of party identification, as originally analysed by Don Aitkin in the 1960s?
- What effects did the change to the Senate electoral system have?
- What was the consequence of Prime Minister engineering a double dissolution election?

The first question about the closeness of the election result is answered in Chapter 1 by Gauja, Chen, Curtin and Pietsch, Chapter 6 by Simon Jackman and Luke Mansillo, Chapter 10 by Clive Bean and Chapter 11 by Rob Manwaring. According to these chapters, there seemed to be a disconnection between the public and the political parties. This was intensified by the perceived manipulation of the election timing by Prime Minister. While the Prime Minister blamed Labor's 'Mediscare' campaign for the closeness of the result (and the Australian Election Study data reported in the book can be interpreted in this way), the downward trajectory of support for the Coalition Government could be traced back to Christmas 2015. By the time the Prime Minister prorogued the parliament in order to call the double dissolution election, the Liberal-National Coalition had suffered five percentage point fall in its support.

This indicates that to dissolve the Parliament in May and have the election in July was monumental mistake. Turnbull should have gone earlier, perhaps soon after he snatched the Prime Ministership in September 2015, when he was basking in an electoral honeymoon. However, Chapter 8 by Antony Green painstakingly explains that Turnbull was prevented from calling the double dissolution when it most suited him. Partly this was because the trigger was weak. More importantly, his desired changes to the Senate voting system were not in place in 2015.

Turnbull's was a Pyrrhic victory. As pointed out in Chapter 12 by Nicholas Barry, his position and status within the Liberal Party was diminished. It is clear that the Liberal Party was not the winner. The National Party, by increasing one seat at the expense of its Coalition partner, was 'back from the brink' but now faces the fierce challenge

from rural-based right-wing parties as well as Independent candidates with strong local networks.

While the ALP recovered from a heavy defeat in 2013 to the brink of victory by adopting a ‘policy-rich approach’ to compensate for its Leader’s limited appeal, Labor’s first preference vote was its second lowest in recent history. It was hardly a winner. Chapter 11 by Rob Manwaring points out that Labor ran an oppositionist campaign, focusing on the so-called threat to Medicare. Perhaps that is the reason why its campaign fell just short.

The Greens, as Chapter 8 by Green and Chapter 13 by Stewart Jackson point out, put large resources into campaigns for House of Representative seats in metropolitan Melbourne and Sydney. It should have been obvious that the ALP would defend the Members for Sydney (Tanya Plibersek) and Grayndler (Anthony Albanese). It is a mystery to me why the Greens in NSW put so many resources there. While the Greens secured nine Senators, losing one in South Australia but still recording a respectable overall result, concentration of resources on the House seats in Melbourne and Sydney could have been why the Greens won only three Senators eligible to serve six-year terms. Green also points out that for the first time the Green’s aggregated share of votes in the Senate was lower than that in the House of Representatives.

So the winners of the 2016 election seem to be minor parties, especially the Nick Xenophon Team (NXT), Pauline Hanson’s One Nation (PHON), as well as Independents. However, as Chapter 15 by Glenn Kefford correctly points out, both Xenophon and Hanson faced difficulties institutionalising their parties after the federal election. NXT stumbled badly at ‘the next logical step... to entrench themselves further’ at the 2018 South Australian state election.¹ PHON has had a string of section 44 disqualifications and resignations.

One of the highlights of Australia’s federal election series is a section dedicated to analyse the AES, a long-standing survey of voter attitudes and behaviour. For a very long time, as Aitkin noted in the 1960s, high and strong level of party identification with major parties has contributed to the stability of Australia’s party system. As Chapter 10 by Clive Bean points out, while it is still possible to argue that ‘party

¹ See also the article by Mike Dean in this issue of the *Australasian Parliamentary Review*.

identification continues to dominate the electoral landscape', evidence to support decline in major party identification has finally emerged.

One of the more interesting analyses of the AES deals with the question concerning 'what if' there had been no change in the Liberal leadership. Chapter 10 by Bean concludes that voter attitudes to Tony Abbott were so low he would have dragged the Coalition vote down by as much as two percent. It seems obvious that the Coalition would have lost had they retained Abbott as Prime Minister.

As far as the change to the Senate electoral system is concerned, Green explains why it was necessary, how it was done and what kind of effect it had. While the double dissolution muddled the result and we have to wait for the next half Senate election to see exact impact of changes, it seems certain that in 2016 preferences flowed between parties with similar ideological outlooks. When a minor party was excluded from the count, preferences flowed steadily to major parties. And among minor parties, the ones with better name recognition tended to attract preferences. In a nutshell, it appears that the changes achieved the Prime Minister's purpose. On the other hand, the Prime Minister's decision to call a double dissolution election, lowering the Senate quota, made it easier for minor parties to win Senate seats at the expense of the Coalition, which lost 3 seats.

This book is not only an excellent snapshot of the 2016 election. It also provides comprehensive narrative of political landscape between 2013 and 2016. The fact that this book was published in April 2018 means that readers can observe post-election developments while reading the book. No one could have foreseen the political cyclone in the form of the section 44 disqualifications.² However, Turnbull's internal difficulties, which ultimately resulted in his removal, NXT's and PHON's inability to institutionalise themselves and the environmental issue eventually putting political pressure on the Coalition are developments mentioned in the book's analysis that have all been realised since 2016. The book's discussion of the implications of the election for the 45th Parliament are spot-on (the discussion on p.683 mentions the 43rd Parliament, which must mean the 45th).

² See the articles by Anne Twomey and Mel Keenan in the Spring/Summer 2017 issue of the *Australian Parliamentary Review*.

If I have one major complaint about this otherwise excellent book, it is the lack of an index. This absence is perhaps understandable, as the book has 690 pages. Nonetheless, for a book of this genre, an index seems indispensable.

The book left me with a couple of questions about the news media and Australian elections. First, with regard to the 'legacy' media, it is disturbing to see one of the major Australian media outlets—arguably the most powerful—become so biased that it has effectively become a political player. Is there anything that can be done to rectify the situation? Second, why is Crikey.com omitted from Chapter 20 by Peter Chen, in his examination of the election coverage by non-mainstream media? Crikey.com is older than Chen's cut-off point of 7 years but this cut-off means the book omits an important media outlet from its analysis of election coverage. One thing is certain: Crikey.com is not a part of the traditional 'legacy' media.

By late 2018, the most frequently asked question concerning Australian politics is 'Why have we had so many Prime Ministerial coups?'. I suppose quite a few experts have started contemplating this question and their ideas will come out sometime in 2020 in the form of the 2019 federal election review. I'm looking forward to reading that.

