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**THE SOUTH AUSTRALIAN LEGISLATIVE  
COUNCIL: POSSIBLE CHANGES TO ITS  
ELECTORAL SYSTEM**

BY

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## EXECUTIVE SUMMARY

Under the current electoral system for the South Australian Legislative Council, a party which gains more than 50% of the vote across the State should win a majority of the 11 seats in the Legislative Council election, but in order to have the balance of power in the Legislative Council it needs to win 6 Council seats at *two consecutive* elections. This has meant that no government could expect to have a majority in the Legislative Council during its first term, and few would be likely to achieve a majority in subsequent terms.

To win a seat in the Legislative Council a candidate must win at least a quota of votes – 8.3% under the current system. Only 20 to 30% of these votes need to be first preference votes, but if relying on preference votes the candidate must be placed higher on the ticket of candidates or parties who are excluded, than other candidates who remain in the count. In particular, in order to continue in the count long enough to receive extra preference votes, a candidate needs to be placed high on the tickets of those candidates who are excluded *early* in the count.

It is possible to model the Legislative Council voting system because 96% of voters use the ticket vote provisions.

The ticket model shows that reducing the size of the Legislative Council but still electing half of the Members at every House of Assembly election, would not necessarily change the balance of power in the Council (see Table 2). After the 1993 State election there would have been a LIB majority in a Legislative Council of either 16 MLCs or 20 MLCs (half elected in 1989 and half in 1993) but these were the only 2 cases where a party had a majority of seats out of the 18 hypothetical Councils ranging in size from 12 to 22 Members. The parties to lose most from reducing the size of the Council but still electing half of the Members each time, would be the ALP and LIB. The Democrats (and IND No Pokies in 2 cases after the 1997 election) would still have held the balance of power.

If we elected fewer Members to the Legislative Council but elected all of them at each general election, there would have been several Members from smaller parties, and the number of these parties represented would have increased with the size of the Council. However, having won more than half of the first preference vote in 1993, LIB would have held the majority of seats in the Council regardless of the size of the Council and this would have co-incided with a majority of seats in the House of Assembly (see Table 4). Electing all of the Council Members at the same time would mean that a government could have a majority in both Houses.

Increasing the number of Members to be elected at one time involves lowering the quota of votes required to win a seat. But because some of these votes can be preferences, there is no simple pattern for which parties will win the extra seats. In 1997 the Greens would have won a seat if we elected 17 or 22 MLCs, but not otherwise (see Table 5).

To win a majority of seats in the Legislative Council (of any size) a party needs to win at least 50% of the vote – just over 50% if the election is for an odd number of Members but more if the election is for an even number. Again, not all of these votes would need to be first preference votes (see Table 6).

As the number of Members elected is increased, parties need to win more seats to gain a majority and an increasing proportion of their votes needs to come from first preference votes. The extent to which a party can rely on the transfer of preferences from excluded candidates reduces with larger Councils.

A threshold could be introduced to prevent parties or candidates with very small numbers of votes from continuing in the count and gaining a seat via preferences of excluded candidates. Common thresholds in other systems are 5% of votes or a given proportion of a quota. A higher threshold would have more effect than a low one. A ½ quota threshold imposed on a count to elect 11 Members to the Legislative Council would have had no effect on the outcomes in 1985, 1989 or 1993, but would have prevented the IND No Pokies candidate from continuing in the count (see Table 8).

With a larger Council, or a Council where all Members were elected at the same general election, the quota would be lower than at present and a threshold would have more effect.

The party to benefit most from a threshold would probably be the Democrats (see Table 9).

The NSW Parliament has decided to abolish ticket voting.

IN SA abolishing the ticket vote would probably not have a great effect on the direction that preferences flow, and hence on the candidates winning seats, but it could be expected to substantially increase the informal vote.

If electorates were to be introduced for the Legislative Council, it seems likely that the constraints on drawing Assembly boundaries would also apply in the case of Council districts, although the size of the districts could make these constraints less applicable.

Historically, Legislative Council boundaries in South Australia were linked to Assembly boundaries.

If districts are introduced for the Council, which parties win which seats will depend to some extent on the boundaries and the voting system to be used.

Using a hypothetical set of 9 Council districts, and electing 18 Members all at the same election, only one seat changed (from Grey Power to DEM) when the districts were used rather than a Statewide electorate (see Table 11).

Using the same hypothetical set of 9 Council districts, and electing just 9 Members at the same election, two seats changed (from IND No Pokies and also from LIB, both to ALP) when the districts were used rather than a Statewide electorate (see Table 12). When Assembly voting data (rather than Council voting data) were applied to the hypothetical electorates one LIB seat and the No Pokies seat would have gone to the ALP. Introducing districts into the Council rather than a Statewide electorate could have quite unpredictable results.

The transition from a larger to a smaller Legislative Council was handled in Tasmania by a Tribunal, which allocated Members to the new districts. The Tribunal recommended strongly against retaining “unallocated” Members (those who were not allocated to a particular district) on the grounds that this could create difficulties for the Members who were to represent the new areas. The terms of unallocated Members were curtailed and compensation was paid for their reduced terms of service.

## INTRODUCTION

In South Australia the Legislative Council has a proportional representation electoral system with compulsory voting, full preferential voting and a top-down bottom-up count. There is no threshold. Members' terms are for 8 years, and half are elected each four years – in practice at each general election for the House of Assembly. The lagged election cycle for the Legislative Council means that a party needs to win 6 Council seats at *two consecutive* elections in order to have control of the House. In practice this has been impossible for parties to attain.

Since the introduction of proportional representation for the Legislative Council the balance of power in the Council has been held by the Australian Democrats and – more recently – the IND No Pokies Member, and no government has had a majority of seats in both Houses.

This situation is common in many Houses elected by proportional representation.

It is difficult for any government wanting to move legislation through the Parliament. On the other hand, there is also a strong argument for the role of the Legislative Council being one of review. Proponents of this argument consider that this review function of an Upper House cannot be properly performed when the government has the balance of power in the Upper House.

The balance between accountability and government control is debated elsewhere<sup>1</sup> in depth and this paper takes that debate as given.

More recently, parties holding seats within the South Australian Legislative Council and even outsiders have made public statements supporting reform of the electoral system for the Legislative Council.

Proposals have been made in terms of changing the number of seats, electing all Members at the same time and even reintroducing electorates for the Legislative Council. The Premier Mr. Olsen was reported in January and February this year to be thinking about various reforms, including “reducing the number of members possibly to 16 from 22”, and “changing the voting system so members are elected for districts, similar to the Victorian system instead of the current statewide electorate”.<sup>2</sup> Terry Cameron MLC representing SA First, proposed that the number of Members of the Legislative Council be reduced to 15 or 16, elected for 4-year terms.<sup>3</sup> Journalist Terry Plane proposed that the number of Members should be cut to 12.<sup>4</sup> Both Mr Olsen's and Mr Plane's proposals also included the return of specific electorates for Legislative Councillors, but these electorates were not specified.

In July, Mr Olsen announced that he would be presenting proposals for reform of the Upper House, to the Parliament in October. While Mr Olsen “ruled out total abolition of the Council as an option”,<sup>5</sup> no other details have been finalised. Mr Olsen announced that the Liberal Party room would be discussing “a series of options... including reducing the number of MLCs and reintroducing electorates”.<sup>6</sup> He also noted that “some MPs” favoured multi-member electorates – possibly nine two-member districts<sup>7</sup>. In the same press report, Opposition Leader Mr Rann favoured reducing

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<sup>1</sup> See especially Harry Evans “Accountability versus Government Control: the Effect of Proportional Representation” in M.Sawer and S Miskin (eds.) 1999, Representation and Institutional Change : 50 Years of Proportional Representation in the Senate, Department of the Senate, Canberra.

Also Scott Bennett, 1999, Should the Australian electoral System be Changed?, Commonwealth Parliamentary Library Current Issues Brief No 10 of 1998-99, available at [www.aph.gov.au/library/pubs](http://www.aph.gov.au/library/pubs)

<sup>2</sup> Greg Kelton, “Order in the House”, The Advertiser, 4 January 2000, p.1

<sup>3</sup> Greg Kelton, “Upper House reform fixed”, The Advertiser, 5 January 2000, p.2. See also SA First Electoral Policy at <http://safirst.tripod.com>.

<sup>4</sup> Terry Plane, “Cut the Legislative Council back to 12 members” City Messenger, 25 January 2000.

<sup>5</sup> Greg Kelton, “Reform in the House” The Advertiser, 25 July 2000, pp.1-2.

<sup>6</sup> As above

<sup>7</sup> As above

the number of Members in both the Legislative Council and the House of Assembly, by 4 in each case. The next day Mr Cameron (SA First) proposed 6 fewer Members in each House (bringing the number of MLCs back to 16 and Assembly Members back to 41) and fixed four-year terms for Upper House Members.<sup>8</sup>

These proposals raise questions such as:

If the number of Members of the Legislative Council was changed, would that change the party balance in the Council, and if so, how?

Would it matter if Members were elected for 4-year or 8-year terms?

What would happen if Members were elected to represent regions or electorates?

What if a threshold was introduced? (a number of votes which a candidate would need in order to participate in the distribution of preferences and perhaps win a seat)

It is possible to use past SA Legislative Council election figures to try to answer these questions, and that is what this paper does.

This paper describes the current electoral system for the Legislative Council. It introduces a simple model for the Legislative Council voting system, which generates accurate results for the number of Members elected to represent each party at each election since 1985 (always electing 11 Members), and which is then used to:

- generate *estimates* for electing 7 Members, 8 Members etc.,
- look at the effect of electing *all* MLCs each 4 years compared to half each 4 years; and
- look at the effect of introducing a threshold.
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The paper also looks at ticket voting provisions; and finally looks at the types of electorates and voting systems which could be used in the Upper House, and provides estimates of the possible electoral outcomes.

## HOW DOES THE LEGISLATIVE COUNCIL VOTING SYSTEM WORK?

### Voting

The Legislative Council ballot paper enables electors to vote for one party (an above-the-line vote, also known as a ticket vote) or to vote for every individual candidate (a below-the-line vote, also known as a preferential vote). If the elector chooses to vote above-the-line he or she is only required to mark one box, but voting below-the-line requires a mark in every box in order of preference.

Before election-day, each party (and each independent candidate) informs the State Electoral Office (SEO) of the order in which it wants its first preference votes to be distributed to every other candidate contesting the election. This ticket is used to distribute the party's votes in the event that the party does not gain enough votes to continue in the count. In effect the party (or independent candidate) is providing the SEO with a pattern of preferences, and this is called the ticket.

Some parties lodge two tickets: in 1997 two tickets were lodged for IND No Pokies, Natural Law, the ALP, the Democrats, IND Representing the Silent Majority, and IND to Ban Duck Shooting. In most cases the two tickets differ only when the preferences reach the ALP and the Liberal Party; one ticket will usually put the ALP ahead of LIB and the other will put LIB ahead of the ALP. (In 1997 though, the two Grey Power tickets were quite different, and the two ALP tickets varied the order of preferences to the Greens and IND Students Against HECS.)

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<sup>8</sup> Greg Kelton, "Rann backs some House reform," The Advertiser, 26 July 2000, p.24.

Large sheets showing the order of preferences for each ticket lodged by each party or Independent, are displayed in each voting booth on the day of the election.

When a voter chooses to give his vote to a party or Independent using an above-the-line vote, he is accepting that party's (or Independent's) choice in relation to the order of preference distribution. A voter who does *not* accept that choice, can specify the order in which he prefers his vote to be distributed simply by voting below-the-line and numbering each candidate.

At each of the last three State elections, 96% of formal ballot papers were marked with above-the-line votes, and only 4% of ballot papers specified each candidate.

## **Counting**

### **-The quota**

In order to be elected to the Legislative Council, a candidate must receive a quota of votes. The quota is calculated as:

(total formal votes / number of seats available, plus one) plus one.

When we elect 11 Members to the Legislative Council, the quota is about 8.3% of total formal votes. If this number of Members was to grow, then the quota of votes required to be elected would be lower (and *vice versa*).

*A candidate does not need to receive a whole quota of first preference votes; additional preference votes can accrue to the candidate as other candidates with fewer votes are excluded during the count. This means that it is quite possible for a candidate with only a fraction of a quota of first preferences to still win a seat. Under the current system where we elect 11 candidates, it is possible for a candidate with only about a third of a quota (about 25,000 votes in 1997) to win enough preference votes from other candidates to finally win a whole quota (and hence a seat). If we were to elect more Members at one time the number of first preference votes required to finally go on and win a quota would be lower (because the size of the quota would be lower), and similarly if we were to elect fewer Members at one time then the number of first preference votes required to continue in the count and finally win a quota would be correspondingly higher.*

### **-The process of the count**

The count uses a 'top-down bottom-up' method of counting.

Each party nominates its candidates in an order which reflects the importance which the party places on having that candidate win a seat – the most important candidate is at the top of the party's list. All ticket votes for a party are allocated to the top candidate on the party's list, as well as any first preferences gained by that candidate from below-the-line votes. Second and subsequent candidates on the party's list are shown at this stage as having only those first preference votes which they gained from below-the-line votes.

Once all formal first preference votes have been counted and allocated to individual candidates, the quota can be calculated, and candidates who have gained a quota or more can be declared elected.

Their excess first preference votes are then distributed to another candidate in the order dictated by the party ticket or (in the case of below-the-line ballot papers) in the order specified on the ballot paper. A party must field more than one candidate, so at this stage of the count the excess votes will almost inevitably "roll down" to the party's second candidate, and may prove to be enough to elect that second candidate.

Where a party has lodged two tickets, every second preference vote is distributed according to the second ticket.

When the excess votes of those candidates who have been elected, have all been distributed to other candidates, the count passes to the “bottom-up” stage. At this point the candidate with the *lowest* number of votes is determined to be the least-preferred candidate, and is excluded from the remainder of the count. The candidate’s votes are allocated to continuing candidates in the order dictated by the ticket which the candidate or his party had lodged with the SEO prior to the election, or (in the case of below-the-line ballot papers) in the order specified on each ballot paper. This process of excluding the candidates with the least support continues until a continuing candidate has received enough preference votes to win a quota (at which stage that candidate is declared elected) and then resumes until all seats have been won.

The general effect of a proportional representation voting system is to elect Members in proportion to the number of votes their parties received at the election. This proportionality is affected to a small degree by the fact that second and subsequent preferences have the same value in the count as first preferences; this amplifies the positions of the various parties at the start of the count as those with the most votes at the beginning of the count stay in the count and collect further preferences, while those with the fewest votes at the start of the count are excluded early on and cannot then collect any more preference votes. The size of this amplification can be seen in Table 1 below.

**TABLE 1: PERCENTAGE OF FIRST PREFERENCE VOTES GAINED BY MAJOR PARTIES, AND PERCENTAGE OF SEATS GAINED, SA LEGISLATIVE COUNCIL ELECTIONS, 1985 TO 1997**

	ALP	LIB	DEM	CTA	IND No Pokies	All others combined	TOTAL
<b>1985</b>							
Share of formal first preferences (%)	48.0	39.3	5.5			7.2	100.0
Seats won if count was strictly proportional to first preferences	5.28	4.32	0.6			0.8	11.0
Seats actually won	5	5	1			0	11
<b>1989</b>							
Share of formal first preferences (%)	39.7	41.1	10.7	2.5		5.9	100.0
Seats won if count was strictly proportional to first preferences	4.4	4.5	1.2	0.3		0.7	11.0
Seats actually won	5	5	1	0			11
<b>1993</b>							
Share of formal first preferences (%)	27.4	51.8	8.0			12.7	100.0
Seats won if count was strictly proportional to first preferences	3.01	5.7	0.9			1.4	11.0
Seats actually won	4	6	1				11
<b>1997</b>							
Share of formal first preferences (%)	30.6	37.8	16.7		2.9	12.1	100.0
Seats won if count was strictly proportional just to first preferences	3.4	4.2	1.8		0.3	1.3	11.0
Seats actually won	4	4	2		1		11

SOURCE: actual results are from:

SA. State Electoral Department, 1986, General Elections 1985, PP 145 of 1986-87.

SA. State Electoral Department, 1991, General Elections 1989, PP 161 of 1990-91.

SA. State Electoral Department, 1995, Statistical Returns for General Elections 11 December 1993, SEO Adelaide.

SA. State Electoral Department, 1998, Statistical Returns for General Elections 11 October 1997, SEO Adelaide.

My calculations from the above.

While the proportional representation count does not produce results that are exactly proportional to the first preference vote, it does produce results that are closer to strict proportionality than any other commonly-used voting system.

### **How many votes are required for a candidate to be elected?**

A candidate needs to win a quota of votes (about 8.3% if we elect 11 Members) to win a seat. Not all of these votes need to be first preference votes.

Under the current arrangement where 11 Members are elected at each Legislative Council election, a successful candidate requires at least enough first preference votes to win about a third of a quota (about 2.5% of first preference votes or 25,000 in 1997). However, if we were to elect a different number of Members it is possible that a candidate could be elected with fewer first preference votes (see Tables 3 and 6 later).

In order to continue in the count for long enough to receive preference votes from other candidates as they are gradually excluded, the successful candidate cannot be the least-preferred candidate at the start of the count (to be fair, this will usually be guaranteed by winning 25,000 first preferences).

Finally, the successful candidate must receive the remaining portion of his or her quota (currently a maximum of two-thirds of a quota of votes) as preferences from other candidates, so must be placed higher on their tickets than other candidates who continue in the count (e.g. higher than the major parties stand on those tickets). In particular, in order to continue in the count long enough to receive extra preference votes, a candidate needs to be placed high on the tickets of those candidates who are excluded *early* in the count.

*Each of these requirements will be played out differently at each election.*

Winning more than a third of a quota is no guarantee of winning a seat if preferences do not flow towards you. For example, in 1997 the fifth LIB candidate had 54% of a quota and the IND No Pokies candidate began the count with only 34% of a quota, but the IND No Pokies candidate took the seat.

The Liberal Party candidates won 4.54 quotas, so the first four candidates were elected at the beginning of the count and the fifth LIB candidate began the count with 54% of a quota (over 40,000 votes). But IND No Pokies candidate (with only 25,630 first preference votes at the beginning of the count) was placed higher than the ALP, LIB or DEM on almost every party's tickets, which meant that as the minor players in the election were excluded and their preference votes were allocated elsewhere, IND No Pokies continued in the count picking up preferences while the major parties received relatively few. The outcome was of course that IND No Pokies won a seat and the fifth LIB candidate did not.

Being placed high on the ticket of other candidates or parties is no guarantee of receiving their preference votes, because they may not be excluded before you are.

For example, in 1997 the IND HEMP party was placed 2<sup>nd</sup> on the ticket of the Australian Greens party, but did not receive any preference votes from the Greens because IND HEMP was excluded before the Greens.

### **How many votes are required for a party to win the majority of seats?**

Members of the Legislative Council each serve an eight-year term; 11 of the 22 Members are elected each 4 years at the same time as the election for House of Assembly Members.

The lagged election cycle for the Legislative Council means that a party needs to win 6 Council seats at *two consecutive* elections in order to have control of the House.

To win 6 of the 11 available seats, a party needs to win 6 quotas, which works out at slightly over 50% of the total number of formal votes. A party could win these 6 quotas by winning 50% (or more) of the first preferences or, at a minimum about 44.2% of all formal first preference votes and then making up the additional 5.8% of votes in second or subsequent preferences of excluded candidates.<sup>9</sup>

Winning 50% of the vote in order to win a majority of the seats is not an unreasonable task – we expect that in the House of Assembly elections. But in the Legislative Council a party must do this

<sup>9</sup> 5 quotas (= 41.7% of formal first preferences) plus about 0.3 of a quota (= 2.5% of first preferences) to remain in the count, totals 44.2% of formal first preference votes.

for two elections in a row to win the majority of seats. No party has managed to do this – the ALP won 6 seats in 1975, LIB won 6 in 1979 and again in 1993 but these wins required large swings towards the parties at the time and the swings were not sustained at a subsequent election.

*On the evidence of recent history, no government can expect to have a majority in the Legislative Council during its first term, and few would be likely to achieve a majority in subsequent terms.*

## **CAN WE MODEL THE LEGISLATIVE COUNCIL VOTING SYSTEM?**

It has already been pointed out that 96% of formal ballot papers at each of the last three State elections for the Legislative Council were marked with above-the-line votes, and only 4% of ballot papers specified each candidate. Therefore it should be possible to model the Legislative Council vote as if every voter's preferences followed his or her chosen party's ticket. Indeed, when the first preferences of all voters (i.e. all formal first preference votes, whether they were recorded above or below the line), are distributed as if they were all above-the-line votes, the model produces the same successful candidates as the actual count, in 1985, 1989, 1993 and in 1997 (see the tables in Appendix 1).

Therefore I think the ticket-vote model can be used as the basis for an analysis of hypothetical changes to the electoral system.

## **USING THE TICKET VOTE MODEL**

It is quite a simple (but time-consuming) task to apply the voting figures from 1985, 1989, 1993 and 1997 to the model, to look at the effect of changing the number of Members we might have wanted to elect at each of these elections.

There is one problem, which is that the parties which did contest these elections might have chosen not to do so if South Australia had decided to elect *fewer* Members to the Legislative Council. Some of the people who did stand as Independent or small-party candidates in 1997 may have thought it not worth their while to enter the competition.

Similarly, if it had been decided that *more* Legislative Councillors were to be elected, it is quite possible that more Independent or small-party candidates would have presented themselves as candidates, reasoning that a larger number of available seats would mean a lower quota and therefore a greater chance of continuing through the count and winning a seat.

There is no way that I can make allowances for this problem, but it is likely that the addition or subtraction of smaller competitors would not have altered the figures greatly.

### **What if fewer Members were required?**

In January, Mr Olsen proposed electing fewer Members to the Legislative Council – perhaps as few as 16. Mr Cameron proposed either 15 or 16, and Mr Plane proposed electing only 12.

Assuming half of these Members were elected every 8 years – as is currently done – the composition of the Legislative Council would have been as shown in Table 2. (For good measure, I have also included the option of electing 7 Members each time to give a 14-Member Legislative Council.)

If we think of the different options in Table 2 as representing possible alternative Councils, (a Council of 12, 14, 16, 18, 20 or 22 Members) then it seems clear from Table 2 that there would still have been only two Councils in which either of the major parties held the balance of power in a Council; after the 1993 State election the Liberal Party would have held a majority of seats in either a 16-Member Council or a 20-Member Council (as it did in the House of Assembly). In each of the other alternative Councils, the balance of power would have been held by the Democrats and, after the 1997 State election, the IND No Pokies Member.

**TABLE 2: COMPOSITION OF THE LEGISLATIVE COUNCIL AFTER THE 1989, 1993 AND 1997 STATE ELECTIONS, FOR A COUNCIL SIZE BETWEEN 12 AND 22 (8-year terms)**

		Council composition after the 1989 election				Council composition after the 1993 election				Council composition after the 1997 election						
		ALP	LIB	DEM	TOTAL	ALP	LIB	DEM	TOTAL	ALP	LIB	DEM	NO POKIES	TOTAL		
<b>MODEL:</b> ELECTING 6 MPs for LC size of 12	Elected 1985	3	3		6	Elected 1989	2	3	1	6	Elected 1993	2	3	1	6	
	Elected 1989	2	3	1	6	Elected 1993	2	3	1	6	Elected 1997	2	2	2	6	
	Sitting 1989 to 1993	5	6	1	12	Sitting 1993 to 1997	4	6	2	12	Sitting 1997 to 2001	4	5	3	0	12
<b>MODEL:</b> ELECTING 7 MPs for LC size of 14	Elected 1985	4	3		7	Elected 1989	3	3	1	7	Elected 1993	2	4	1	7	
	Elected 1989	3	3	1	7	Elected 1993	2	4	1	7	Elected 1997	2	3	2	7	
	Sitting 1989 to 1993	7	6	1	14	Sitting 1993 to 1997	5	7	2	14	Sitting 1997 to 2001	4	7	3	0	14
<b>MODEL:</b> ELECTING 8 MPs for LC size of 16	Elected 1985	4	3	1	8	Elected 1989	3	4	1	8	Elected 1993	2	5	1	8	
	Elected 1989	3	4	1	8	Elected 1993	2	5	1	8	Elected 1997	2	3	2	1	8
	Sitting 1989 to 1993	7	7	2	16	Sitting 1993 to 1997	5	9	2	16	Sitting 1997 to 2001	4	8	3	1	16
<b>MODEL:</b> ELECTING 9 MPs for LC size of 18	Elected 1985	4	4	1	9	Elected 1989	4	4	1	9	Elected 1993	3	5	1	9	
	Elected 1989	4	4	1	9	Elected 1993	3	5	1	9	Elected 1997	3	3	2	1	9
	Sitting 1989 to 1993	8	8	2	18	Sitting 1993 to 1997	7	9	2	18	Sitting 1997 to 2001	6	8	3	1	18
<b>MODEL:</b> ELECTING 10 MPs for LC size of 20	Elected 1985	5	4	1	10	Elected 1989	4	5	1	10	Elected 1993	3	6	1	10	
	Elected 1989	4	5	1	10	Elected 1993	3	6	1	10	Elected 1997	3	4	2	1	10
	Sitting 1989 to 1993	9	9	2	20	Sitting 1993 to 1997	7	11	2	20	Sitting 1997 to 2001	6	10	3	1	20
<b>ACTUAL COUNT:</b> ELECTING 11 MPs for LC size of 22	Elected 1985	5	5	1	11	Elected 1989	5	5	1	11	Elected 1993	4	6	1	11	
	Elected 1989	5	5	1	11	Elected 1993	4	6	1	11	Elected 1997	4	4	2	1	11
	Sitting 1989 to 1993	10	10	2	22	Sitting 1993 to 1997	9	11	2	22	Sitting 1997 to 2001	8	10	3	1	22

SOURCES: model results are from my calculations using the ticket vote model

actual results are from:

SA. State Electoral Department, 1986, General Elections 1985, P.P. 145 of 1986-87

SA. State Electoral Department, 1991, General Elections 1989, P.P. 161 of 1990-91

SA. State Electoral Office, 1995, Statistical Returns for General Elections 11 December 1993, SEO, Adelaide

SA. State Electoral Office, 1998, Statistical Returns for General Elections 11 October 1997, SEO, Adelaide

The results in Table 2 are worth pondering.

Electing fewer Members would increase the size of the quota and it is generally thought that independent candidates or candidates from smaller parties would be penalised (by comparison with the system as it stands at present).

This *does* seem to be true in the case of the IND No Pokies Member: if only 6 or 7 Members were required in 1997 rather than 11, IND No Pokies would not have won a seat.

Yet Table 2 shows that this rule *would not* have affected the performance of the Australian Democrats to the same extent. If, at the election in 1985 only a very small contingent of MPs were required to be elected to the Legislative Council – only 6 or 7 MLCs – no DEM Members would have been elected. But with this exception, the number of DEM MPs elected to the Upper House does not seem to vary much at all when the total number of MPs to be elected is varied.

Whether South Australia had chosen to elect 6, 7, 8, 9, 10 or 11 Members to the Legislative Council in 1997, 2 of them would have been Democrats. In the Council, they would have joined the single Democrat elected at the 1993 election – regardless of whether 6 Members had been required or 11 or any number in between, at that 1993 election.

Indeed, Table 2 shows that the parties which would have been substantially affected by a change to smaller numbers of Members elected, would have been the ALP and the Liberal Party. If only 6 Members had been required in 1997 the ALP, Liberal Party and the Democrats would all have come out of the count with 2 Members each, compared to the actual election count in 1997 when 4 ALP, 4 LIB, 2 DEM and one IND No Pokies Member had actually been elected.

*What is the reason for the consistent performance by the Democrats; how is it that a reduction in the number of Members to be elected affects the larger parties much more than the Democrats or – in 1997 – No Pokies?*

Table 3 may help to explain this. This table shows the results in 1985, 1989, 1993 and 1997 in terms of *quotas* won from first preferences and then from subsequent preferences.

It may be useful first to look at the LIB position. In 1997 Liberal Party candidates received 339,064 formal first preference votes.

- To elect 11 MLCs the quota was 74,709 votes, so LIB won 4.54 quotas, or 4 seats with the opportunity to make it 5 through receiving preferences from excluded candidates. (It is not possible to win more than one seat through receiving preferences.)
- If only 6 MLCs were required, the quota almost doubles and the Liberal Party would have won 2.65 quotas – 2 seats with the opportunity to increase it to 3 with preferences from excluded candidates.

*So the Liberal Party could potentially have lost 2 seats if the number of MLCs to be elected had been reduced from 11 to 6.*

By comparison, in 1997 the Australian Democrats won 149,660 formal first preference votes.

- To elect 11 MLCs the quota was 74,709 votes, so the Democrats won 2.00 quotas, or 2 seats (with not enough excess first preferences to stay in the count and pick up an additional seat from excluded candidates).
- To elect only 6 MLCs, the quota almost doubles and the Democrats would have won only 1.17 quotas - 1 seat (but this time with enough excess first preferences to stay in the count and pick up an additional seat from excluded candidates).

*So the Democrats could potentially have lost no seats or 1 seat, if the number of MLCs to be elected had been reduced from 11 to 6.*

TABLE 3: THE LEGISLATIVE COUNCIL COUNT: 1985, 1989, 1993 and 1997  
 QUOTAS WON AND SEATS WON IF WE HAD ELECTED ONLY 6, 8, 9 OR 10 MEMBERS TO THE LEGISLATIVE COUNCIL

	1985					1989					1993					1997						
	ALP	LIB	DEM	All Others combined	TOTAL	ALP	LIB	DEM	CTA	All Others combined	TOTAL	ALP	LIB	DEM	All Others combined	TOTAL	ALP	LIB	DEM	NO POKIES	All Others combined	TOTAL
Formal first p	391,076	320,055	44,988	58,819	814,938	339,961	351,559	91,456	21,658	50,650	855,284	248,970	470,675	73,051	115,830	908,526	274,098	339,064	149,660	25,630	108,051	896,503
Share of form	48.0	39.3	5.5	7.2	100.0	39.7	41.1	10.7	2.5	5.9	100.0	27.4	51.8	8.0	12.7	100.0	30.6	37.8	16.7	2.9	12.1	100.0
<b>MODEL, ELECTING 6 MEMBERS</b>	1 QUOTA = 116420 formal votes					1 QUOTA = 122184 formal votes					1 QUOTA = 129790 formal votes					1 QUOTA = 128072 formal votes						
Quotas won	3.36	2.75	0.39	0.51	7.00	2.78	2.88	0.75	0.18	0.41	7.00	1.92	3.63	0.56	0.89	7.00	2.14	2.65	1.17	0.20	0.84	7.00
Seats won fr	3	2			5	2	2	1			5	1	3	1		4	2	2	1		5	
Seats won from distributor	1				1		1				1	1				2					1	
<b>MEMBERS</b>	3	3	0	0	6	2	3	1	0	0	6	2	3	1	0	6	2	2	2	0	0	6
<b>MODEL, ELECTING 7 MEMBERS</b>	1 QUOTA = 101868 formal votes					1 QUOTA = 106911 formal votes					1 QUOTA = 113566 formal votes					1 QUOTA = 112063 formal votes						
Quotas won	3.84	3.14	0.44	0.58	8.00	3.18	3.29	0.86	0.20	0.47	8.00	2.19	4.14	0.64	1.02	8.00	2.45	3.03	1.34	0.23	0.96	8.00
Seats won fr	3	3			6	3	3				6	2	4			6	2	3	1		6	
Seats won fr	1				1			1			1			1		1			1		1	
<b>MEMBERS</b>	4	3	0	0	7	3	3	1	0	0	7	2	4	1	0	7	2	3	2	0	0	7
<b>MODEL, ELECTING 8 MEMBERS</b>	1 QUOTA = 90549 formal votes					1 QUOTA = 95032 formal votes					1 QUOTA = 100948 formal votes					1 QUOTA = 99612 formal votes						
Quotas won	4.32	3.53	0.50	0.65	9.00	3.58	3.70	0.96	0.23	0.53	9.00	2.47	4.66	0.72	1.15	9.00	2.75	3.40	1.50	0.26	1.08	9.00
Seats won fr	4	3			7	3	3	0			6	2	4			6	2	3	1		6	
Seats won from distribution of preference	1				1		1	1			2		1	1		2			1	1		2
<b>MEMBERS</b>	4	3	1	0	8	3	4	1	0	0	8	2	5	1		8	2	3	2	1		8
<b>MODEL, ELECTING 9 MEMBERS</b>	1 QUOTA = 81494 formal votes					1 QUOTA = 85529 formal votes					1 QUOTA = 90853 formal votes					1 QUOTA = 89651 formal votes						
Quotas won	4.80	3.93	0.55	0.72	10.00	3.97	4.11	1.07	0.25	0.59	10.00	2.74	5.18	0.80	1.27	10.00	3.06	3.78	1.67	0.29	1.21	10.00
Seats won fr	4	3			7	3	4	1			8	2	5			7	3	3	1		7	
Seats won from distributor	1		1		2	1					1	1		1		2			1	1		2
<b>MEMBERS</b>	4	4	1	0	9	4	4	1	0	0	9	3	5	1		9	3	3	2	1		9
<b>MODEL, ELECTING 10 MEMBERS</b>	1 QUOTA = 74086 formal votes					1 QUOTA = 77754 formal votes					1 QUOTA = 82594 formal votes					1 QUOTA = 81501 formal votes						
Quotas won	5.28	4.32	0.61	0.79	11.00	4.37	4.52	1.18	0.28	0.65	11.00	3.01	5.70	0.88	1.40	11.00	3.36	4.16	1.84	0.31	1.33	11.00
Seats won fr	5	4			9	4	4	1			9	3	5			8	3	4	1		8	
Seats won from distribution of preference	1				1		1				1		1	1		2			1	1		2
<b>MEMBERS</b>	5	4	1	0	10	4	5	1	0	0	10	3	6	1		10	3	4	2	1	0	10
<b>MODEL, ELECTING 11 MEMBERS</b>	1 QUOTA = 67912 formal votes					1 QUOTA = 71274 formal votes					1 QUOTA = 75711 formal votes					1 QUOTA = 74709 formal votes						
Quotas won	5.76	4.71	0.66	0.87	12.00	4.77	4.93	1.28	0.30	0.71	12.00	3.29	6.22	0.96	1.53	12.00	3.67	4.54	2.00	0.34	1.45	12.00
Seats won fr	5	4			9	4	4	1			9	3	6			9	3	4	2		9	
Seats won from distributor	1		1		2	1					2	1		1		2			1	1		2
<b>MEMBERS</b>	5	5	1	0	11	5	5	1	0	0	11	4	6	1		11	4	4	2	1	0	11
<b>ACTUAL COUNT, ELECTING 11 MEMBERS</b>	1 QUOTA = 67912 formal votes					1 QUOTA = 71274 formal votes					1 QUOTA = 75711 formal votes					1 QUOTA = 74709 formal votes						
Quotas won	5.76	4.71	0.66	0.87	12.00	4.77	4.93	1.28	0.30	0.71	12.00	3.29	6.22	0.96	1.53	12.00	3.67	4.54	2.00	0.34	1.45	12.00
Seats won fr	5	4			9	4	4	1			9	3	6			9	3	4	2		9	
Seats won from distributor	1		1		2	1					2	1		1		2			1	1		2
<b>MEMBERS</b>	5	5	1	0	11	5	5	1	0	0	11	4	6	1		11	4	4	2	1	0	11

SOURCES: model results are from my calculations using the ticket vote model  
 actual results SA, State Electoral Department, 1986, *General Elections 1985*, P.P. 145 of 1986-87  
 SA, State Electoral Department, 1991, *General Elections 1989*, P.P. 161 of 1990-91  
 SA, State Electoral Office, 1995, *Statistical Returns for General Elections 11 December 1993*, SEO, Adelaide  
 SA, State Electoral Office, 1998, *Statistical Returns for General Elections 11 October 1997*, SEO, Adelaide

The difference between the performance of the Democrats and the Liberal Party has been in their relative ability to pick up the extra preference votes during the count, as other candidates are excluded. In 1997 the Democrats were placed higher than either the ALP or LIB on the tickets of the following parties or candidates:

- Australian Greens (15,377 first preference votes);
- IND No Pokies (12,815 first preference votes);
- Grey Power (14,261 first preference votes);
- IND HEMP (15,432 first preference votes);
- IND Ban Duck Shooting (3,323 first preference votes).

In total, 74,023 preference votes would flow to the Democrat candidates before the ALP or LIB candidates in 1997, *regardless of how many Members were to be elected.*

Had only 6 MLCs been required in 1997, the DEM first preference vote would have been enough to secure 1.17 quotas, and having secured that first seat their position on the tickets of the other candidates and parties would have meant that they would have won a second seat (even though only 0.17 of a quota is a small foothold from which to go on to win a full quota.)

By contrast, the LIB vote would have won 2.65 quotas; 2 seats plus enough votes to keep a third LIB candidate in the count, plus a relatively small number of preference votes to secure that third seat, but the required preferences would not have eventuated.

### **What if *more* Members were required?**

In January, Mr Olsen proposed electing fewer Members to the Legislative Council – perhaps as few as 16. Mr Cameron proposed either 15 or 16, and Mr Plane proposed electing only 12.

If these Members were to be elected for *four* year terms (following Terry Cameron's proposal) then we would effectively be electing *more* MLCs at each election.

Electing more Members on each occasion would reduce the quota and it is commonly believed that this would increase the likelihood of small parties holding the balance of power in the new Council.

Another change would be that the composition of the Council would be a more immediate expression of the mood of the electors – rather than a reflection of the vote at the *two* most recent elections. This change could be expected to make Council membership more changeable, but would it affect the balance of power within the chamber?

Table 4 shows the model outcomes had we been electing anywhere from 12 to 22 MLCs at the 1985, 1989, 1993 and 1997 State elections.

Table 4 shows that if more Legislative Councillors had been elected at the past 4 elections, there would indeed have been several Members representing smaller parties over the past few terms, and the number of these Members would have increased with the size of the Legislative Council.

Table 4 also shows that in 1993, the Liberal Party, with more than half of all first preference votes for the Council, would have won more than half of the seats in the Legislative Council and would have had control of that House, *regardless of the size of the House.* (This would have coincided with a LIB majority in the House of Assembly.)

With almost half of the first preference vote in 1985 (48%), the ALP would also have had a majority of Members (and hence control) in 1985, but only in either a 13-Member Council or a 17-Member Council. (The ALP had a majority of seats in the House of Assembly after the 1985 election.)

**TABLE 4: THE LEGISLATIVE COUNCIL COUNT: 1985, 1989, 1993 and 1997  
SEATS WON IF WE HAD ELECTED BETWEEN 12 AND 22 MEMBERS TO THE LEGISLATIVE COUNCIL**

	ALP	LIB	DEM	NDP	NAT	CTA	OTHERS (combined)	TOTAL	
	<i>Formal first preference votes for each major party/candidate</i>								
	391,076	320,055	44,988	12,098	13,276	24,666	8,779	814,938	
	48.0	39.3	5.5	1.5	1.6	3.0	1.1	100.0	
	Seats won by each major party / candidate								
electing 12 MLCs	6	5	1					12	
electing 13 MLCs	7	6						13	
electing 14 MLCs	7	6	1					14	
electing 15 MLCs	7	7	1					15	
electing 16 MLCs	8	7	1					16	
electing 17 MLCs	9	7	1					17	
electing 18 MLCs	9	8	1					18	
electing 19 MLCs	9	8	1	1				19	
electing 20 MLCs	10	8	1		1			20	
electing 21 MLCs	10	9	1	1				21	
electing 22 MLCs	11	9	1			1		22	

  

	ALP	LIB	DEM	NDP	NAT	CTA	GREY POWER	OTHERS (combined)	TOTAL
	<i>Formal first preference votes for each major party/candidate</i>								
	339,961	351,559	91,456			21,658	19,486	31,164	855,284
	39.7	41.1	10.7			2.5	2.3	3.6	100.0
	Seats won by each major party / candidate								
one quota =									
electing 12 MLCs	5	5	1				1		12
electing 13 MLCs	5	6	2						13
electing 14 MLCs	6	6	1				1		14
electing 15 MLCs	6	7	2						15
electing 16 MLCs	6	7	2				1		16
electing 17 MLCs	7	8	2						17
electing 18 MLCs	7	8	2				1		18
electing 19 MLCs	8	9	2						19
electing 20 MLCs	8	9	2				1		20
electing 21 MLCs	9	9	2				1		21
electing 22 MLCs	9	10	2				1		22

  

	ALP	LIB	DEM	GREY POWER	IND McCarty	OTHERS (combined)	TOTAL
	<i>Formal first preference votes for each major party/candidate</i>						
	248,970	470,675	73,051	14,560	18,521	82,749	908,526
	27.4	51.8	8.0	1.6	2.0	9.1	100.0
	Seats won by each major party / candidate						
one quota =							
electing 12 MLCs	4	7	1				12
electing 13 MLCs	4	8	1				13
electing 14 MLCs	4	8	1		1		14
electing 15 MLCs	5	8	1		1		15
electing 16 MLCs	5	9	1		1		16
electing 17 MLCs	5	10	2				17
electing 18 MLCs	5	10	2		1		18
electing 19 MLCs	6	11	2				19
electing 20 MLCs	6	11	2		1		20
electing 21 MLCs	6	12	2		1		21
electing 22 MLCs	6	12	2		1		22
(See NOTE below)	7	12	2		1		22

  

	ALP	LIB	DEM	GREY POWER	GREENS	IND NO POKIES	OTHERS (combined)	TOTAL
	<i>Formal first preference votes for each major party/candidate</i>							
	274,098	339,064	149,660	14,261	15,377	25,630	78,413	896,503
	30.6	37.8	16.7	1.6	1.7	2.9	8.7	100.0
	Seats won by each major party / candidate							
one quota =								
electing 12 MLCs	4	4	3			1		12
electing 13 MLCs	4	5	3			1		13
electing 14 MLCs	5	5	3			1		14
electing 15 MLCs	5	6	3			1		15
electing 16 MLCs	5	6	3	1		1		16
electing 17 MLCs	5	6	3	1	1	1		17
electing 18 MLCs	6	7	3	1		1		18
electing 19 MLCs	6	7	4	1		1		19
electing 20 MLCs	7	7	4	1		1		20
electing 21 MLCs	7	8	4	1		1		21
electing 22 MLCs	7	8	4	1	1	1		22

NOTE: The two alternatives for 1993 with 22 Members depend on how the surplus votes are distributed when Grey Power is excluded.

Each of the two alternatives is equally likely.

SOURCE: my calculations based on a ticket vote model.

TABLE 5: EFFECT OF REDUCING THE QUOTA: SA LEGISLATIVE COUNCIL COUNT: 1985, 1989, 1993 and 1997

<i>Formal first preference votes for each major party/candidate</i>		ALP	LIB	DEM	NDP	NAT	CTA	ALL OTHERS	TOTAL	
		391,076	320,055	44,988	12,098	13,276	24,666	8,779	814,938	
<i>one quota =</i>		48.0	39.3	5.5	1.5	1.6	3.0	1.1	100.0	
		Seats won by each party / candidate								
1985	electing 6 MLCs	116,420	3	3					6	
	electing 7 MLCs	101,867	4	3					7	
	electing 8 MLCs	90,549	4	3	1				8	
	electing 9 MLCs	81,494	4	4	1				9	
	electing 10 MLCs	74,085	5	4	1				10	
	electing 11 MLCs	67,912	5	5	1				11	
	electing 12 MLCs	62,688	6	5	1				12	
	electing 13 MLCs	58,210	7	6					13	
	electing 14 MLCs	54,329	7	6	1				14	
	electing 15 MLCs	50,934	7	7	1				15	
	electing 16 MLCs	47,938	8	7	1				16	
	electing 17 MLCs	45,274	9	7	1				17	
	electing 18 MLCs	42,892	9	8	1				18	
	electing 19 MLCs	40,747	9	8	1	1			19	
electing 20 MLCs	38,807	10	8	1		1		20		
electing 21 MLCs	37,043	10	9	1				21		
electing 22 MLCs	35,432	11	9	1			1	22		

<i>Formal first preference votes for each major party/candidate</i>		ALP	LIB	DEM	NDP	NAT	CTA	Grey Power	ALL OTHERS	TOTAL
		339,961	351,559	91,456			21,658	19,486	31,164	855,284
<i>one quota =</i>		39.7	41.1	10.7			2.5	2.3	3.6	100.0
		Seats won by each major party / candidate								
1989	electing 6 MLCs	122,184	2	3	1					6
	electing 7 MLCs	106,911	3	3	1					7
	electing 8 MLCs	95,032	3	4	1					8
	electing 9 MLCs	85,529	4	4	1					9
	electing 10 MLCs	77,753	4	5	1					10
	electing 11 MLCs	71,274	5	5	1					11
	electing 12 MLCs	65,791	5	5	1			1		12
	electing 13 MLCs	61,092	5	6	2					13
	electing 14 MLCs	57,019	6	6	1			1		14
	electing 15 MLCs	53,455	6	7	2					15
	electing 16 MLCs	50,311	6	7	2			1		16
	electing 17 MLCs	47,516	7	8	2					17
	electing 18 MLCs	45,015	7	8	2			1		18
	electing 19 MLCs	42,764	8	9	2				1	19
electing 20 MLCs	40,728	8	9	2					20	
electing 21 MLCs	38,877	9	9	2				1	21	
electing 22 MLCs	37,186	9	10	2			1		22	

<i>Formal first preference votes for each major party/candidate</i>		ALP	LIB	DEM	Grey Power	IND	McCarty	ALL OTHERS	TOTAL	
		248,970	470,675	73,051	14,560	18,521		82,749	908,526	
<i>one quota =</i>		27.4	51.8	8.0	1.6	2.0		9.1	100.0	
		Seats won by each major party / candidate								
1993	electing 6 MLCs	129,790	2	3	1				6	
	electing 7 MLCs	113,566	2	4	1				7	
	electing 8 MLCs	100,947	2	5	1				8	
	electing 9 MLCs	90,853	3	5	1				9	
	electing 10 MLCs	82,593	3	6	1				10	
	electing 11 MLCs	75,711	4	6	1				11	
	electing 12 MLCs	69,887	4	7	1				12	
	electing 13 MLCs	64,895	4	8	1				13	
	electing 14 MLCs	60,568	4	8	1			1	14	
	electing 15 MLCs	56,783	5	8	1			1	15	
	electing 16 MLCs	53,443	5	9	1			1	16	
	electing 17 MLCs	50,474	5	10	2				17	
	electing 18 MLCs	47,817	5	10	2			1	18	
	electing 19 MLCs	45,426	6	11	2				19	
electing 20 MLCs	43,263	6	11	2			1	20		
electing 21 MLCs	41,297	6	12	2				1	21	
electing 22 MLCs	39,501	6	12	2			1	1	22	
(See NOTE below)		7	12	2			1		22	

<i>Formal first preference votes for each major party/candidate</i>		ALP	LIB	DEM	Grey Power	Aust Greens	IND No Pokies	ALL OTHERS	TOTAL	
		274,098	339,064	149,660	14,261	15,377	25,630	78,413	896,503	
<i>one quota =</i>		30.6	37.8	16.7	1.6	1.7	2.9	8.7	100.0	
		Seats won by each major party / candidate								
1997	electing 6 MLCs	128,072	2	2	2				6	
	electing 7 MLCs	112,063	2	3	2				7	
	electing 8 MLCs	99,612	2	3	2				8	
	electing 9 MLCs	89,650	3	3	2			1	9	
	electing 10 MLCs	81,500	3	4	2			1	10	
	electing 11 MLCs	74,709	4	4	2			1	11	
	electing 12 MLCs	68,962	4	4	3			1	12	
	electing 13 MLCs	64,036	4	5	3			1	13	
	electing 14 MLCs	59,767	5	5	3			1	14	
	electing 15 MLCs	56,032	5	6	3			1	15	
	electing 16 MLCs	52,736	5	6	3			1	16	
	electing 17 MLCs	49,806	5	6	3			1	17	
	electing 18 MLCs	47,184	6	7	3			1	1	18
	electing 19 MLCs	44,825	6	7	4			1	1	19
electing 20 MLCs	42,691	7	7	4			1	1	20	
electing 21 MLCs	40,750	7	8	4			1	1	21	
electing 22 MLCs	38,978	7	8	4			1	1	22	

NOTE: The two alternatives for 1993 with 22 Members depend on how the surplus votes are distributed when Grey Power is excluded. Each of the two alternatives is equally likely.

SOURCES: Model results are from my calculations; actual results are from:

- SA. State Electoral Department, 1986, *General Elections 1985*, P.P. 145 of 1986-87
- SA. State Electoral Department, 1991, *General Elections 1989*, P.P. 161 of 1990-91
- SA. State Electoral Office, 1995, *Statistical Returns for General Elections 11 December 1993*, SEO, Adelaide
- SA. State Electoral Office, 1998, *Statistical Returns for General Elections 11 October 1997*, SEO, Adelaide

## Changing the size of the quota

Table 5 summarises the data already shown in Tables 3 and 4, concentrating on the effect of reducing the size of the quota. For each of the 4 most recent State elections, Table 5 shows the number of Members from each party that would have been elected to the Legislative Council, according to the size of the whole group elected.

It is interesting to see that reducing the quota does not necessarily give one more seat to a party already represented in the Council: for example in the case of the 1997 State election, if 16 Members had been elected to the Legislative Council, they would have been 5 ALP, 6 LIB, 3 DEM, 1 IND No Pokies and a single Grey Power Member. Reducing the size of the quota so that we could elect 17 Members would have introduced a Greens Legislative Councillor as well, but reducing the quota again to elect 18 Members would have given the extra quota *and the Greens Member's seat* to the ALP and Liberal Party, and the Green Member would have missed out.

These unpredictable results come about because the system which governs how the Legislative Council votes are counted, reacts to the number of votes left over after the parties have won their quotas at the very first stage of the count. If, for example, a major party has won several quotas it may have only quite a small number of remaining votes, and will be competing with smaller parties which have not won *any* quotas and so may have quite a lot of continuing votes. The remaining votes of the major party may not enable it to continue in the count for very long, so it may be excluded quite early on in the count, retiring with just the quotas won at the very first stage of the count. Meanwhile, the smaller parties will continue, and be boosted by the votes of the excluded major party.

A second reason why reducing the quota may have the effect of keeping a Member *out* of the House (as, for example in the case of the Greens Member in 1997 if the number of Members was to be increased from 17 to anywhere from 18 to 21) is because of the allegiances of smaller and larger parties.

In 1997 if 17 Members were required for the Legislative Council the Democrats would have *just* won three quotas with their first preference votes, and had only 242 continuing votes, leaving them unable to influence the count after that. On the other hand, if 18 Members were required, the smaller quota would have left the Democrats with 8,105 continuing votes which would have been instrumental in enabling the Greens Member to stay in the count and be elected. Increasing the number of Members by one more to 19 (and decreasing the quota) would have meant that the Democrats had 15,182 continuing votes which would have been enough to keep a DEM candidate in the count for some time, enabling DEM (rather than the Greens) to pick up preference votes from other smaller parties as they were excluded, and enabling a Democrat to take an extra seat.

The quotas table raises another question:

### **If we were to elect fewer or more Members at each election, would a party be able to gain a majority of seats without having to win 50% or more of the vote?**

Logically, a party would need to win a higher percentage of the vote when the election is for an even number of Members than when the election is for an uneven number of Members. To have a majority of Members in a 16-Member Council, a party would need to win 9 seats, but it would still only need 9 seats for a majority in a 17-Member Council.

To win 9 seats, a party would need to win at least 8 quotas, plus enough votes to stay in the count, and then enough preferences to win the 9<sup>th</sup> quota. In actual results from 1985 to 1997, the lowest fraction of a quota that has enabled a party to stay in the count and win an extra seat has been 29% of a quota – in 1993 the ALP won 3.29 quotas and stayed in the count for long enough to win not only the three seats but also a fourth seat. The ticket vote model results given in Table 3 above show that if we had only been electing 6 Members in 1997, the DEM first preference vote would have given them 1.17 quotas which would have kept DEM in the count long enough to not

only win one seat but also a second seat. A rough estimate (based on this historical experience) might be that a party would need to have at the very least 20% of a quota to stay in the count.

If this estimate is accepted then we can calculate the percentage of first preference votes a party would need to win in order to secure a majority of seats in a Legislative Council of any size.

Table 6 below shows that in order to win a majority of the seats in a Legislative Council of any size, a party would need to win a majority of the votes – not necessarily all from first preference votes.

For a Legislative Council election of 11 Members, a party would need to win at least 43.3% of all first preferences which could then be topped up with up to 6.7% of preferences from excluded candidates to provide the required 50% of all votes.

Table 6 also shows quite clearly that that it would always be less difficult for a party to win a majority of seats if the election is for an *odd* number of Members.

**TABLE 6: PERCENTAGE OF VOTES FOR A PARTY TO WIN A MAJORITY OF SEATS IN THE LEGISLATIVE COUNCIL**

	Seats required for a majority of seats	Quota as % of total formal first preference votes	% of all votes required for a party to win a majority of seats	Minimum which must come from first preference votes (%)	Maximum which can come from other preferences (%)
	(S)	(Q)	$(V = S \times Q)$	$F = ([S-1] + 0.2) \times Q$	$(O = V - F)$
Electing 6 MLCs	4	14.3	57.1	45.7	11.4
Electing 7 MLCs	4	12.5	50.0	40.0	10.0
Electing 8 MLCs	5	11.1	55.6	46.7	8.9
Electing 9 MLCs	5	10.0	50.0	42.0	8.0
Electing 10 MLCs	6	9.1	54.5	47.3	7.3
<b>Electing 11 MLCs</b>	<b>6</b>	<b>8.3</b>	<b>50.0</b>	<b>43.3</b>	<b>6.7</b>
Electing 12 MLCs	7	7.7	53.8	47.7	6.2
Electing 13 MLCs	7	7.1	50.0	44.3	5.7
Electing 14 MLCs	8	6.7	53.3	48.0	5.3
Electing 15 MLCs	8	6.3	50.0	45.0	5.0
Electing 16 MLCs	9	5.9	52.9	48.2	4.7
Electing 17 MLCs	9	5.6	50.0	45.6	4.4
Electing 18 MLCs	10	5.3	52.6	48.4	4.2
Electing 19 MLCs	10	5.0	50.0	46.0	4.0
Electing 20 MLCs	11	4.8	52.4	48.6	3.8
Electing 21 MLCs	11	4.5	50.0	46.4	3.6
Electing 22 MLCs	12	4.3	52.2	48.7	3.5

SOURCE: my calculations

For any election of an odd number of Council Members, a party needs only to win 50% of the overall vote, but to win a majority of seats in an election for an *even* number of Members, a party needs to win an extra half of a quota. When the election is for only a few MLCs, the quota is relatively high and it would be more difficult for a party to win 4 and a half quotas (requiring 57.1% of votes) than to win 4 (requiring 50% of votes) for example. When the election is for a larger number of Members, there is still an extra half quota to be achieved if the election is for an even number of Members, but the size of the quota is relatively low and the extra votes required may be achievable. For example, the additional votes required to win a majority of seats in a Council election for 22 Members over a Council of 21 – or indeed 11 – is 2.2% of all votes.

Finally, Table 6 shows that as the number of Members to be elected is increased, a party needs to gain an increasing proportion of its support from its own first preference votes. (Another way of saying this is that the smaller the quota, the less a party can rely on preferences from excluded candidates to help win a majority of seats.)

For example, in an election for 21 MLCs, a party needs to win 50% of the vote overall, but all of this except about 3.5% must come from first preferences. By contrast, in an election for 7 MLCs, a party still needs to win 50% of the vote overall, but up to 10% can come from preferences from excluded candidates.

This last point has implications for the ticket vote provisions. If the Council was to be enlarged, or if the Council was to be reduced but all Members were to be elected at the same time, then the importance of receiving preferences from minor parties or Independents would be less than it is currently.

### **Electing Members for 4 year terms or 8 year terms**

It is clear from Table 5 that electing a small number of Members to the Legislative Council for overlapping 8-year terms confines the party representation within the Council to a smaller group of parties, when compared to an option of electing twice the number of Members all at the same election for 4-year terms.

Table 7 makes this point more clearly.

As a result of the 1993 and 1997 State elections, the Legislative Council is currently composed of 8 ALP Members, 10 LIB, 3 DEM, and 1 IND No Pokies Member.

By contrast, had each of the 22 seats in the Council been filled at the 1997 State election, the composition of the Council would have been quite different. The major parties would have had 3 fewer Members (1 fewer ALP and 2 fewer LIB Members), the Democrats would have had one *more* Member, and there would have been one Grey Power and one Australian Greens Member.

The balance of power would have been held – as it is currently – by the smaller parties.

The relatively large number of LIB Members in the current Legislative Council (10 MLCs) compared to their party representation if we had elected all 22 MLCs at the most recent election (8 LIB MLCs) is a function of the Liberal Party's higher popularity in 1993 than in 1997. At the actual election of 1993 the Liberal Party gained 51.8% of first preference votes for the Legislative Council and as a result won 6 of the 11 available seats. Those MLCs are continuing Members of the current Council.

In 1997, the Liberal Party won only 37.8% of first preference votes for the Legislative Council and as a result won only 4 of the 11 available seats. The LIB representation in the current Legislative Council therefore is 10 Members, but if we had elected all 22 Legislative Council Members in 1997 the LIB representation in the current Legislative Council would have been only 8 Members.

The lagged nature of Membership in the Legislative Council (due to electing half of the Members at each election) might be seen as having the effect currently of over-representing the Liberal Party (and indeed also the Labor Party—see Table 7). But by the same token, that same lag was responsible for under-representation of Liberal Members in the Legislative Council between 1993 and 1997. Over that period 11 LIB Members sat in the Council but there would have been 12 LIB Members if they had all been elected simultaneously (see Table 7).

TABLE 7: COMPOSITION OF THE LEGISLATIVE COUNCIL IN 1989, 1993 and 1997  
EFFECT OF SIMULTANEOUS 4-YEAR TERMS OR OVERLAPPING 8-YEAR TERMS

		ALP	LIB	DEM	CTA	TOTAL		
<b>COUNCIL COMPOSITION AFTER THE 1989 STATE ELECTION</b>								
MODEL	Electing 6 MLCs in 1985 and 6 MLCs in 1989	5	6	1		12		
MODEL	Electing 12 MLCs in 1989	5	5	1	1	12		
	Difference	0	-1	0	1	0		
MODEL	Electing 7 MLCs in 1985 and 7 MLCs in 1989	7	6	1		14		
MODEL	Electing 14 MLCs in 1989	6	6	1	1	14		
	Difference	-1	0	0	1	0		
MODEL	Electing 8 MLCs in 1985 and 8 MLCs in 1989	7	7	2		16		
MODEL	Electing 16 MLCs in 1989	6	7	2	1	16		
	Difference	-1	0	0	1	0		
MODEL	Electing 9 MLCs in 1985 and 9 MLCs in 1989	8	8	2		18		
MODEL	Electing 18 MLCs in 1989	7	8	2	1	18		
	Difference	-1	0	0	1	0		
MODEL	Electing 10 MLCs in 1985 and 10 MLCs in 1989	9	9	2		20		
MODEL	Electing 20 MLCs in 1989	8	9	2	1	20		
	Difference	-1	0	0	1	0		
<b>ACTUAL COUNT</b>	Electing 11 MLCs in 1985 and 11 MLCs in 1989	10	10	2		22		
<b>MODEL</b>	Electing 22 MLCs in 1989	9	10	2	1	22		
	Difference	-1	0	0	1	0		
<b>COUNCIL COMPOSITION AFTER THE 1993 STATE ELECTION</b>								
		ALP	LIB	DEM	Grey Power	IND McCarty	TOTAL	
MODEL	Electing 6 MLCs in 1989 and 6 MLCs in 1993	4	6	2			12	
MODEL	Electing 12 MLCs in 1993	4	7	1			12	
	Difference	0	1	-1			0	
MODEL	Electing 7 MLCs in 1989 and 7 MLCs in 1993	5	7	2			14	
MODEL	Electing 14 MLCs in 1993	4	8	1	1		14	
	Difference	-1	1	-1	1		0	
MODEL	Electing 8 MLCs in 1989 and 8 MLCs in 1993	5	9	2			16	
MODEL	Electing 16 MLCs in 1993	5	9	1	1		16	
	Difference	0	0	-1	1		0	
MODEL	Electing 9 MLCs in 1989 and 9 MLCs in 1993	7	9	2			18	
MODEL	Electing 18 MLCs in 1993	5	10	2	1		18	
	Difference	-2	1	0	1		0	
MODEL	Electing 10 MLCs in 1989 and 10 MLCs in 1993	7	11	2			20	
MODEL	Electing 20 MLCs in 1993	6	11	2	1		20	
	Difference	-1	0	0	1		0	
<b>ACTUAL COUNT</b>	Electing 11 MLCs in 1989 and 11 MLCs in 1993 (see NOTE below)	9	11	2			22	
<b>MODEL</b>	Electing 22 MLCs in 1993	6	12	2	1	1	22	
	Difference	-3	1	0	1	1	0	
<b>ACTUAL COUNT</b>	Electing 11 MLCs in 1989 and 11 MLCs in 1993 (see NOTE below)	9	11	2			22	
<b>MODEL</b>	Electing 22 MLCs in 1993	7	12	2	1		22	
	Difference	-2	1	0	1		0	
<b>COUNCIL COMPOSITION AFTER THE 1997 STATE ELECTION</b>								
		ALP	LIB	DEM	IND No Pokies	Grey Power	Aust Greens	TOTAL
MODEL	Electing 6 MLCs in 1993 and 6 MLCs in 1997	4	5	3	0			12
MODEL	Electing 12 MLCs in 1997	4	4	3	1			12
	Difference	0	-1	0	1			0
MODEL	Electing 7 MLCs in 1993 and 7 MLCs in 1997	4	7	3	0			14
MODEL	Electing 14 MLCs in 1997	5	5	3	1			14
	Difference	1	-2	0	1			0
MODEL	Electing 8 MLCs in 1993 and 8 MLCs in 1997	4	8	3	1			16
MODEL	Electing 16 MLCs in 1997	5	6	3	1	1		16
	Difference	1	-2	0	0	1		0
MODEL	Electing 9 MLCs in 1993 and 9 MLCs in 1997	6	8	3	1			18
MODEL	Electing 18 MLCs in 1997	6	7	3	1	1		18
	Difference	0	-1	0	0	1		0
MODEL	Electing 10 MLCs in 1993 and 10 MLCs in 1997	6	10	3	1			20
MODEL	Electing 20 MLCs in 1997	7	7	4	1	1		20
	Difference	1	-3	1	0	1		0
<b>ACTUAL COUNT</b>	Electing 11 MLCs in 1993 and 11 MLCs in 1997	8	10	3	1			22
<b>MODEL</b>	Electing 22 MLCs in 1997	7	8	4	1	1	1	22
	Difference	-1	-2	1	0	1	1	0

NOTE: The two alternatives for 1993 with 22 Members depend on how the surplus votes are distributed when Grey Power is excluded. Each of the two alternatives is equally likely.

SOURCES: model results are from my calculations using the ticket vote model. Actual results are from:  
SA. State Electoral Department, 1986, *General Elections 1985*, P.P. 145 of 1986-87  
SA. State Electoral Department, 1991, *General Elections 1989*, P.P. 161 of 1990-91  
SA. State Electoral Office, 1995, *Statistical Returns for General Elections 11 December 1993*, SEO, Adelaide  
SA. State Electoral Office, 1998, *Statistical Returns for General Elections 11 October 1997*, SEO, Adelaide

## A threshold?

It would be possible to introduce a threshold of first preference votes, below which a candidate could not continue in the count nor receive preferences distributed from excluded candidates. This is quite common (although not universal<sup>10</sup>) in proportional representation elsewhere, and indeed a half-quota threshold was in force in South Australia for Legislative Council elections from 1973 until 1985. At the time of its introduction in 1973, it was assumed that no candidate or group which received fewer than half a quota of votes should expect to win a seat, and so it was proposed that those candidates or groups would be excluded from the count *and their first preference votes would be completely disregarded*.<sup>11</sup> Before the Bill was finally approved by both Houses this clause was changed to provide that parties or Independents with less than half a quota of votes would be excluded and have their votes distributed to other parties or candidates right at the start of the count.

The effect of the threshold is to prevent a party or Independent candidate with relatively few first preference votes from continuing in the count and perhaps winning a quota using the preferences of other parties or candidates as they are progressively excluded during the count.

Germany's system has a threshold of 5% of formal first preferences<sup>12</sup>.

In Australia, Senator Helen Coonan recently suggested a threshold for the Senate of between 5% and 11.43% (the equivalent of 80% of a Senate quota).<sup>13</sup>

Bennett notes that "Obviously expert advice would be necessary to conduct a thorough analysis of the impact of a threshold system but conceptually it offers the possibility of a solution to the *rule of minorities* that has so characterised the Senate in recent years".<sup>14</sup>

As pointed out earlier, the results over several Legislative Council elections in SA show that at the absolute minimum, a group or candidate could win a seat with about 20% of a quota of first preference votes (about 15,000 in 1997). Setting a threshold of a third or half a quota *should* have an effect on the count.

A 5% threshold seems small but it is actually higher than half a quota while we continue to elect 11 Members at each election – half a quota would be about 4.3% of formal first preference votes. So we could expect that a threshold of 5% or more would also have an effect on the outcome of a State election in South Australia.

While one effect of a threshold would be to exclude groups with low levels of support across the State, it may also affect small groups which have their support concentrated in given areas – in South Australia the National Party would be the obvious example.

*Would a threshold have had much of an effect in recent Legislative Council elections?*

<sup>10</sup> For example, the system recommended for the UK by the recent Jenkins Commission has no threshold. See the Independent Commission on the Voting System, 1998, Report, The Stationery Office, London. Also at [www.official-documents.co.uk/document/cm40/4090/4090.htm](http://www.official-documents.co.uk/document/cm40/4090/4090.htm)

<sup>11</sup> Constitution and Electoral Acts Amendment (Council Elections) Bill 1973, became Act No 52 of 1973.

<sup>12</sup> "...under the German system a party which fails to secure at least 5 per cent of the vote across the country as a whole, or three constituency seats, cannot take part in the allocation of seats based on second votes. This provision was introduced to prevent the system from being made unworkable – as many claimed the Weimar Republic had been – by the growth of small extremist parties which could paralyse the business of government." Bogdanor, V, 1984, What is Proportional Representation?, Martin Robertson & Co., Oxford, at pp.50-51.

<sup>13</sup> Helen Coonan, 'The Senate. Safeguard or Handbrake on Democracy?', address to Sydney Institute, February 1999, p. 23. Referred to in Bennett, S, 1999, "Should the Australian electoral system be changed?" (Federal) Parliamentary Library Current Issues Brief No.10.

<sup>14</sup> Bennett, S, 1999, "Should the Australian electoral system be changed?" (Federal) Parliamentary Library Current Issues Brief No.10, at [www.apf.gov.au/library/pubs/cib/1998-99/99cib10.htm](http://www.apf.gov.au/library/pubs/cib/1998-99/99cib10.htm)

TABLE 8: THE LEGISLATIVE COUNCIL COUNT: 1985, 1989, 1993 and 1997 with various thresholds (electing 11 MLCs)

<b>1985</b>		ALP	LIB	DEM	NAT	CTA	IND Marijuana Legalisation (Dimitriou)	NDP	IND for Peace & Survival (Mountwinter)	TOTAL	
one quota = 67912 first preference votes											
Formal first preference votes won		391,076	320,055	44,988	13,276	24,666	8337	12,098	442		814938
Quotas won from first preferences		5.8	4.7	0.7	0.2	0.4	0.1	0.2	0.0		12.0
% of first preferences won		48.0	39.3	5.5	1.6	3.0	1.0	1.5	0.1		100.0
Seats won by each party / candidate											
ACTUAL COUNT, no threshold		5	5	1							11
MODEL, 1/3rd quota threshold (22,637 first preferences)		5	5	1							11
MODEL, 1/2 quota threshold (33,956 first preferences)		5	5	1							11
MODEL, threshold of 5% of first preferences (40,747 first preferences)		5	5	1							11

  

<b>1989</b>		ALP	LIB	DEM	NAT	CTA	Grey Power	IND The Greens (Lamb)	Aust Conservative Party	IND Christian Democrats	IND Community Security & Prison Reform (Tatnell)	TOTAL	
one quota = 71274 first preference votes													
Formal first preference votes won		339,961	351,559	91,456	6,700	21,858	19,486	14,087	7,657	2,267	453		855284
Quotas won from first preferences		4.8	4.9	1.3	0.1	0.3	0.3	0.2	0.1	0.0	0.0		12.0
% of first preferences won		39.7	41.1	10.7	0.8	2.5	2.3	1.6	0.9	0.3	0.1		100.0
Seats won by each party / candidate													
ACTUAL COUNT, no threshold		5	5	1									11
MODEL, 1/3rd quota threshold (23,758 first preferences)		5	5	1									11
MODEL, 1/2 quota threshold (35,637 first preferences)		5	5	1									11
MODEL, threshold of 5% of first preferences (42,764 first preferences)		5	5	1									11

  

<b>1993</b>		ALP	LIB	DEM	NAT	CTA	Grey Power	Green Party	Green Alliance	IND Natural Law	IND HEMP	Shooters	AIA	IND Protect Schools & Justice (Adams)	IND Fairness & Justice (Mobbs)	IND Truth & Justice (Smaniotto)	IND Education is the Key (McCarty)	IND Labor (Peterson)	TOTAL		
one quota = 75711 first preference votes																					
Formal first preference votes won		248,970	470,675	73,051	6,516	9,317	14,560	11,853	3,960	3,421	16,353	10,622	3,533	3,377	2,564	895	18,521	10,338		908526	
Quotas won from first preferences		3.3	6.2	1.0	0.1	0.1	0.2	0.2	0.1	0.0	0.2	0.1	0.0	0.0	0.0	0.0	0.2	0.1		12.0	
% of first preferences won		27.4	51.8	8.0	0.7	1.0	1.6	1.3	0.4	0.4	1.8	1.2	0.4	0.4	0.3	0.1	2.04	1.1		100.0	
Seats won by each party / candidate																					
ACTUAL COUNT, no threshold		4	6	1																	11
MODEL, 1/3rd quota threshold (25,237 first preferences)		4	6	1																	11
MODEL, 1/2 quota threshold (37,856 first preferences)		4	6	1																	11
MODEL, threshold of 5% of first preferences (45,426 first preferences)		4	6	1																	11

  

<b>1997</b>		ALP	LIB	DEM	NAT	Grey Power	Aust Greens	Natural Law	IND HEMP	IND No Pokies	IND Aust First	UAP	IND Students vs HECS	Overtaxed Motorists Drinkers etc	Smokers Rights	Aust Rec & Fish	National Action	IND Voluntary Euthanasia	IND Silent Majority	IND Ban Duck Shooting	TOTAL	
one quota =74709 first preference votes																						
Formal first preference votes won		274,098	339,064	149,660	9,233	14,261	15,377	1,744	15,432	25,630	9,150	11,920	2,957	6,024	2,665	7,048	3,673	4,393	851	3,323	896503	
Quotas won from first preferences		3.7	4.5	2.0	0.1	0.2	0.2	0.0	0.2	0.34	0.1	0.2	0.0	0.1	0.0	0.1	0.0	0.1	0.0	0.0	12.0	
% of first preferences won		30.6	37.8	16.7	1.03	1.6	1.7	0.2	1.7	2.9	1.02	1.3	0.3	0.7	0.3	0.8	0.4	0.5	0.1	0.4	100.0	
Seats won by each party / candidate																						
ACTUAL COUNT, no threshold		4	4	2						1											11	
MODEL, 1/3rd quota threshold (24,903 first preferences)		4	4	2						1											11	
MODEL, 1/2 quota threshold (37,354 first preferences)		4	4	3																	11	
MODEL, threshold of 5% of first preferences (44,825 first preferences)		4	4	3																	11	

SOURCES: model results are from my calculations using the ticket vote model

Actual results are from: SA. State Electoral Department, 1986, General Elections 1986, P.P. 145 of 1986-87  
 SA. State Electoral Department, 1991, General Elections 1989, P.P. 161 of 1990-91  
 SA. State Electoral Office, 1995, Statistical Returns for General Elections 11 December 1993, SEO, Adelaide  
 SA. State Electoral Office, 1998, Statistical Returns for General Elections 11 October 1997, SEO, Adelaide

Table 8 shows the results from 1985 to 1997 if there had been thresholds of a third of a quota, half a quota or 5% of formal first preferences, as well as the actual results from those elections.

*In only one election – the 1997 state election – would the result have been any different had there been a threshold of any of the sizes examined in Table 8.*

In 1997, the IND No Pokies party received 0.34 quotas of first preference votes (25,630 first preference votes). Had there been a threshold of a third of a quota (which would have amounted to 24,903 first preference votes) the IND No Pokies candidate would have continued in the count and still won a seat, but the higher thresholds of  $\frac{1}{2}$  a quota (37,354 first preference votes in 1997) or 5% of the total number of formal first preference votes (44,825) would have excluded the IND No Pokies candidate from the count right from the start. The IND No Pokies ballot papers would have been distributed to the second preferred candidates and the Democrats would have won the extra seat in the Legislative Council.

In 1985 the Call to Australia candidate would also have slipped over the lowest of the thresholds, having won 22,637 first preference votes. With a threshold of  $\frac{1}{3}^{\text{rd}}$  of a quota (22,637 first preference votes in 1985) the CTA candidate would have continued in the count for a short time, but would eventually have been excluded because the tickets of those less-popular candidates or groups who were excluded by the threshold, dictated that their preferences should be passed on to the major parties, rather than to the CTA. With the higher thresholds of  $\frac{1}{2}$  a quota or 5% of total first preferences, the CTA would have been excluded from the count right at the start.

If a threshold was to be introduced, it seems likely that the party which would gain most would be the Democrats, because – at least in recent years – their ability to attract the preferences of the smaller groups has been greater than that of the ALP or the Liberal Party.

- In 1997 for example, the Democrats would have gained about 74,000 preferences (or 55% of the available preferences) before the ALP or the Liberal Party. They would have come from the Australian Greens, IND No Pokies, Grey Power, IND HEMP and IND to Ban Duck Shooting.
- The ALP would have gained preferences before the Liberal Party or the Democrats from IND Australia First, UAP, IND Against HECS, Overtaxed motorists, drinkers etc, Smokers Rights, IND for Voluntary Euthanasia and National Action, and half of the preferences from Natural Law and IND Silent Majority. This accounted for about 42,000 preferences, or only 32% of the available preferences.
- Finally, the Liberal Party would have gained only about 17,600 preferences (13%) before the ALP or the Democrats, from the National Party and from Australian Recreation and Fishing, and half of the preferences from Natural Law and IND Silent Majority.

Table 8 also shows quite clearly that there has been a real growth in the number of smaller parties putting candidates forward for election to the Legislative Council. Furthermore, the number of first preference votes they have attracted (which are necessarily gained at the expense of the major parties) has grown.

In 1985 the number of first preference votes won by parties other than the ALP, LIB and DEM was under 59,000 – about 7% of all formal first preference votes.

This increased steadily to 8% in 1989, 13% in 1993 and almost 14% in 1997 (by 1997 the *number* had increased to almost 134,000 first preference votes.)

If a threshold was to be introduced, a possible reaction from the smaller groups could be to form coalitions which together might be expected to win somewhere near the number of votes required to slip above the threshold.

Healey and Newman clearly envisaged this possibility in relation to any introduction of a threshold in Senate elections:

For the proposal to be remotely acceptable to minor parties, the threshold should not make it virtually impossible to be elected, and coalition arrangements, or joint tickets, would have to be allowed. An obvious possibility is a Democrat / Green coalition, but others are possible.<sup>15</sup>

Healey and Newman also noted that while 5% is a commonly-used threshold level overseas,

(s)ome countries require a larger threshold, seven or eight per cent, for parties in coalition, with the threshold rising according to the number of parties in the coalition, so that small parties cannot evade the threshold requirement by notional coalitions.<sup>16</sup>

### A combination of quota and threshold?

Finally, what if a threshold was to be introduced in conjunction with a change to the number of Members to be elected to the Legislative Council – say the election of all 22 Members at once, or a reduction in numbers to 18, but all elected at the same election?

In this case, a 5% threshold would be inappropriate, because a full quota in an election for 22 Members would be only about 4%. A half-quota threshold or a one-third-quota threshold would still work.

Table 9 below shows that if larger numbers of Members were to be elected using the present election system for the Legislative Council (State-wide electorate, proportional representation count, no threshold) then it is highly likely that there would be more Members elected to represent smaller parties. These calculations are based only on the 1997 Legislative Council elections but similar results would appear for 1993 and earlier years.

As larger numbers of Members are elected, the size of the quota declines and a quota comes into the reach of smaller parties, especially if they receive substantial numbers of preferences before the major parties. A threshold does not prevent a party with significant first preference support from continuing in the count: it does however prevent a party with a small first preference base from continuing in the count and receiving large parcels of preferences. The case for a threshold might be argued on the basis of the fact that by far the majority of voters in the Legislative Council election use the ticket-vote option and that most of these voters have little understanding of where their preferences have been allocated by their first-preferred party's ticket.

**TABLE 9: ESTIMATED EFFECT OF THRESHOLDS OF DIFFERENT SIZES, LEGISLATIVE COUNCIL 1997**

		ALP	LIB	DEM	IND No Pokies	Grey Power	Greens	TOTAL
To elect 11 MLCs	No Threshold	4	4	2	1			11
	Threshold = 1/3 <sup>rd</sup> quota	4	4	2	1			11
	Threshold = ½ quota	4	4	3				11
To elect 22 MLCs	No Threshold	7	8	4	1	1	1	22
	Threshold = 1/3 <sup>rd</sup> quota	7	9	4	1	1		22
	Threshold = ½ quota	8	9	4	1			22
To elect 18 MLCs	No Threshold	6	7	3	1	1		18
	Threshold = 1/3 <sup>rd</sup> quota	6	7	4	1			18
	Threshold = ½ quota	6	7	4	1			18

SOURCE: my calculations

<sup>15</sup> M Healey and G Newman, 1999, "An Electoral Threshold for the Senate?" Parliament of Australia Department of the Parliamentary Library [Research Note No. 19 of 1998-99](#).

<sup>16</sup> As above.

Introducing a threshold would have the effect of reducing the probability that a party (or IND candidate) with very little first preference support from the public, could eventually be voted into a seat through preferences specified in the tickets of excluded candidates – i.e. effectively through the support of other *parties*.

The effect of a threshold would vary with the number of Members to be elected to the Legislative Council; it would have more effect if the whole Council were to be elected at the same time than if Members were elected at two elections.

### No Tickets?

Although each Party's tickets are displayed in each booth, there is an argument that most voters are unaware of the way that their preferences will be allocated when they vote above-the-line. (This would become an increasing problem if more Members were to be elected at the same time, because the quota would be lower than at present.)

The New South Wales government has recently changed that State's electoral legislation to abolish ticket voting.

The NSW Legislative Council has 42 Members elected to represent the State as a whole. Half of the Members are elected each 4 years, and each serves an 8-year term.

The electoral system uses a proportional representation system which has allowed either above-the-line or a below-the-line voting but the voting is optional preferential - if the voter chooses to vote below-the-line for individual candidates only 15 preferences are required to be specified (even though 21 Members are required to be elected).

At last year's Legislative Council election, there were 264 candidates for election. The ALP won 37.3% of all first preferences, the LIB/NAT coalition won 27.4% of first preferences, and the remaining 35.3% of first preferences were split between *84 parties or Independent candidates*, only 7 of which received more than 1% of all first preference votes<sup>17</sup>.

The ballot paper has been described as "table-cloth sized".<sup>18</sup> In addition to the extra administrative expense caused to the State Electoral Office (an extra \$10million over the previous election)<sup>19</sup> there were other drawbacks – it was alleged that many of the parties which contested the election were newly-formed with the aim of attracting other parties' preferences through the ticket vote provisions, and that electors who voted above-the-line had no idea who their preferences were ultimately electing to the Parliament.<sup>20</sup>

As a result several changes to the Legislative Council voting system will come into effect at the next NSW State election. Voting for the Legislative Council will remain optional preferential - a voter must still record his or her vote for 15 candidates and *may* record further preferences if they wish. In this context:

- Party tickets will no longer be used to determine the distribution of preferences where a voter has chosen to make an above-the-line vote.

.. a person voting above the line may number preferences for the different groups from one onwards. The first preference indicated for a group will take the voter's preferences through the

<sup>17</sup> Results are at the NSW State Electoral Office's web-site [www.seo.nsw.gov.au](http://www.seo.nsw.gov.au)

<sup>18</sup> Hon J. Della Bosca, introducing the Parliamentary Electorates and Elections Bill in the NSW Legislative Council, 20 October 1999 at p.1592. See NSW Hansard at [www.parliament.nsw.gov.au](http://www.parliament.nsw.gov.au)

<sup>19</sup> As above

<sup>20</sup> "For example, at the last election 60,000 people voted for one party but ultimately ended up electing a person from another party who was No. 17 on the first party's preference list. It is highly unlikely that these voters knew that their votes would end up electing the person that they did." Hon J. Della Bosca as above.

whole list of the candidates in that group below the line. The second preference indicated for a further group will then continue the application of preferences to all the candidates in that group below the line, and so on<sup>21</sup>

- Parties or groups with fewer than 15 candidates will not be eligible to be included in the group voting area above the line of the ballot paper.

With optional preferential voting above the line, voters may elect to record only a first preference vote above the line. Accordingly, any vote above the line must reflect a vote for at least 15 candidates below the line. To ensure that this is the case, only those groups that include at least 15 candidates will be permitted to apply for a group voting square above the line.

Groups of two or more candidates will still be permitted to be on the ballot papers, as required under the Constitution. However, groups with fewer than 15 candidates will not be eligible to apply for a group voting square above the line. A voter who wishes to vote for a smaller group will need to do so by voting below the line.<sup>22</sup>

- The minimum number of members required to register a party has been increased from 200 members to 1,000 members, and for the first 12 months after a party's registration it will not be entitled to be included in the group voting section above the line on a ballot paper.<sup>23</sup>

The Bill passed in the NSW Upper House with the support of the coalition Opposition but – perhaps not surprisingly – was not supported by the 3 Independent Members of that House. It passed the Lower House without amendment.

It is hard to tell how the results would be affected in the South Australian Legislative Council election if ticket voting was abandoned here. A lot would depend on the other arrangements made (for example whether a group could only be included along the top part of the ballot paper if it fielded at least 6 candidates). It is clear from actual voting results however that the tickets do allocate votes to other parties in ways that individual voters would not necessarily agree with.

For example, in 1997, there were 2 DEM tickets for the Legislative Council; one allocated preferences to ALP before LIB and the other allocated preferences to LIB before ALP. This meant that when the count got down to a competition between ALP and LIB, 50% of DEM ticket voters had their votes allocated to ALP and 50% to LIB. By contrast, DEM voters in the House of Assembly were always more likely to allocate their own preferences to the ALP than to LIB. In the 17 House of Assembly seats where there were just the 3 major parties' candidates and the DEM votes were excluded, 59% of DEM votes went to the ALP and only 41% to LIB (ranging from 66.3% to ALP in Napier to only 51.7% to ALP in Newland).

<sup>21</sup> Hon J. Della Bosca as above.

<sup>22</sup> Hon J. Della Bosca as above

<sup>23</sup> "It is well known that the current electoral system for the Legislative Council allows at least one or two candidates to be elected virtually by chance. This has led to a lottery approach to Legislative Council elections, where parties are formed and people contest the election under a catchy party name in the hope of winning the prize of election to Parliament. The Government proposes to discourage the lottery approach by tightening the minimum requirements for registering a political party to ensure that only genuine parties with at least some level of community support may contest elections.

For the first 12 months after their registration registered parties will not be able to nominate or endorse candidates for an election. In addition, during this period their party name will not be able to appear on ballot papers and they will not be able to register electoral matter for an election. This will ensure that a party must maintain the minimum number of members for a period of 12 months before it can contest an election. It is designed to ensure that only parties with membership and community support, and a genuine desire to participate in the political process, are able to obtain the benefits of registration.

The bill will also abolish registration based on parliamentary representation. Currently, a party that has at least one member who is a member of Parliament is entitled to be registered, regardless of the size of its membership. Abolishing this special treatment for parliamentary parties will ensure that all parties are required to have and maintain a minimum level of community support."

Hon J. Della Bosca, introducing the Parliamentary Electorates and Elections Bill in the NSW Legislative Council, 20 October 1999 at p.1592

Similarly, the (single) ALP ticket for the Legislative Council ballot distributes all ALP ticket votes to DEM before LIB, but in the 3 House of Assembly seats where only the three major parties fielded candidates and the ALP candidate was excluded, there was a leakage of about 11% of ALP preferences to LIB rather than DEM.

There was only one seat where only the three major parties fielded candidates and the LIB candidate was excluded (Napier); there was a leakage of 16% of LIB preferences to the ALP rather than to DEM.

*If we recalculate the 1997 Legislative Council vote in 1997 changing the allocation of ALP, LIB and DEM excluded votes from 100% to DEM, 100% to DEM and 50/50 respectively, to 90% to DEM, 85% to DEM and 60/40 respectively, the result in 1997 would not have been any different, whether we are looking at electing large or small numbers of Members at one time. This is because all three were either still in the race at the end of the count or had relatively few votes to transfer because most had been used to win a quota. It seems likely that abolishing ticket voting would have little effect on the outcome of a proportional representation count, as long as the problems with an increased informal vote were addressed at the same time.*

From 1973 here in South Australia the Legislative Council count was a proportional representation count and tickets were not in use until 1985. In the intervening 12 years voters marked their preferences for individual candidates or groups, and marking a preference against every candidate was not necessary.<sup>24</sup> There was, however, a relatively high level of informal votes (10.1% in 1982) which was reduced considerably with the introduction of the ticket vote in 1985 (informals were 3.7% of total votes for the Council).

## ELECTORATES FOR UPPER HOUSE MEMBERS

### **Is there any reason why we do not currently have electorates for the Upper House in South Australia?**

The idea of Members of the Legislative Council representing geographic areas of the State is not a new one for South Australia.

The 16 elected Members of the composite (partly-elected and partly-appointed) Legislative Council of 1851<sup>25</sup> each represented single-Member electorates.

However, when responsible government was attained in 1857 and there were two Houses, only the Assembly Members represented electorates.

In debate on the Constitution Bill which would allow election to the 1857 Parliament, G S Kingston proposed that "all of the electors of the colony should vote for all of the members of the House. Kingston considered that this course would get rid of the bugbear of local influence".<sup>26</sup> In the end, Kingston's view prevailed and the new Parliament<sup>27</sup>, comprised an 18-Member Legislative Council, *with each Councillor representing the State as a whole*, and a 36-Member House of Assembly, made up of 17 single-Member or multi-Member electorates.

The ideal of the Legislative Councillors speaking for the State as a whole, rather than for interests within a smaller area was still strongly held nearly 30 years later.

As to the division of the colony into districts, he considered the introduction of the local element into the Council most undesirable. It was one of the proudest things that a member of the Council could

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<sup>24</sup> At first voters needed to mark a preference for at least 23 candidates, but from the 1982 election voters needed to mark only 11 preferences.

<sup>25</sup> Elected according to Ordinance No 1 of 1851 (SA).

<sup>26</sup> G D Combe, 1957, Responsible Government in South Australia, p.60.

<sup>27</sup> Elected according to the Constitution Act 1956 (No 2 of 1855-56)

say that he was elected by the whole colony, and not by a particular district of it. ... He knew from experience in Assembly that, even without log-rolling, members frequently felt obliged to support the construction of works required by their district, respecting which they personally scarcely felt that the expenditure was justifiable as regards the interests of the whole colony.<sup>28</sup>

Nonetheless, as settlement expanded further from the metropolitan area the ideal became harder to uphold in practice.

If hon. Members bore in mind the increased extent of occupation and settlement in South Australia they would see the absolute necessity to divide the country into districts.<sup>29</sup>

There could be no doubt that the great expense connected with putting candidates' views before the country tended to keep out many good men who would otherwise come forward, and he thought that was a strong argument in favour of reducing the size of the districts...<sup>30</sup>

...if there was anything that had been universally demanded during the past two or three years it was the division of the electorate of the Council into districts.... It would be manifestly unfair when some great question was under discussion that the members should have to go to the whole colony, but that objection would not stand if a member had only to go before a district.<sup>31</sup>

Despite several attempts to re-introduce electorates for the Upper House<sup>32</sup>, the single State-wide District continued until 1881 when the State was divided into four Districts, each returning 6 Members to the Legislative Council. These four Districts were not equally-sized in terms either of population or of geographic area.

The boundaries of the new Legislative Council Districts were drawn around groups of Assembly electorates,<sup>33</sup> and this arrangement continued from 1881 for almost a century until 1973.

- In 1901<sup>34</sup> the number of Members in the Legislative Council was reduced to 18 but the four Council Districts were retained. Most Districts still returned 6 Members to the Council but one would now return 4 Members.
- When Council Membership was increased to 20 in 1913<sup>35</sup>, the four existing Districts were increased to 5, each returning 4 Members. Each of the 5 new Council Districts was again made up of groups of Assembly electorates.
- From the end of the Great War until the end of the Second World War there were at least 13 attempts<sup>36</sup> to adopt Federal House of Representatives boundaries for Assembly electorates;

<sup>28</sup> Hon RC Baker, Legislative Council 19 July 1881: 289

<sup>29</sup> Hon W Morgan, Legislative Council 26 July 1881: 346

<sup>30</sup> Hon JB Spence, Legislative Council 27 July 1881: 379

<sup>31</sup> Hon J Pearce, Legislative Council Hansard, 19 July 1881: 286

<sup>32</sup> Both the Constitution Act Amendment Bill, 1858 and the Electoral Act Amendment Bill 1858, proposed 6 three-Member Council districts. The Select Committee on Amendment of the Constitution 1865-6 (P.P. No147 of 1855-6) also recommended districts for the Legislative Council but did not specify how many.

<sup>33</sup> Under the Constitution Act 1881, Central District contained 6 Assembly electorates, Southern contained 7, North-Eastern contained 6 and Northern contained 3. Under the Constitution Act Further Amendment Act 1882 (No 278 of 1882) 4 new Assembly electorates were created and under the Northern Territory Representation Act 1888 (No 450 of 1888) the Territory was allocated its own separate Assembly electorate. Whenever new Assembly electorates were created they were allocated to existing Council Districts.

<sup>34</sup> Constitution Act Amendment Act 1901 (No 779 of 1901). Changes took effect at the Legislative Council election of 1902.

<sup>35</sup> Constitution Further Amendment Act 1913 (No 1148 of 1913). Changes were phased in at the 1915 and 1918 Legislative Council elections.

<sup>36</sup> Proportional Representation Bill 1919,  
Proportional Representation Bill 1920,  
Proportional Representation Bill 1922,  
Proportional Representation Bill 1924,  
Proportional Representation Bill 1932,  
Reduction of Members (Proportional Representation Bill) 1932,  
Constitution Amendment (Proportional Representation Bill) 1933,

most of these attempts would have broken the relationship between Assembly and Council boundaries. All were unsuccessful.

- Later attempts to change Council (and Assembly) boundaries<sup>37</sup> refrained from tying State boundaries to Federal boundaries, and were more successful. In 1955 the number of Assembly electorates was changed but the Council retained its 5 Districts, each taking in between 6 and 9 Assembly electorates, as recommended in an Electoral Commission Report<sup>38</sup> of that year.
- The next Electoral Commission (1962) was required<sup>39</sup> to recommend boundaries for 6 Council Districts, each to be based on two or more complete Assembly electorates. In addition, 3 of the Council Districts were required to be rural and 3 to be urban. The appointed Commission provided boundaries which would have complied with these requirements but the Report was never implemented.<sup>40</sup>
- An unsuccessful Bill was brought forward in 1965 to constitute another Electoral Commission; the guidelines for this Commission would also have required it to produce boundaries for 5 multi-Member Council Districts with boundaries drawn around groups of Assembly electorates.
- An Electoral Commission constituted in 1969<sup>41</sup> was required to redistribute Assembly boundaries to accommodate an increase of Members to 47 (from 39) and to propose consequent changes to Council boundaries. The number of Council electorates was to stay at 5. *For the first time, the Commission was given express permission to divide parts of any of its proposed Assembly districts between Council Districts*, but in the event each Council District covered complete Assembly electorates.
- An unsuccessful attempt was made in 1972<sup>42</sup> to increase the number of Council Members from 20 to 24 and reduce the number of Council Districts from 5 to 2 – one metropolitan District covering all of the metropolitan Assembly electorates and one Country District covering all of the rural Assembly electorates. Each of the proposed Council Districts would have 12 Members.

In 1973<sup>43</sup> legislation was passed to make the Council one State-wide District. At the same time, the method of counting the Council vote was changed to an optional preferential vote using a proportional representation count.<sup>44</sup>

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Constitutional and Electoral Acts (Proportional Representation) Bill 1940,  
 Constitutional and Electoral Acts (Proportional Representation) Bill 1943,  
 Constitutional and Electoral Acts (Proportional Representation) Bill 1945,  
 Constitutional and Electoral Acts (Proportional Representation) Bill 1946,  
 Constitution (Legislative Council Franchise) Bill 1946,  
 Constitutional and Electoral Acts (Proportional Representation) Bill 1947.

<sup>37</sup> Constitution Act Amendment Bill 1950,

Constitution Act Amendment Bill 1953,

Constitution Act Amendment Bill 1954.

<sup>38</sup> Electoral District (Redivision) Act 1954,

SA. Electoral Commission, 1955, Report, P.P. No 12 of 1955

Constitution Act Amendment Act 1955. These changes took effect at the general elections of 1956.

<sup>39</sup> Electoral Districts Redivision Act 1962 (No 34 of 1962)

<sup>40</sup> The Constitution Act Amendment Bill (No 3) 1964 attempted to implement the recommendations of the Commission but was defeated.

<sup>41</sup> Electoral Districts (Redivision) Act 1968-69 (No 2 of 1969)

Electoral Act Amendment Act (No 2) (No 99 of 1969)

SA. Electoral Commission, 1969, Report, P.P. 79 of 1969.

Constitution Act Amendment Act 1969 (No 110 of 1969) The changes took effect at the general elections of 1970.

<sup>42</sup> Constitution Act Amendment Bill (No 2) 1972

<sup>43</sup> Constitution and Electoral Acts Amendment Act 1973 (No 52 of 1973) The changes took effect at the general elections of 1975 and 1977.

<sup>44</sup> Constitution and Electoral Acts Amendment Act 1973 (No 52 of 1973) The count used a list system whereby voters could only choose groups of candidates – usually parties - rather than individual candidates within those groups. At the beginning of the count those groups winning less than half a quota of first preference votes were excluded from the count and had their votes distributed to continuing parties.

## Why was it decided that one State-wide electorate would be appropriate for the Legislative Council?

From the late 1960s there had been a series of changes which broadened the Council franchise,<sup>45</sup> culminating in the 1973 change to the Constitution Act<sup>46</sup> which enabled anyone enrolled to vote for the Assembly to also vote in Council elections. Under the more limited franchise the Council had been dominated by conservative Members, and the arguments for opening up the franchise to everyone qualified to vote for the House of Assembly, were based on equity. These equity arguments were also applied to the gross mal-apportionment which then existed in Legislative Council electoral boundaries. (In 1972 country electorates contained roughly half the number of voters in city electorates, which had the effect of increasing the value of country votes compared to those lodged by city voters.)

In the Assembly a boundary redistribution in 1969<sup>47</sup> had lessened the effect of the mal-apportionment and by 1973 the focus turned to reform of the Council. When the two reform Bills were introduced at the end of the 1972-73 session (designed to ensure full adult franchise for the Council and a proportional representation count for Council elections) the change to a single electorate for the Council was seen as a change made necessary by the choice of proportional representation, *and did not draw a single line of Hansard debate*.<sup>48</sup>

What did take up most of the debate was the method by which the proportional representation vote should be counted. The original provisions of the Bill would have had some first preference votes discarded. Voters would only be able to vote for groups (along the lines of our current above-the-line vote provisions) and any candidate or group which received fewer than half a quota of votes would be excluded from the count, with those votes then being completely *disregarded*. Half a quota of first preference votes was proposed as a threshold, below which no candidate or group could expect to win a seat. During a series of conferences on the Bill, the threshold was rejected, thereby allowing the first preference votes of such candidates to be “attributed” (distributed) at their full value to continuing groups.

## What kind of electorates would be possible for the Upper House?

In January both Mr Olsen and Mr Plane proposed that electorates or districts could be re-introduced for the South Australian Upper House, and in July Mr Olsen noted that some MPs wanted to see the re-introduction of multi-member districts, “possibly nine districts each returning two members”.<sup>49</sup> This would mean electing 18 Members to the Legislative Council – all at once or 9 at 4-year intervals. It would also mean reducing the size of the Legislative Council by 4

<sup>45</sup> Constitution Act Amendment Act 1969 (No 110 of 1969) broadened the property qualification and enabled spouses of qualified electors to vote for the Council.

Constitution Act Amendment Bill 1970 attempted to extend Council franchise to anyone enrolled to vote for the House of Assembly.

Constitution Act Amendment Act 1971 (No 17 of 1971) reduced the age of voting from 21 to 18.

Constitution Act Amendment Bill 1971 attempted to extend Council franchise to anyone enrolled to vote for the House of Assembly.

Constitution Act Amendment Bill (No 4) 1972 attempted to extend Council franchise to anyone enrolled to vote for the House of Assembly.

<sup>46</sup> Constitution Act Amendment Act 1973 (No 51 of 1973) extended the Council franchise to anyone enrolled to vote for the House of Assembly.

<sup>47</sup> Electoral Districts (Redivision) Act 1968-69 (No 2 of 1969) and Electoral Act Amendment Act (No 2) (No 99 of 1969).

Electoral Commission Report, 1969, PP No 79 of 1969. (Although the redistribution was a major step towards equality in the value of votes, the largest recommended metropolitan seat was Price, with 16,164 electors, and the smallest country seat was Frome, with 8,576 electors.)

Constitution Act Amendment Act 1969 (No 110 of 1969).

<sup>48</sup> Committee stage of the Constitution and Electoral Acts Amendment (Council Elections) Bill. Clauses 9 to 11 were passed without discussion (Hansard 26 June 1973, p.130)

<sup>49</sup> Greg Kelton, “Reform in the House” The Advertiser, 25 July 2000, pp.1-2.

Members, which would be in line with the reported preference of the Opposition Leader Mr Rann for a reduction of 4 members in each House.<sup>50</sup>

### Nine Districts?

Boundaries could be drawn according to House of Assembly electorate boundaries or even Federal House of Representatives boundaries.

There are two problems with using the Federal House of Representatives boundaries. Firstly, South Australia elects 12 Members to the House of Representatives so using these boundaries would require a choice of either 12 Members in single-Member districts or 24 Members in two-Member districts. Neither of these numbers seems to be within the scope of the proposals Mr Olsen is reported to have been considering. Secondly, the number of Members which South Australia elects to the House of Representatives will change with time according to the relative size of our population. It is not unreasonable to expect that the next time any change is made it will be to reduce the number of Members of the House of Representatives for South Australia from 12 to 11 (because of more rapidly increasing populations in other States). If this were to happen then the number of Members elected to the South Australian Parliament would change not because of a decision made by this Parliament but due to a quite external factor.

It seems more likely that if the proposed Legislative Council districts were to have their shapes linked to any other electorates, there would be an Assembly – Council link.

While there are 47 House of Assembly electorates it would be difficult to link them with 9 Legislative Council districts but if that number were reduced to 45, each Upper House district could be effectively an umbrella district for 5 House of Assembly electorates.

Of course, the Parliament could choose any number of districts – for example 8 Legislative Council districts each covering 6 House of Assembly electorates (requiring one new House of Assembly district to be created).

If Legislative Council districts were to follow House of Assembly boundaries the requirements imposed upon the Electoral Districts Boundaries Commission when drawing up House of Assembly boundaries would probably also be imposed in the case of Legislative Council districts. These requirements include making the electorates roughly equal in terms of the number of voters (with a tolerance of 10%),<sup>51</sup> and drawing continuous boundaries except where islands are included.<sup>52</sup> The requirement that the Commission take account of community of interest, topography and ease of communication between sections of an electorate<sup>53</sup> might all be less stringently imposed upon a Council redistribution than an Assembly redistribution, simply because of the much larger scale of the resulting districts. Finally, the fairness requirement might be seen as less relevant for the Upper House, partly because it relates to the necessity of a party with a majority of support being able to *form government*, and partly because any move away from proportional representation to another voting system would indicate the Parliament's intention to give a lower priority to equity in the Legislative Council.

### What Voting system?

Optional Preferential? If the Parliament decided to re-introduce electorates for the Legislative Council, and to require the election of *one* candidate for each district at each general election (effectively continuing the present system of double terms for Legislative Councillors) there is no reason why the preferential voting system used for the House of Assembly could not be used.

<sup>50</sup> As above.

<sup>51</sup> Constitution Act 1934 (SA), s.??

<sup>52</sup> Constitution Act 1934 (SA), s.82(5).

<sup>53</sup> Constitution Act 1934 (SA), s.83(2).

The only other Australian State which uses the same voting system to elect Members of both its Upper and Lower Houses, is Victoria, but this seems likely to change soon. After its 1999 election with the support of three Independents, the Bracks ALP government agreed to introduce a Bill<sup>54</sup> to change the number of Members in their Legislative Council from 44 to 35, reduce the number of Upper House electorates from 22 ( each returning 1 MLC every 4 years but for 8-year terms) to 5 (each returning 7 MLCs at every 4 years) and introduce a proportional representation count for the Legislative Council.

A link would remain between the Upper and Lower House electorates: each province would cover 17 Legislative Assembly electorates, and for that reason the number of Assembly Members would be reduced from 88 to 85.

PR? If the Parliament decides to re-introduce electorates for the Legislative Council, and to require the election of either one or two candidates for each district at each general election, then it would be possible to use a proportional representation count within each district.

The old one? If the Parliament decides to re-introduce electorates for the Legislative Council, and to require the election of two candidates for each district at each general election, an alternative would be to revert to the system which was used until 1975. Before the change to a single State-wide electorate for the Legislative Council, there were 5 Council districts each electing 4 Legislative Councillors – 2 MLCs per electorate every 3 years.

There was an optional preferential count, but as voters were required to show their preferences for 5 of the candidates (where only 2 were required to be elected) few votes were exhausted. The first vacancy was filled if a candidate had an absolute majority of first preference votes, or otherwise by the distribution of preferences of the least-favoured candidates, until one candidate had an absolute majority of votes. But the count to fill the second vacancy was effectively a rethrow of all of the ballot papers; the count began again as if the successful first candidate had not been available and his or her ballot papers were allocated (at their full value) to the second-preferred candidate.

This voting system effectively gave an *extra* vote to those voters who had been far-sighted enough to give their first preference to the candidate who filled the first vacancy. In this way the voting system amplified the vote of the most popular party, and it is probably not surprising that in 1973 each of the 5 Legislative Council Districts returned 2 members from the same party.

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<sup>54</sup> Constitution (Reform) Bill (Victoria) second reading in the Legislative Assembly on 25 November 1999 available on-line through [www.parliament.vic.gov.au](http://www.parliament.vic.gov.au).

### What electoral effect?

Dividing South Australia into 9 districts could be done in many ways, but any exercise in aggregating House of Assembly electorates would no doubt start at the south-eastern electorate of Gordon and the western electorate of Flinders. One hypothetical aggregation of existing House of Assembly electorates into 9 Legislative Council districts is shown below; all are within 10% tolerance and the two electorates of Adelaide and Wright have been split between districts.

**TABLE 10: NINE HYPOTHETICAL LEGISLATIVE COUNCIL DISTRICTS BASED ON HOUSE OF ASSEMBLY BOUNDARIES.**

<u>Hypothetical Council districts</u>	Comprising existing Assembly electorates of:	Assembly enrolments as at October '97	Deviation from mean enrolment
Country 1: North & West	Flinders, Frome, Giles, Goyder, Stuart	107,382	-4.4%
Country 2: South & Central	Chaffey, Gordon, Hammond, MacKillop, Schubert	109,901	-2.1%
Adelaide: Southern Suburbs	Bright, Fisher, Kaurna, Mitchell, Reynell	108,806	-3.1%
Adelaide: Hills	Coles, Finniss, Heysen, Kavel, Mawson	108,158	-3.7%
Adelaide: Inner & East	Bragg, Davenport, Norwood, Unley, Waite	108,111	-3.7%
Adelaide: Western suburbs	½ Adelaide, Colton, Elder, Hanson, Morphett, Peake	117,035	-4.2%
Port Adelaide	½ Adelaide, Hart, Lee, Price, Ross Smith, Spence.	115,378	+2.7%
Gawler, Elizabeth & Salisbury	Elizabeth, Light, Napier, Ramsay, Taylor, ½ Wright.	116,567	+3.8%
Adelaide: NE Suburbs	Florey, Hartley, Newland, Playford, Torrens, ½ Wright.	119,416	+6.3%

SOURCE: enrolment figures from SA. State Electoral Office, 1998, Statistical Returns for General Elections 11 October 1997, SEO, Adelaide.

*The districts shown above are only one set of districts – there are many possible combinations of the House of Assembly boundaries, and it is more than likely that the Parliament would choose a different set.*

Still, when the results of the State election of 1997 are applied to this particular set they do say something about the way that electoral outcomes are influenced by both boundaries and voting systems.

If all 18 Members of the Legislative Council were elected at one time, then the current voting system could be retained. The ticket vote model produces a 1997 Legislative Council result for the 9 hypothetical districts, of 6 ALP, 7 LIB, 4 DEM and 1 IND No Pokies Members returned to the Legislative Council.

By comparison, the model result for electing 18 Members to the Legislative Council in 1997 *without any districts* was 6 ALP, 7 LIB, 3 DEM, 1 IND No Pokies Member and 1 Grey Power Member (see Table 7 above). The introduction of these particular hypothetical electorates into the calculation moved one DEM seat to Grey Power. What did not change was the balance of power in the Council.

*In this case, the introduction of electorates would not necessarily have changed the composition of the Legislative Council much at all.*

**TABLE 11: APPLYING ACTUAL 1997 LEGISLATIVE COUNCIL VOTES TO THE 9 HYPOTHETICAL DISTRICTS, TO ELECT 18 MEMBERS**

To elect 18 Members, 1997 LC voting figures, PR count		
	First Member elected	Second Member elected
Country 1: North and West	LIB	IND NoPokies
Country 2: South and Central	LIB	ALP
Adelaide: Southern suburbs	LIB	ALP
Adelaide: Hills	LIB	DEM
Adelaide: Inner and East	LIB	DEM
Adelaide: Western suburbs	LIB	ALP
Port Adelaide	ALP	DEM
Gawler, Elizabeth and Salisbury	ALP	DEM
Adelaide: North-eastern suburbs	LIB	ALP
TOTAL	6 ALP, 7 LIB, 4 DEM, 1 No Pokies	

SOURCE: my calculations using 1997 Legislative Council voting figures, voting tickets etc. Copies available on request.

The IND No Pokies seat in the country might seem surprising, but it was the large LIB vote that made this possible. Even after winning one seat, the LIB vote was a good size. Later in the count when the LIB excess votes were distributed, the LIB ticket favoured IND No Pokies before DEM or ALP, so the IND No Pokies vote was boosted above the DEM vote; DEM was then excluded and its ticket again preferred IND No Pokies before the ALP.

Two results were very close. After the ALP Member was elected to the Gawler, Elizabeth & Salisbury district, the election of the second member was a very close contest which the DEM Member won; similarly, in the district of Adelaide: Southern Suburbs the first Member to be elected was LIB, and the ALP candidate only won the second seat against the DEM candidate by a few thousand votes.

What the calculations do show is that:

- when two Members are elected to represent a district, and a proportional representation count is used, it is *not at all likely* that both Members will be from the same party;
- introducing districts for the Legislative Council would probably have a different effect on small parties according to how geographically concentrated their support was. Small parties with electoral support which is dispersed across the State would suffer if electorates were introduced because they would have little chance of winning a seat in any electorate, but small parties with their support concentrated in one region (e.g. NAT, an IND or perhaps a One Nation candidate) would have a better chance of winning a Council seat under this system than if competing in a Statewide electorate.
- DEM representation would be likely to remain in the Legislative Council; and
- introducing districts for the Legislative Council may still not give the balance of power in the Legislative Council to one party.

If the decision was made to introduce 9, 2-Member districts for the Legislative Council *and to elect only one Member every four years* (but still for 8-year terms), it should still be possible to estimate the outcome using a proportional representation count applied to the Legislative Council voting figures from 1997. In this case the quota simply becomes 50% of the total formal votes plus one, which is the same as the majority required under a preferential vote (like that used for the House of Assembly count). The count can be continued until it is a competition between just two candidates.<sup>55</sup>

<sup>55</sup> Interestingly, in this case we can calculate a two candidate preferred vote from a PR count.

Table 5 much earlier showed that electing just 9 Members to a Statewide electorate in 1997 would have seen 3 ALP, 3 LIB, 2 DEM and 1 IND No Pokies Member returned to the Legislative Council. By contrast, Table 12 below shows that even with the same voting data, electing 9 Members from these 9 hypothetical districts would have seen 5 ALP, 2 LIB and 2 DEM Members elected to the Council. *In this case, the introduction of districts would have given 1 LIB seat and the IND No Pokies seat to the ALP.*

TABLE 12: APPLYING ACTUAL 1997 LEGISLATIVE COUNCIL VOTES TO THE 9 HYPOTHETICAL DISTRICTS, TO ELECT 9 MEMBERS

	Outcome	ALP	LIB	DEM
		2 candidate preferred vote (%)		
Country 1: North and West	LIB	46.7	53.3	
Country 2: South and Central	LIB	39.0	61.0	
Adelaide: Southern suburbs	ALP	50.8	49.2	
Adelaide: Hills	DEM		47.6	52.4
Adelaide: Inner and East	DEM		48.2	51.8
Adelaide: Western suburbs	ALP	50.4	49.6	
Port Adelaide	ALP	62.3	37.7	
Gawler, Elizabeth and Salisbury	ALP	59.8	40.2	
Adelaide: North-eastern suburbs	ALP	53.6	46.4	
TOTAL	5 ALP, 2 LIB, 2 DEM			

SOURCE: my calculations using 1997 Legislative Council voting figures, voting tickets etc. Copies available on request.

As in the previous exercise, the actual 1997 Legislative Council voting figures were applied to the 9 hypothetical districts, and were distributed according to the party tickets lodged with the State Electoral Office prior to the election. The only difference between this exercise and the previous one is that the quota is changed in order to elect one, rather than two, Members for each of these hypothetical districts.

But the results of the two exercises are quite different: it is *not* the case that the Member who would have been elected first in a 2-Member district is automatically elected if the district becomes a one-Member district, because the quota is higher in a one-Member district – it becomes 50% of the formal first preference vote (plus 1) rather than just about a third of first preference votes.

- An election for 2 Members to each of the hypothetical districts (a total of 18 Members) would have resulted in 6 ALP, 7LIB, 4DEM, 1 No Pokies Members being elected;
- An election for only *one* Member to each of the hypothetical districts (a total of 9 Members) would have resulted in 5 ALP, 2 LIB and 2 DEM Members being elected.

*That is, by electing only one Member at each election, LIB would have had 5 fewer Members, ALP 2 and DEM 2 in 1997.*

The difference arises because in the first exercise – the proportional representation count to elect 2 members to each district - the quota was about  $1/3^{\text{rd}}$  of the total number of formal votes and one party always had enough votes to win a quota right at the start of the count. The rules of the PR count dictate that the party can continue in the count (and can pick up votes from other candidates or parties who are gradually excluded for lack of votes) but only its votes *in excess of the quota* can be carried further in the count. This means that a party which wins a quota right at the beginning is likely to be excluded for lack of votes during the progress of the count.

By comparison, in the second exercise (the count to elect one Member to each of the hypothetical districts) the quota was effectively half of the total formal votes and no party won a quota at the first stage of the count. All votes therefore continued in the count.

There are two conceptual problems with these two exercises (shown in Tables 11 and 12). Firstly, it is doubtful that smaller parties which contested the 1997 Legislative Council election would field candidates for all 9 proposed districts. IND HEMP and the IND Students against HECS might not contest country seats and the National Party might not contest city seats, for example. So the 1997 figures really are not directly transposable to a hypothetical district-style election. Secondly, introducing districts for the Legislative Council could encourage voters to pay more attention to the individual candidates rather than casting a fairly straight party vote. The introduction of a personal vote for the Legislative Council would mean that 1997 Legislative Council voting figures would not necessarily be useful indicators of future behaviour; perhaps House of Assembly figures would be better.

It would be possible to re-do the figures in Tables 11 and 12 using *House of Assembly* voting figures from 1997. The conceptual limitation with using House of Assembly voting figures is essentially the reverse of the problem with using Legislative Council voting figures: candidates for smaller parties simply did not contest each of the House of Assembly seats which make up the hypothetical Legislative Council districts. There was no NAT candidate in Gordon, Hammond or Schubert, for example (although in Chaffey the NAT candidate won the seat) so we could reasonably expect that if all of these seats were combined to form one Legislative Council district (such as the hypothetical Country 2: North & west) then there *would* be a NAT candidate for the district and there would be a higher NAT vote in that larger district than was recorded for the House of Assembly in 1997. Similarly, there were no IND or IND LIB candidates in Chaffey, Hammond and Schubert, so even though other seats within their hypothetical district (Country 1: South and Central) were won by an IND candidate and an IND LIB candidate, the hypothetical district as a whole probably shows a lower level of support for IND candidates than might exist in a real election context.

If these problems are accepted the exercise can still be done but the resulting figures should be seen – much like those in Tables 11 and 12 – as indicative.

Table 13 below shows the outcome of the final exercise, applying *House of Assembly* voting figures from 1997 to the same 9 hypothetical districts, and using a preferential count.

**TABLE 13: APPLYING ACTUAL 1997 HOUSE OF ASSEMBLY VOTES TO THE 9 HYPOTHETICAL DISTRICTS, TO ELECT 9 MEMBERS**

	Outcome	ALP	LIB	DEM
		2 candidate preferred vote (%)		
Country 1: North and West	LIB	42.0	58.0	
Country 2: South and Central	LIB	33.2	66.8	
Adelaide: Southern suburbs	LIB	48.7	51.3	
Adelaide: Hills	LIB	39.0	61.0	
Adelaide: Inner and East	LIB	40.3	59.7	
Adelaide: Western suburbs	LIB	49.2	51.8	
Port Adelaide	ALP	66.3	33.7	
Gawler, Elizabeth and Salisbury	ALP	62.6	37.4	
Adelaide: North-eastern suburbs	ALP	53.2	46.8	
TOTAL	3ALP, 6 LIB, 0 DEM			

SOURCE: my calculations using 1997 House of Assembly voting figures and two party preferred counts. Copies available on request.

At first glance, the results in Table 13 are really *quite* different from those in Table 12. On closer study though, it seems that the hypothetical seats could be something like the following:

Country 1: North and West	Fairly strong LIB seat
Country 2: South and Central	Strong non-Labor seat - may be marginal between LIB and IND / NAT
Adelaide: Southern suburbs	Marginal between ALP and LIB
Adelaide: Hills	Strong non-Labor seat: - marginal between DEM and LIB
Adelaide: Inner and East	Strong non-Labor seat: - marginal between DEM and LIB
Adelaide: Western suburbs	Marginal between ALP and LIB
Port Adelaide	Strong Labor seat
Gawler, Elizabeth and Salisbury	Strong Labor seat
Adelaide: North-eastern suburbs	Marginal between ALP and LIB

SOURCE: my calculations using 1997 House of Assembly voting figures and two party preferred counts. Copies available on request.

That is, of the nine hypothetical seats there would seem to be 3 ALP seats, 2 LIB seats and 4 marginals (of which 2 could be held by DEM). By comparison, electing 9 MLCs for a Statewide electorate in 1997 would have seen 3 ALP, 3 LIB, 2 DEM and 1 IND No Pokies Member returned to the Legislative Council.

### Transition?

How could a transition from 22 Members from a State-wide electorate to 18 (or any other number) representing electorates be effected?

If the new Members were still to have 8-year terms, it would be possible to phase in the change over the next two elections by electing 9 Members to represent the new seats in 2001-2; with the 11 Members whose terms have not expired the hybrid Legislative Council would be reduced to 20 in 2001-2 and then to 18 when the change was fully effective at the following election.

It is possible that the Members representing the State as a whole would face some difficulty working with Members from the same house representing particular geographic areas.

If however the Members were to be elected for 4 year terms, there could be a complete change at one election as long as there was a transition arrangement to cover the 11 Members whose terms had not expired at the time of the change.

Tasmania has recently faced just such a problem.

Upper House Members in Tasmania currently represent 19 single-Member electorates and are elected using a preferential count similar to the South Australian House of Assembly count. Each Member holds office for 6 years, with elections being held for 3 Members each year and 4 in every sixth year.

The Parliamentary Reform Act 1998 (Tas) required a Redistribution Committee and Tribunal to re-draw Legislative Council boundaries so that the State would be covered by only 15 (not 19) electorates for the Upper House, and to draw up transitional proposals for the change.

The Redistribution Committee created 15 new Divisions for the Tasmanian Legislative Council, basing its boundaries on equal numbers of electors, natural boundaries and communities of interest. Once the boundaries had been determined the Committee became a Redistribution Tribunal and allocated 15 then-current Members of the Legislative Council to the new seats; 4 Members remained unallocated.

At this stage, one alternative would have been to leave the 4 unallocated Members as Members-at-large representing the State as a whole until their terms expired. The Tribunal was of the view that

(T)he principle of unallocated Members representing their current Division, or no division at all, presents ...representational difficulties. With the creation of new divisions the retention of unallocated Members would create confusion for some electors and may hinder allocated Members from effectively representing the electors of their new division.<sup>56</sup>

The Tribunal also noted that continuing the terms of office of the 4 unallocated members

would be over-riding the intention of the Act – that being to reduce the number of Members of the Council as soon as possible.<sup>57</sup>

The unallocated Members had their term of office reduced “so that the Member ceases to be a Member of the Council on 1 July 1999” a period of less than 10 weeks from the time of the final determination. Compensation was awarded to unallocated Members following the formula used in the case of standard Tasmanian Senior Executive Service contracts – one week’s salary for each 6 weeks remaining in the contract (in the case of Members of Parliament the relevant salary was determined to be base salary plus office salary plus committee sitting fees, averaged over the Member’s last 12 months of service). The employer’s superannuation contribution foregone by an unallocated Member due to the reduction of his or her term, was also added to the compensation package.

At the same time as Members were allocated to the 15 new electorates, the Tribunal specified the order in which those new electorates would be contested. The first periodic elections of Members on the basis of the new boundaries were conducted on 28 August 1999 and 6 May 2000.

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<sup>56</sup> Initial Transition Proposal – Reasons, at [www.lcredistribution.tas.gov.au](http://www.lcredistribution.tas.gov.au)

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## SUMMARY TABLE, 1997 LEGISLATIVE COUNCIL RESULTS UNDER DIFFERENT ELECTORAL SYSTEMS

	ALP	LIB	DEM	IND	No Pokies	Grey Power	Greens	All Others	TOTAL
Percentage of first preference votes gained	30.6	37.8	16.7	2.9	1.6	1.7	8.7	100.0	
<b>ACTUAL RESULTS, 1997</b>									
Electing 11 MLCs	4	4	2	1				11	
<b>MODEL RESULTS FOR 1997</b>									
Electing 11 MLCs (no threshold)	4	4	2	1				11	
Electing 11 MLCs with threshold:									
1/3rd quota	4	4	2	1				11	
1/2 quota	4	4	3					11	
5% of formal first preferences	4	4	3					11	
Electing 22 MLCs (no threshold)	7	8	4	1	1	1		22	
Electing 22 MLCs with threshold:									
1/3rd quota	7	9	4	1	1			22	
1/2 quota	8	9	4	1				22	
Electing 18 MLCs (no districts)	6	7	3	1	1			18	
Electing 18 MLCs to represent 9 hypothetical districts:									
using Legislative Council voting figures	6	7	4	1				18	
Electing 9 MLCs (no districts)	3	3	2	1				9	
Electing 9 MLCs to represent 9 hypothetical districts:									
using Legislative Council voting figures	5	2	2					9	
using House of Assembly voting figures	3	6						9	

SOURCE: my calculations.