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Understanding House Of Assembly Boundaries

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UNDERSTANDING HOUSE OF ASSEMBLY BOUNDARIES

Introduction

This paper is about one component of the South Australian system – House of Assembly electorate boundaries. It is a simple guide to why and how electoral boundaries are drawn in South Australia.

> **The South Australian electoral system recognises each elector's right to a vote which has equal power in electing the government. In elections for the House of Assembly it recognises that right as an outcome of two factors: electorates with equal numbers of electors (equity) and electorates which will together give government to the party most electors prefer (fairness).**
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> **An equity requirement is common to all electoral systems in every Australian jurisdiction, but the fairness requirement is unique to South Australia. [1]**

1. Why do we need boundaries at all?

It would be quite possible to elect a government without having any electorate boundaries at all. We could have one Statewide electorate; in fact that is how we elect Members to the Legislative Council.

Usually a Statewide electorate would use a voting system that would ensure that any party or any group in the community could win seats in proportion to their support amongst electors. In this way a Statewide electorate with proportional representation (PR) can produce a House which mirrors[2] the community quite closely. Certainly minor parties are more likely to be able to win a seat in a proportional representation system than under a system that uses single-member electorates.

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[1] Newton-Farrelly, J, 2008, *From Gerry-built to Purpose-built: creating fair and equal electoral districts in South Australia.* Paper presented to the Australasian Study of Parliament Group, Brisbane, p.1.

[2] In 1906 Mr Asquith argued in favour of proportional representation, that "it was infinitely to the advantage of the House of Commons, if it was to be a real reflection and mirror of the national mind, that there should be no strain of opinion honestly entertained by any substantial body of the King's subjects which should not find there representation and speech." See Humphreys, JH. 1911. *Proportional Representation; A Study in Methods of Election.* London: Methuen.

Although proportional representation produces a very representative House, States with two Houses usually use PR for elections to the Upper House, not the House in which government is formed. This is because PR does allocate seats to smaller parties and so a major party is unlikely to win a significant majority of the seats. To form government in a PR system, a party would usually need to form a coalition with other Members from minor parties, who would then negotiate policy positions. Essentially, a party may be elected on the basis of one set of policies but may only be able to implement a sub-set, or a different set, of policies.

By contrast, elections on the basis of single-Member electorates generally produce results which penalise smaller parties but amplify, or exaggerate, the proportion of seats which the major parties win, given the proportion of votes that they win across the community. In particular *the party which wins the most votes will win a bigger share of the seats than its share of the votes*, and this applies whether the system allocates seats on the basis of first preferences (e.g. the UK and Canada) or on the basis of final preferences (in Australia), as long as there are single-Member electorates. This amplification is usually seen as a useful characteristic of single-Member electorate systems, because it gives the party with the most support in the community an opportunity to form a fairly stable government.[3]

So while the argument for single-Member electorates is often expressed in terms of the relationship between a Member and his or her constituents (the Member can look after the interests of constituents and represent them in the Parliament and in the party's caucus), another advantage of having single-Member districts is that generally one party will win a clear majority of the seats and will be able to form government without needing to compromise the policies on which it has been elected.

In Australia, all States and Territories except Tasmania and the ACT, use single-member electorates for the Lower House – the House in which government is formed. Any system that uses single-member electorates will need to draw boundaries.

2. If we do need boundaries couldn't they be simple?
It would be possible to draw a grid across the map of South Australia and make 47 electorates of equal geographic size. But this would produce electorates that had vastly different numbers of voters. One of these electorates would need to cover all of the

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[3]Sometimes called the "exaggeration of majorities". See for example Lakeman, E. 1955. *How Democracies Vote: a Study of Electoral Systems*. London: Faber and Faber.

current Adelaide electorates, plus the outer-Adelaide electorates (Heysen, Light and Kavel) and also Finniss (which takes in Kangaroo Island). That one electorate would be just the same size geographically as each of the other 46 electorates, but it would contain about 80% of the voters in South Australia.

Almost anyone would see that one Member speaking on behalf of 80% of the voters would be unfair, and that it would be unfair for the votes of all of Adelaide and the Fleurieu Peninsula to have the same value as the votes of a sparsely populated area of the outback where perhaps only 100 people might live. So in a State where population is not spread evenly across the map, it would obviously be better if electorates contained equal numbers of people, rather than equal geographic sizes.

Drawing electorates with roughly equal numbers of people should be a relatively simple process, but should they contain equal numbers of people or equal numbers of people on the electoral roll or perhaps equal numbers of voters?

3. Electing a Member and electing a government.

It would be possible to draw electorates which included equal numbers of people, whether they were citizens or not, and whether they were children or adults. This is what happens in the USA, and it is justified on the grounds that Members represent all of their constituents, non-citizens and children included. But non-citizens and children cannot generally have a role in choosing their member, so on election day we would find that some electorates would have fewer voters (those with large numbers of migrant workers or overseas students or young children) and some electorates would have more (those with large numbers of older citizens).

This would not be a problem at all within an electorate. In the competition to choose their local Member every voter within that electorate would have an equal say (each vote would have an equal value). But when voters mark a House of Assembly ballot paper, they are not only directly choosing their local Member, they are indirectly choosing the party who will form government. Their Member will increase the numbers on either the Government benches or the Opposition benches. If each vote is to have the same value then the competition to be elected as a Member must require the same number of votes in each electorate, whether it is a vote in Whyalla or a vote in Burnside. When an electoral system gives each vote the same value, that system is said to be 'equitable'. (Many people describe this as "**One Vote, One Value**".)

Ideally, the results at each election should show that each electorate has recorded the same number of *formal votes*, but it is not feasible to estimate in advance of an election how many people on the electoral roll will choose not to record a vote, and how many votes will be informal. So in practice, the most equitable electoral system will guarantee that each vote will have an equal value by including the same number of *electors* in each electorate.[4]

4. Equity and malapportionment.

When the number of electors in each seat is not close enough to being equal, the principle of 'One Vote, One Value' is not carried through and the electoral system is often called '**malapportioned**.' But how far from the average do electorates need to be before equity turns into malapportionment?

Most Australian States decided in the 1970s and 1980s to draw equitable electorates and put an end to the advantage that malapportionment can give to a party. Since then the instructions given to redistribution authorities around Australia have generally required them to draw each electorate so that it includes the same number of electors, *plus or minus 10%*. Some commissions, including the South Australian Electoral Districts Boundaries Commission (the EDBC), aim for an even lower figure; the EDBC aims to set all electorates so that they will be within 3.5% of the average at the time of the election.[5]

In all Australian jurisdictions other than South Australia and Western Australia,[6] boundaries will be in place for several elections, so being able to set electorates with higher or lower numbers of electors than the average allows a commission to take population change into account. Sometimes seats in outer-suburban areas with newly-commenced large-scale developments are set low in recognition of the fact that they will grow, and conversely an electorate might be set high, with a larger number of electors, if its population is expected to decline over the term that the new boundary will be in place. Still, this would be within the +/-10% limitation.

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[4] In electoral systems where there is voluntary voting or where there is voluntary enrolment, it is even more difficult to ensure equity. In the USA voting is voluntary and electorates are drawn to include equal numbers of resident population.
[5] See for example Appendix 10 "Present and Projected Enrolments for Assembly Districts After Redistribution", Electoral Districts Boundaries Commission. 2007.*Report.* Adelaide: The Commission.
[6] The *Electoral Act* (WA) s 16Eb was amended in 2005 to require a redistribution after every general election for the Legislative Assembly.

Generally, seats that are set furthest from the average are seats that cover very large geographical areas and are very sparsely populated; these seats are sometimes set with quite low numbers of electors to recognise the difficulties of communication. But there is a problem with setting these districts low – most have declining populations,[7] so setting them low when boundaries are intended to last for two or three elections will mean that they are likely to be unacceptably low by the time of the final election.

 In South Australia, there are three seats which cover very large areas (Flinders, Giles and Stuart). Members representing these three electorates receive additional administrative support and larger travel allowances, but their seats comply with the statutory[8] tolerance of 10% at the time of the redistribution, and the Commission's aim of 3.5% by the time of the election,[9] and equity is not compromised. But in Queensland and Western Australia the problem of seats that cover very large geographic areas is addressed in a way that does compromise equity. The size of geographically large-scale electorates in these two States is reduced by setting them well below the statutory tolerance and *then treating them as if they come within the tolerance*. In Queensland, an electorate which covers an area of more than 100,000 square kilometres has its *actual* number of electors increased by a number of nominal, or phantom electors, equal to 2% of the number of square kilometres in the electorate, and the combined number of actual and nominal electors must then be within 10% of the average. In Western Australia an electorate which covers an area of more than 100,000 square kilometres also has its actual number of electors increased, in this case by a number equal to 1.5% of the number of square kilometres in the electorate, and for these large seats the combined number of actual and nominal electors may be as low as 20% below the average.[10]

If these rules had been adopted in South Australia, they would have applied to Giles and Stuart, but Flinders would have been too small.[11] Using the Western Australian method,

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[7] The draft Queensland redistribution report of 2008 noted that although there had been a growth of 19.3% in the number of electors across Queensland since the last redistribution, it had not flowed through to the outback electorates: "…despite the addition of weighted enrolment for these districts, the enrolment in all of these districts had continued to decrease." Queensland Redistribution Commission. 2008. Proposed Queensland Electoral Districts: Reasons, Descriptions and Maps. Brisbane: The Commission, at p.8. Available from www.ecq.qld.gov.au.
[8] Constitution Act (SA) s. 77(2).
[9] See for example Appendix 10 "Present and Projected Enrolments for Assembly Districts After Redistribution", Electoral Districts Boundaries Commission. 2007.*Report.* Adelaide: The Commission.
[10] For all WA seats other than these large electorates, tolerance is just 10%. See WA. Office of the Electoral Distribution Commissioners. 2007. *Western Australia's Proposed Electoral Boundaries,* June 2007. Perth: The Office, at p.3. Available at www.waec.wa.gov.au.
[11] The boundaries that will operate for the next SA election in 2010, make Flinders 58,562 km^2; Stuart 339,736km^2 and Giles 497,758km^2.

converting 1.5% of Giles' land area into nominal electors would have added about 7,500 nominal electors to its total; Stuart would have received about 5,100 of these elector-equivalents. On the other hand, if Queensland's 2% option had been applied, Giles would have received just under 10,000 nominal electors and Stuart would have received about 6,800 nominal electors. Given that the South Australian electorates were most recently calculated on the basis of an average number of 23,231[12] electors, this method would have substantially reduced the number of real electors that these seats would have had to cover, and would have therefore have allowed the Commissioners to reduce the land size of these two largest electorates considerably, *but at a cost – equity*. When election time arrived, the number of real electors in these seats might only be two-thirds that of other seats. The number of actual votes from real electors required to elect a member to represent Giles or Stuart would have been considerably lower than the number to elect a member in Flinders, or any other seat around the State. So the effect of the large area allowance would have been to increase the value of a real elector's vote in these large electorates, by comparison with the value of a vote lodged by electors in any other seat.

As noted above, in South Australia the special problems experienced by Members representing larger area electorates are recognised by giving the members more administrative and financial resources. In Queensland and Western Australia the problem has been addressed by making the electorates a little smaller geographically than they would otherwise need to be. These are solutions to a quite obvious problem of representation, and the solutions are applied to just those seats for which the problem is most acute.

By contrast, a practice employed many years ago to give *all* country seats an advantage, regardless of their actual difficulty of representation, had its origin more in political advantage than in representational disadvantage.

In South Australia from the 1938 election until the 1970 election, in Queensland from 1949 to 1992[13] and in Western Australia for almost all of the twentieth century and until the coming election,[14] *all* seats outside the metropolitan area were drawn much smaller

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[12] As at the time of the election due in 2010. See SA. Electoral Districts Boundaries Commission. 2007. *Report.* Adelaide: The Commission, at p.17.

[13] The Queensland zonal malapportionment was originally drawn up in 1949 by the ALP because its support was at that time stronger in country areas. Bjelke-Petersen modified it in 1971 and extended it to benefit the Country Party (later the Nationals).

[14] Equitable seats will only come in force in Western Australian at the next State election, expected later this year. See Kelly N. 2006. Research Note: Western Australian Electoral Reform: Labor Finally Succeeds. *Australian Journal of Political Science* 41 (3):419-426.

than the average, *regardless of their geographic size or isolation*. This practice is known as '**zonal malapportionment**.'   It has the effect of giving an electoral advantage to the parties which have strong support in the country areas; the number of votes required to elect a Member to represent any of these smaller seats would have been considerably lower than the number to elect a Member in the larger seats in the city, and as a result a party could win a majority of the seats in the House of Assembly without actually having the support of the majority of the voters across the State.   Zonal malapportionment therefore compromised equity (equal numbers of electors in each seat) and it also compromised fairness (electorates which will together give government to the party most electors prefer**)** because ALP support was concentrated in the larger, city seats[15], and conservative support (LCL in South Australia, National Party in Queensland and Liberal Party in Western Australia) was much more concentrated in seats outside the metropolitan area.

In South Australia zonal malapportionment[16]   was so effective it kept the Playford government in office at several elections when it did not win the support of the majority of voters,[17] and it had the same effect for the Bjelke-Petersen government In Queensland and for various Liberal governments in Western Australia.

In a set of boundaries where zonal malapportionment was used, a large number of electorates were advantaged, and the advantage flowed to one party, but the WA / Qld large area allowance only applies to five electorates in each State[18] and they are not all held by the same party.[19]   So the large electorate allowance is generally regarded as a necessary evil rather than as evidence of malapportionment, zonal or otherwise. Nonetheless the large area allowance does compromise equity, and it is unlikely to have

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[15] Actually the Queensland zonal malapportionment was originally drawn up in 1949 by the ALP because its support was at that time stronger in country areas. Bjelke-Petersen modified it in 1971 and extended it to benefit the Nationals.

[16] Blewett and Jaensch called this the 'Playmander': see Blewett N and D Jaensch 1971. *Playford to Dunstan: The politics of transition*. Melbourne: Cheshire, at p.17

[17] Because the statistics are difficult to work with, this assertion is based on estimated figures. See Jaensch D. 1971. 'Under Representation and the 'Gerrymander' in the Playford Era'. *Australian Journal of Politics and History* 17(1): 82-95; Stock, J. 1991 "The 'Playmander' Revisited; the significance of cross-voting in estimating the two-party vote in South Australia, 1943-1953' *Australian Journal of Political Science* 26 (2): 331-341.

[18] WA has 59 seats and Queensland has 89. See WA. Electoral Distribution Commissioners. 2007. *Western Australia's New Electoral Boundaries October 2007 Final Report*. Perth: Office of the Electoral Distribution Commissioners, at p.22. Also, Queensland Redistribution Commission. 2008. *Proposed Queensland Electoral Districts; Reasons, Descriptions and Maps.* Brisbane: The Commission, at pp 6-7.

[19] In Queensland 2 of the 5 large area seats (Mt Isa and Cook) are traditionally Labor seats; in Western Australia 3 of the 5 large area seats are expected to be Labor seats (see Green A 2007. *2007 Redistribution Western Australia*. Western Australian Parliamentary Library Election Papers Series 2/2007).

a place in South Australia because this electoral system places a higher value on absolute equity than other jurisdictions do, for one reason – equity underpins the statutory fairness requirement.[20] That requirement places an obligation on the Commissioners to draw boundaries in such a way that a party which has the support of the majority of electors across the State will be reasonably likely to win a majority of the seats, and hence win government. The fairness requirement cannot be fulfilled if some seats can be won with fewer votes than others. (The fairness requirement will be described in section 6).

5. At what point in time should electorates have equal numbers of electors?

As noted in section 4, most jurisdictions around Australia require that the number of electors in each seat be within 10% of the average, but in most jurisdictions a new set of electorates stays in place for two or three elections. The point in time at which compliance with that 10% tolerance is judged, is almost invariably a date at the very beginning of the redistribution process, well before the election at which each of the new seats take effect. The commissioners are generally not required to produce a set of electorates that will still have equal numbers of electors in each seat by the time of the second or third election, only at the beginning of the process. This means that population change over the period for which the new seats will operate, can gradually make some electorates much bigger and some much smaller than the rest, a situation which is termed '**creeping malapportionment**.'

The exception to this rule has been the Commonwealth, which requires that commissioners aim to have elector enrolments within 3.5% of the average, half-way through the period for which the new seats will operate.[21]

The South Australian requirement is no different from other States', in that it requires the Electoral Districts Boundaries Commission to draw electorates with no more than 10% tolerance from the average number of electors, as at a date just before the redistribution process is begun.[22] But all commissions are required to take several other factors in to account when they draw the boundaries, and in South Australia the EDBC has interpreted a requirement that it should take demographic change[23] into account, to mean that electorates should be equitable (in practice within 3.5% of the average) *at the*

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[20] This requirement is unique to South Australia.
[21] *Commonwealth Electoral Act 1918* s.73 (4)a and s63A.
[22] *Constitution Act (SA) 1934* s 77(2).
[23] *Constitution Act (SA) 1934* s 83(2)e.

time of the election, as well as at the beginning of the process. This interpretation is consistent with the fact that the South Australian redistribution process is focussed on a fair and equitable outcome at the election at which the new boundaries will come into effect.   It is also made possible in South Australia, whereas it might not be possible in other jurisdictions, by the fact that the Commission has access to population projections that are specially prepared and very detailed. The effect of the Commissioners' decision to treat the demographic change criterion as an equity requirement is that South Australian elections will always be conducted on the basis of the most equitable electorates possible, and the value of each vote will be as nearly equal as possible.

6. What does gerrymandering mean?

Electoral boundaries are essentially lines drawn on a map. But the map is not just a map of geographical features, it is also a map of population, and in particular we can think of it as a map of voters. Some of those voters will have died-in-the-wool allegiances to one party, some will have rusted-on allegiances to another party and some will change their minds about who to vote for, from time to time. Because political views are formed by the experiences that voters have in their working lives as well as from their family circumstances and other life experiences, and because people with similar interests and similar incomes (and similar amounts of income to spend on housing) often live close to each other, it is normally the case that the spread of supporters of a given party across the map will not be random or even, but party support will be concentrated in particular geographic areas. National Party voters, for example, are likely to be concentrated in country areas; Greens and Democrat voters have been more clustered in the Adelaide Hills and foothills areas, and even the major parties have uneven distributions across the State: Liberal voters have been more clustered in country areas and ALP voters are clustered more around urban areas.

It is this differential concentration of political support across the map, which makes it possible for two sets of boundaries drawn across a map to have two different outcomes. If for example, ALP voters were moved out of a marginal ALP seat and into an already safe ALP seat, it would become easier for the ALP to win the safe seat but harder for the ALP to win the marginal seat. If this sort of thing was done on a larger scale, with the intention of giving an advantage to one party or another, it would be seen as **gerrymandering**.[24] Various techniques have been identified, including concentrating an

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[24] The term comes from 1812 in Massachusetts when Governor Eldridge Gerry drew boundaries that would advantage his party in the coming Senate elections. The seats seemed to have the shape of a salamander, and a quip that they were in fact a 'Gerry-mander' gave the Governor a spot in history.

opposing party's support into a few sacrificial very safe seats (this is termed 'packing'), diluting their support across a larger number of seats which they nonetheless still can't win ('cracking'), favouring a party by spreading its support out from a few safe seats into a larger number of more marginal seats ('stacking') and drawing seats which will make two sitting members from the same party compete against each other ('kidnapping').[25]

Gerrymandering does still occur in the USA on a regular basis when governments draw boundaries that will suit themselves,[26] but in Britain, Canada, New Zealand and Australia the task has been given to commissions that are independent of the parties and also generally independent of the Parliament. These Commissions have also been instructed specifically that they should not look at the map in terms of the political allegiances of voters – the presumption has been that the outcome will only be fair if the commissioners are blind to the political dimension of their task.

Nonetheless these independent commissioners can *unintentionally* draw boundaries which advantage one major party over another. A redistribution which has unintentionally created a set of boundaries that would advantage one party over another is generally not referred to as a gerrymander but rather as '**biased**'. Without the ability to look at their boundaries in terms of the results that they would be likely to produce, commissions have sometimes produced a set of boundaries that are biased, and in the extreme case, *a party could win a majority of the seats and form government, even though it did not have the support of the majority of voters.*[27]

A bias is evident when, with the same share of the vote, the two major parties would win different numbers of seats.[28] Another way to look at bias is to ask what proportion of the vote the major parties would need to win in order to win the median seat – the seat which would give them government. Before the 1989 State election the Liberal party argued that for the past six State elections in South Australia it had consistently needed more than 50% of the vote to win government:

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[25] All of these terms have their origin in analysis of redistricting in the American States. See for example Johnston RJ 1979. *The Geography of Elections.* London: Croom Helm.
[26] Only 12 US States have their redistricting done by organizations that are independent of the legislature. See Redistricting Commissions: Legislative Plans, at www.senate.leg.state.mn.us/departments/scr/redist/red2000/apecomsn.htm accessed July 2008.
[27] A government which has a majority of the seats but not the support of a majority of voters across the jurisdiction, is referred to as having a 'spurious majority' (see especially Siaroff A. 2003. 'Spurious Majorities, Electoral Systems and Electoral System Change'. *Commonwealth and Comparative Politics* 41 (2):143-160).
[28] Soper CS and J Rydon. 1958. Under-Representation and Electoral Prediction. *Australian Journal of Politics and History* 4 (1): 94-106.

In South Australia in 1975 the Liberal Party would have required 55 per cent of the two-Party preferred vote across the State to have had reasonable prospects of governing. In 1977 it was 55.3 per cent; in 1979, 54.8 per cent; in 1982, 51.9 per cent; in 1985 51.1 per cent; and in 1989 it is estimated that the Liberal Party requires 52 per cent of the two-Party preferred vote to have a reasonable prospect of forming government.[29]

The boundaries had in fact been responsible for something like a packed result for the Liberal Party because its support was concentrated in a number of very safe country electorates, making it difficult for that party to make effective use of its level of support across the State to win seats. At the subsequent election the Liberal Party did even more poorly than had been predicted: it won 52% of the two party preferred vote across the State but did still not win a majority of the seats (and the ALP retained government).

More recently, a similarly unfair result occurred at the federal election of 1998, when the Labor Party won 51.0% of the two party preferred vote across Australia[30] but did not win a majority of the seats (and the coalition retained government).

These are clearly unfair results, because the intention of the electors was not reflected in the result of the election – while the majority of electors had preferred one party, another had formed government. Perhaps this sort of result needs to be accepted within any system once in a while, but it sounds a warning that bias may be built in to the system.

It was precisely because those boundaries that produced a biased result in South Australia in 1989 had been carefully drawn by well-intentioned, non-partisan, independent commissioners, that the Parliament rejected the presumption that fair boundaries could only be the result of an exercise in which the commissioners were blind to the political effects of their work.   Parliament changed the redistribution process. Section 83A of the *Constitution Act (SA)* now requires the Electoral Districts Boundaries Commission to make every effort to draw electorate boundaries in such a way that a party which wins the support of a majority of voters will win government:

> s 83(1)   In making an electoral redistribution the Commission must ensure, as far as practicable, that the electoral redistribution is fair to prospective candidates and groups of candidates so that, if candidates of a particular group attract more than 50 per cent of the popular vote (determined by aggregating votes cast throughout the State and allocating preferences to the necessary extent), they will be elected in sufficient numbers to enable a government to be formed.

This is known as the '**fairness clause**', and in order to comply, the EDBC must be aware of the strength of support for the two major parties across the map of the State. The

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[29] Hon KT Griffin, *SA Parliamentary Debates* 9 August 1989:113.
[30] www.aec.gov.au/Elections/federal_elections/1998/hor/two_party.htm, accessed July 2008.

fairness clause overturns the presumption that redistribution commissioners need to be blind to the political consequences of their work; on the contrary South Australian commissioners need to understand swing, marginality, the pendulum, and similar concepts.

7. How does the Electoral Districts Boundaries Commission draw boundaries to comply with the fairness requirement?

The Constitution Act 1934 (SA) requires the Commission to draw electorates with equal numbers of electors,[31] and, as far as it is practicable, to draw boundaries in such a way that the party which wins the support of the majority of voters across South Australia will also win a majority of seats.[32] In deciding where to draw these lines the Commission is required to take into account a series of criteria which are common to most other jurisdictions: demographic changes, topography, feasibility of communication between electors and their Member demographic change and finally the desirability of creating electorates that will reflect existing communities of interest "of an economic, social, regional or other kind."[33] Unlike most other commissions, the Commission is not required to take into account the boundaries of existing electorates or local government areas or suburbs; the removal of this requirement in 1991 has allowed substantial change to occur.

When it set to work in 1991 within the new framework, the Commission made an adjustment to recognise the existing bias against the Liberal Party and then drew up a new set of seats, not at this stage taking the fairness requirement into account but simply paying attention to geography and community of interest considerations. The Commission then looked at the results that would have been recorded in those new seats if they had been in place at the previous election (1989), and found, to its surprise, that although it had drawn the new set of seats without any intention to advantage one of the major parties, in fact the new seats would not have produced a fair result.[34]

This exercise has shown that the process of drawing a set of boundaries that will be likely to produce a fair result at the next election is not a simple one, but over the five redistributions that it has now completed under the new system, the Commission and the

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[31] *Constitution Act 1934* (SA) s.77(1).
[32] *Constitution Act 1934* (SA) s.83(1).
[33] *Constitution Act 1934* (SA) s.83(2).
[34] 'A new kind of imbalance had developed simply out of a faithful application of the criteria in Part V of the Act other than section 83(1). This result gives an indication of the difficulties under which former Commissions have acted and Commissions elsewhere in Australia are now acting.' EDBC 1991:69.

parties have come to agreement over a set of procedures. Essentially the Commission will draw a set of boundaries that will result in seats spaced fairly evenly around the pendulum, especially in the vicinity of the median seat (the 24th seat of the 47 House of Assembly seats) so that if the Opposition wins a swing big enough to gain the majority of the two party preferred vote it will be likely to win the median seat.

These procedures are summarised as follows:

- political support will be represented by the two party preferred vote at the most recent election;
- political support in a given geographic area will be calculated at the census collectors district level, and it will be the weighted average of the two party preferred results at booths used by the residents of that CCD;
- the two party preferred vote will be used rather than a two group vote or a government: non-government construct;
- the pendulum will be used and uniform swings will be assumed to operate (but it won't be assumed that individual seats will each swing to the same degree);
- country seats will be assumed to swing less than the average (on the basis of which the Commission will not make the median seat a country seat);
- the Commission will not take incumbency into account;
- the Commission will not make large numbers of marginal seats in order to over-insure the need to guarantee the winning party a majority of the seats;
- the date at which the new electorates will need to have equal numbers of electors will be the next election date;
- and finally the Commission will test its boundaries at two points in time. Firstly at the time of the redistribution the Commission will need to be satisfied that if the Opposition wins a swing big enough to give it 50%+1 of the 2PP vote, it will win a majority of seats and be able to form government. Secondly, at the time of the subsequent election, the redistribution will be judged on the basis of whether the party or group that wins a majority of the two party preferred vote across the State actually does win a majority of the seats.[35]

The fairness clause is not a *proportionality* requirement. The Commission does not attempt to fix seats around the pendulum in such a way that a party which wins 55% of the vote will necessarily win 55% of the seats. But it does explicitly set seats around the

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[35] The way that these procedures were formulated, is described in more detail in Newton-Farrelly, J, 2008, *From Gerry-built to Purpose-built: creating fair and equal electoral districts in South Australia*. Paper presented to the Australasian Study of Parliament Group, Brisbane.

pendulum in such a way that if either the ALP or the Liberal Party wins just over 50% of the vote, that party will win the median seat and be able to form government.

The fairness requirement is not a requirement that the electoral system be fair to all parties, or to individual Members of the Parliament. Minor parties have argued that the new system entrenches the importance of the two major parties, and individual Members have submitted that the combination of frequent distributions and the Commission's lack of concern for existing community of interest makes representing communities more difficult. But these are not requirements under the Act.

8. Has the introduction of the fairness clause worked?

Of the four State elections since the introduction of the fairness clause, three have returned results which were clearly fair in that the party which won a majority of the 2PP vote across the State had also won a majority of the seats. The result in 2002 is not as clear, as the Liberal Party won a majority of the 2PP vote across the State but did not convince the various Independent members to support it to form government – Peter Lewis (CLIC) gave his support to the ALP to form government even though his was clearly a Liberal-oriented electorate. The Commission concluded that this was not a problem with the redistribution, but with the Liberal Party's ability to translate its support into government.

In general, the parties and the individual Members accept the new system and while there have been attempts to change the frequency of redistributions[36] (a change which would reduce equity at the time of each election) there has been no direct attempt to change or nullify the fairness provisions.

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[36] Hon RB Such. Constitution Amendment (Electoral Redistribution) Bill. *SA Parliamentary Debates* 31 May 2006: 327-328; Hon RB Such. Constitution Amendment (Electoral Redistribution) Bill. *SA Parliamentary Debates* 28 February 2008: 2257.