Re-entering chartered waters?

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In Tasmania, Greens leader Nick McKim is pushing for Labor or the Liberals to strike a written agreement with his party in return for its support. Brian Costar and Jennifer Curtin look at the precedents

Above: Tasmanian Greens Kim Booth, leader Nick McKim, Tim Morris and Cassy O'Connor take questions at a news conference in Hobart on the day after the election. AAP Image/ Julian Smith

WITH THE growing number and influence of independent and small-party MPs in Australian parliaments from the mid 1980s, an important new ingredient emerged in state and territory politics: charters negotiated between independent MPs (or, in one case, the Greens) and the major parties as a precondition for supporting a minority government.

These charters usually committed the governing party to a range of parliamentary initiatives to promote executive accountability and honesty; in return, the independents undertook not to bring down the government by voting against supply or confidence motions. The independents reserved their right to consider all other legislation on its merits and to vote accordingly. Sometimes the charters imposed policy demands on the government; improved rural infrastructure and services, and environmental protection are recurrent themes. Seven of these charters involved independent MPs – in Tasmania, New South Wales, Queensland, Victoria, South Australia and the Northern Territory. An eighth agreement, this time between two political parties – the Greens and Labor in the Australian Capital Territory – was examined by Inside Story’s Norman Abjorensen in this article published last November.

The trailblazer, the 1989 Tasmanian Parliamentary Accord, was a little different from most of those that followed. The independent signatories, who called themselves the Green independents, could also be regarded as a political party; and, more importantly, the accord was dominated by very prescriptive environmental policy demands. Each of the charters discussed in this article was the product of the local political circumstances in which the major parties had to deal with minorities to secure parliamentary support to form government. In Tasmania’s case the Liberal government of Robin Gray had lost its absolute majority at the election of May 1989 and five Green independents held the balance of power. The Greens were reluctant to support Gray because of his environmental record, but the premier refused to resign and intimated that he might call a second election. His resolve was not weakened by the publication of the Labor–Green accord on 29 May 1989 and he insisted on his right to meet the parliament as premier. When an attempt to bribe a Labor member to cross the floor – and save Gray’s government – was exposed, the political atmosphere became superheated. Gray lost a confidence motion on 29 June, resigned, and was replaced by Michael Field.

Field himself was to lose office in 1991 because of the collapse of the accord and the withdrawal of Green support. In hindsight, the accord contained the seeds of its own destruction by being too detailed and prescriptive. The Greens demanded too much and Labor was naive to believe it could deliver on those demands. The agreement was a product of Labor’s keenness to return to office after seven years in opposition and the Greens’ eagerness to lock in as many conservation goals as they could as quickly as possible. Of the accord’s seventeen discrete clauses only one dealt exclusively with parliamentary reform. Ten clauses made very specific environmental demands; Section 9, for example, stated that “the state export woodchip quota will not exceed 2.8889 million tonnes per annum.” Other sections dealt with independents’ access to ministers and public servants which, while reasonable in themselves, were presented in an uncompromising tone. Some demands,
such as the one that called for the “abolition of subsidised liquor to ministers,” were relatively trivial. De facto independent leader Bob Brown was correct to state in the foreword to the accord that the Greens had gained “access to and influence on the whole range of government decisions” but, by being so concerned with detail, the document betrayed a lack of necessary trust between the parties.

After a term of majority Liberal government, a minority Liberal administration supported by the Greens suffered the same fate in 1998 as Field’s government had seven years earlier. Stung by these experiences, the major parties combined to reduce the size of the Legislative Assembly from thirty-five to twenty-five members which, under Tasmania’s proportional voting system, disadvantaged minor parties by raising the required quota for election from 12.5 per cent to 16.7 per cent. Despite achieving some policy outcomes favourable to the Greens, the Tasmanian accord came to be associated with political instability; its foundering provided a pretext for the major parties to entrench their dominance – until last weekend’s election, that is, when the question of a Green–major party accord became a live one again.

SEEMINGLY dominant, too, was Nick Greiner’s Liberal–National government in New South Wales as it faced an election in May 1991, but here the result would also give independents considerable leverage. The 1988 state election result had been disastrous for Labor and few doubted that Greiner would be re-elected at the 1991 poll. Yet the election produced a lower house in which the Coalition held forty-nine seats to the Labor Party’s forty-six, with four independents. Although one of the independents, Tony Windsor, declared himself in support of the government, the Liberal Party then lost a court-ordered by-election, robbing the government of its majority. Premier Greiner entered into lengthy negotiations with the other three independents (John Hatton, Clover Moore and Peter Macdonald) about the terms on which they might support the government. The result was a memorandum of understanding, signed on 31 October 1991. Like Tasmania’s accord, this was a very detailed and specific document. But almost all of its nineteen pages sought to enhance accountability of the government to parliament and people; it was policy-prescriptive only in the legal and constitutional areas of freedom of information, the powers of the ombudsman and the auditor-general, defamation laws and whistleblower protection. Significantly the memo had nothing to say about regional and rural New South Wales, reflecting the fact that Moore and Macdonald held Sydney seats and Hatton, while he represented a regional constituency, had made his parliamentary reputation as an anti-corruption campaigner.

Somewhat ironically, corruption was to terminate Greiner’s premiership. In October 1991 the former education minister Terry Metherell, who had not been included in the new cabinet, resigned from the Liberal Party to sit as an independent. He later accepted an unadvertised position with the Environment Protection Authority, precipitating a by-election that was won easily by the Liberal candidate. Greiner was accused of subverting normal public-service recruitment procedures to induce Metherell’s resignation and improve the government’s position in parliament. The independents insisted on referring the matter to ICAC, the Independent Commission Against Corruption, and threatened to support a no-confidence motion if the premier did not stand aside. For its part, ICAC ruled Greiner’s behaviour to be “corrupt” (a finding that was later overturned by the NSW Supreme Court) and he was forced to resign; his successor, John Fahey, presided over a minority government supported by the independents until the Coalition narrowly lost the 1995 election.

The circumstances of the 1995 election revealed the level of hostility towards the independents in both major parties. Greiner (now out of parliament) wrote personally to all voters in the electorates of Manly, Bligh and South Coast urging them not to support the independents, describing the trio as the power “alcoholics” of NSW politics. “Dirty tricks” campaigns were alleged to have taken place in Bligh and Manly, and Clover Moore described the campaign as the “nastiest” she had experienced. With the election result in the balance (Labor eventually won by one seat), the major parties seriously considered contriving another election rather than dealing with the independents.

The amount of vitriol heaped on the independents by the major parties and sections of the media suggests that they might well have achieved their accountability objectives. Certainly the success of the referendums on four-year parliaments and judicial independence put at the 1995 election indicates this was the case. The referendums were part of the independents’ agenda and, despite a distinct lack of enthusiasm from the major parties, they secured Yes votes of 66 per cent and 76 per cent respectively. Nevertheless, Clover Moore lamented that as soon as majority government returned to New South Wales after 1995 “most of the
parliamentary reforms we achieved have been watered down or effectively set aside." She explained that, while the independents hoped their reforms would change the "culture of the parliament," their impact was overwhelmed by the "more powerful culture of the major parties, especially the Labor Party…"

IF THERE were devils to be found in the detail of the Tasmanian and NSW agreements, the same could not be said of the 1996 compact between the independent member for the Queensland seat of Gladstone, Liz Cunningham, and the leader of the National–Liberal Coalition, Rob Borbidge – for the simple reason that the agreement contained almost no detail. In fact it was hardly an “agreement” at all, for Cunningham declared her support for a minority Coalition government by way of a two-page statement read to the media from under a tree near her electorate office.

The circumstances leading to this arrangement were unusual and controversial. With the collapse of the Bjelke-Petersen regime in the wake of a royal commission into corruption, the Labor Party won the 1989 election in a landslide – its first victory since 1956. The 1989 result was replicated by Premier Wayne Goss and his colleagues in 1992. But at the July 1995 election, partly as a consequence of alienating environmentalists by planning a freeway through an ecologically sensitive corridor, Labor lost nine seats. The government emerged with a bare one-seat majority over the Coalition and the newly elected independent, Liz Cunningham. Then the Liberal Party successfully challenged the result in the seat of Mundingburra, which Labor had won by fourteen votes, and the Liberal candidate Frank Tanti won the seat at the subsequent by-election.

The result in Mundingburra robbed Labor of its parliamentary majority and handed the balance of power to Cunningham. In her statement declaring support for Borbidge as premier, Cunningham pledged her vote on confidence motions and supply but reserved her right to vote on all other legislation as she saw fit. Significantly, she did not demand accountability or policy commitments from the Coalition in return for her support, though she did receive additional staffing entitlements. Instead she defended her decision on the grounds that another election was best avoided, that the Coalition had polled over 53 per cent of the two-party-preferred vote (and voters had confirmed this result in Mundingburra) and that she believed the agreement between herself and the government was “best for my local electorate and for the state as a whole…” In expanding on the last point she cited such existing problems as a leaking roof at a local hospital. Unlike the Tasmanian Greens, who had Labor over a barrel and knew it, Cunningham installed a Coalition government largely because she sympathised with its conservative social agenda and was prepared to hand it an executive blank cheque.

The Borbidge government proved controversial and cavalier in its notions of accountability. When the parliament passed a no-confidence vote in the attorney-general in August 1997, for example, the premier backed his colleague’s refusal to resign. Despite numerous gaffes and controversies the parliament ran full term, but the 1998 state election was to prove one of the most dramatic in modern Australian politics. In the best debut electoral performance by any party since Labor began entering the colonial parliaments in the 1890s, the newly formed Pauline Hanson’s One Nation won eleven seats – five from the National Party and six from Labor. By winning six seats from the Liberals, the Labor Party, now led by Peter Beattie, emerged with forty-four seats to the Coalition’s thirty-two. Two independents were returned: Cunningham, again, and first-timer Peter Wellington, who won Nicklin from the Nationals and with whom Beattie began negotiations to form a minority government. These discussions culminated in a six-page letter of understanding from Beattie to Wellington dated 25 June 1998.

In contrast to the Cunningham compact, this agreement required Beattie to pledge the government to reform parliament, maintain a budget surplus and, reflecting recent scandals, issue and enforce detailed guidelines for ministerial credit cards, travel and expenses. Beattie did not agree to Wellington’s desire to implement citizen-initiated referendums, however, promising instead to hold regular “community cabinet meetings.” Despite this disagreement, sufficient mutual trust had been established that on the same day he received Beattie’s letter, Wellington agreed to support a Labor minority government on the usual terms, though Cunningham complained that Wellington had “jumped the gun” in sealing the contract with Beattie before exhausting all other options.

PARLIAMENTARY reforms were also the key to the agreement between Peter Lewis and the Labor Party in South Australia after the February 2002 state election produced a House of Assembly of twenty-three Labor members, twenty Liberals and four independents. Labor needed the support of just one of the independents to
turn out the Liberal government of Premier Rob Kerin. When parliament resumed on 5 March Kerin nominated independent Rory McEwen as Speaker, and opposition leader Mike Rann nominated independent Peter Lewis. Lewis won in a secret ballot twenty-five votes to twenty-two.

Peter Lewis had been a Liberal member of parliament for over twenty years. Since the 1970s he had been a gadfly within his party, advocating parliamentary reform and various rural and irrigation policies. Eventually – on 5 July 2000 – he was expelled from the party room, and he resigned from the party in October. Lewis contested his seat of Hammond at the 2002 election under the banner of the Community Leadership Independence Coalition and defeated the Liberal candidate by 822 votes. Prior to the poll Lewis gave contradictory indications of which party he might support in a hung parliament. An article in the Adelaide Advertiser on 28 January 2002 reported that he “would support a Labor government if its major priority was parliamentary reform,” yet when asked by a reporter from the same paper two days before the poll whether he was intending to support the Labor Party, Lewis replied: “You can quote me. That’s bullshit… clear, unequivocal, hot, green, sloppy, fresh bullshit. I’m not into forming government with Labor.” Nevertheless he listed the Labor candidate second on his how-to-vote card. In a later civil case in which the Liberal Party tried unsuccessfully to have his election voided on the grounds that he misled voters, a Supreme Court judge described Lewis as “a man of high principle... at times impetuous and single minded. I must treat his evidence with caution...”

On 13 February 2002 Lewis announced that he would support a Labor government. He defended this “extraordinarily painful decision” in a statement to parliament subsequent to his election as Speaker. He highlighted his desire to provide stability and certainty of government but also said that he was angered by the Liberal Party’s “arrogant” assumption that he would automatically support its bid to continue in power. He also expressed concern at “the lack of ministerial accountability and parliamentary standards” and the spread of the “parasitic weed broomrape” over pasture land. Following Lewis’s statement the Liberal government lost a confidence vote twenty-three to twenty-two; Lewis did not vote.

Between polling day and the first meeting of the new parliament, Peter Lewis negotiated a Compact for Good Government with the Labor Party. The compact drew heavily on agreements in other states and included mechanisms to improve ministerial accountability, reform parliament and assist rural South Australia. What was different in Lewis’s compact was his insistence that the government “pass an Act of Parliament and make other such arrangements as deemed necessary by the Speaker [Lewis] to meet such costs and facilitating such processes as may be involved in any aspects of the work related to the establishment of a Constitutional Convention...” The convention was held in August 2003 and made a number of recommendations to be considered by the state parliament.

OFF THE AGREEMENTS between independents and governing parties, the best-documented is the charter that brought to an end the colourful, controversial Kennett era in Victorian politics. Drawing on earlier agreements but heavily influenced by the specifics of the impact of Kennett’s government during the 1990s, the 1999 Independents’ Charter Victoria unexpectedly handed government to Labor under its new leader, Steve Bracks.

A Liberal–National Coalition led by Jeff Kennett had won the 1992 Victorian state election in a landslide following an unprecedented decade of Labor government. The 1992 result was confirmed in 1996, but at that election there were early signs of the shift in voter support that would take place in 1999. In the north-western rural seat of Mildura, Russell Savage became the first independent member elected to the Legislative Assembly since 1976, and independent candidates in other rural and regional electorates performed strongly. The following year another independent, Susan Davies, won a by-election in rural West Gippsland. But the Kennett government went to the polls in September 1999 in a seemingly invincible position. As in New South Wales in 1995, the election result was a cliffhanger. Strong swings to Labor in country Victoria and the election of a third independent, Craig Ingram, in Gippsland East produced a hung parliament, the Coalition securing forty-three seats to Labor’s forty-one, with the three independents holding the balance of power. The inconclusive result was complicated by the fact that the sitting Liberal member for Frankston East had died on polling day, triggering a supplementary election four weeks after the poll.

The month between polling day and the Frankston East “deferred election” was tense and dramatic. Susan Davies set the tone two days after the election when she told Kennett he should resign. Had her advice been
accepted, the Coalition may well have retained government because Kennett’s aggressive political style was unsuited to negotiating with the independents. On the advice of a former premier of Victoria, Joan Kirner, Davies contacted the Queensland premier Peter Beattie and independent Peter Wellington to obtain a copy of their 1998 agreement, which served as a template for what became the Independents’ Charter Victoria. This document went through a number of drafts but, like its Queensland model, emphasised principles rather than details. Accountability of government, parliamentary reform and the social and economic rejuvenation of rural Victoria were the main themes.

For the three independent MPs, drafting the charter was easier than negotiating with the major parties and deciding which of them they would install in government. Premier Kennett wasted no time in putting pressure on them by telling the high-rating radio station 3AW on 23 September that they should support him because they held “conservative” electorates. Tension between the Coalition parties was evident when Kennett insisted on meeting with the independents without the National Party leader, Pat McNamara. Kennett’s negotiating tactic was to try to separate the newly elected Ingram from the other two. He offered the speakership to each of them and then later only to Savage and Ingram. In the midst of the negotiations Kennett also offered the speakership to a member of the National Party. Meetings were held between the independents and the party leaders before Labor and the Coalition were presented with the draft charter on 27 September, when the outcomes in several seats were still uncertain.

None of the participants in the negotiations expected the 1999 election to produce such a fluid political environment. The Liberal Party was in shock; Labor had not anticipated forming government; the independents were in the unexpected (and perhaps unwelcome) position of having to decide the next government. There was no shortage of unofficial advisers to the independents as a myriad of groups and individuals put forward interested and disinterested suggestions. Rating agency Standard & Poor’s (an enthusiastic supporter of the Kennett government’s neoliberal economic policies) issued a news release on 28 September that, while not overtly supporting either major party, warned against future temptation “to turn to pork-barrel politics to address the concerns of rural voters... and the independents...” The agency also observed: “A Labor minority government would also have to contend with a coalition majority in the Upper House.”

Upper house reform soon emerged as a critical issue in the negotiations between the independents and the party leaders. Lawyers and constitutional experts convinced the independents that they could best achieve and sustain their accountability objectives by altering the structure of the Legislative Council with a Senate-type proportional voting system. This presented the independents with a dilemma: the Labor Party had long supported electoral reform to the upper house, but a Labor government could not achieve it because of its minority position in the Council; whereas the Liberal Party, and especially Kennett, was on record as opposing proportional voting but had the upper house majority needed to deliver it. As Susan Davies later said, had Kennett given way on upper house reform the independents would have been under great pressure to support a minority Coalition government.

Kennett was maladroit in his detailed negotiations over the contents of the draft charter. His major problem was that accepting much of what the independents demanded, such as restoring the powers of the auditor-general, would mean repudiating policies he had vigorously advocated over the previous seven years. Labor was advantaged by the fact that most of the contents of the charter was settled Labor policy. Kennett’s strong, decisive but non-consultative leadership style proved wanting when he was required to negotiate and compromise with the independents. He restricted his negotiating team to a group of four – himself, deputy premier Pat McNamara and the two deputy party leaders – and as late as 30 September had not shown the draft of the charter to his party room.

Throughout the negotiations Kennett regularly contacted Savage and Ingram but not Davies, whereas Bracks left all three to their own deliberations. Kennett seriously misread the allegiances of the independents – believing, wrongly, that Davies was a lost cause for the Coalition, and underestimating Savage’s hostility. When Savage was first elected in 1996, the premier had directed Coalition members not to socialise with him and in a later parliamentary exchange called him a “fuckwit.” Kennett made the mistake of trying to alter individual clauses of the charter rather than, as the independents insisted, responding to the document as a whole. The formal Coalition response delivered on 12 October was a detailed document of eighteen pages with a further twelve
pages of attachments. Kennett committed to the establishment of a Constitutional Commission to report on possible parliamentary reform, but did not commit to acting on its recommendations. Indeed he stated that “the Coalition is of the view that the options for parliamentary change [in relation to the Legislative Council] put forward by the ALP are fundamentally flawed...,” thereby rejecting a key plank of the independents’ reform agenda. On the other key issue, rural reconstruction, much of the response was given over to a tendentious defence of past Coalition policies.

The independents could be forgiven for concluding that Kennett would rather have gone into opposition than accept the constraints of minority government. Or perhaps he was so confident that Savage and perhaps Ingram would not be prepared to alienate their conservative rural constituencies by installing Labor that he believed he could afford to be obdurate on some points and secure a freer hand in government.

The opposition leader, Steve Bracks, also responded to the independents on 12 October. "I support the Charter in its entirety..." he told them, going on to detail how a Labor government would implement its terms. Having received the responses of the government and the opposition, the independents announced that they would give their decision at 11am on Monday 18 October, two days after the Frankston East supplementary election. On 13 October the Labor Party sent a memorandum of understanding to the independents which sought to establish a formal relationship between them. Davies and Ingram had a meeting with Bracks and his deputy John Thwaites at Parliament House on the eve of the Frankston East election at which Ingram, who had kept his own counsel up to this point, said he would support Labor if it won the next day’s poll. Susan Davies recalls what transpired after the meeting ended:

I was half-way down Victoria Parade when I got a call from Bracks on the mobile. He said he wanted me to come back to parliament. He was pretty pushy. He didn’t usually sound like that. I went back.

Bracks and Thwaites had a memorandum of understanding which they wanted Craig to sign there and then. Craig was going to be out of reach up the Snowy [River] over the weekend. He didn’t want to leave them with a signed document which was only going to be relevant if they won Frankston East and they wanted a signed document as early as possible if that was the outcome.

I took it. I drove home with the memorandum of understanding in my glovebox. It was a very strange feeling. I wasn’t going to sign it until I knew what was happening in Frankston East, and said I would only sign then if there was a clear indisputable result. Craig told me to keep it safe and rip it up if the result went the other way.

Labor won Frankston East decisively. On the following day Bracks’s senior adviser flew by light plane to Newhaven airport, where Davies signed the memorandum. The adviser then flew on to Mildura and collected Savage’s signature and then back to Frankston where Bracks, who was attending a celebratory barbecue, affixed his signature. It had been a month of unprecedented high drama which concluded with the installation of the first minority Labor government in Victoria since 1947.

THE LATEST of the agreements involving independent MPs and large parties involves Gerry Wood MP and the governing Labor Party in the Northern Territory. Struck in August last year after the resignation of Alison Anderson from Labor, it shares a potentially fatal flaw with the first case we discussed, the Green–Labor agreement in Tasmania in 1989. It is overly detailed (thirty-seven projects, many in Mr Wood’s electorate, are listed) and is likely to suffer the same fate as its predecessor.

The majority of the charters we’ve discussed were intended – by the independent signatories, at least – to increase the accountability of executive government. Did they achieve that objective? Alas, Clover Moore’s pessimistic appraisal of New South Wales after the return of majority government in 1995 holds true for the other jurisdictions as well. “Accountability independents” discovered that changing parliamentary cultures, especially in the lower houses, was to prove much more difficult than changing governments. Why? As the author of a recent study of the House of Lords explains, “even true democrats [once] in government will find it hard to prioritise a
parliamentary reform which will involve their work being scrutinised more closely."

This is not to suggest that the various independent charters did not bring about important reforms – most notably in Victoria, where the upper house was thoroughly renovated in 2003. The difficulty lies in making the reforms durable when governments regain parliamentary majorities and no longer need to accommodate minorities. The further development of an “accountability culture” in upper houses presents the best option for durable reform. The independents may come to be seen as “pathfinders” in putting issues and reforms like these on the political agenda, to be pursued and entrenched by those who follow. •