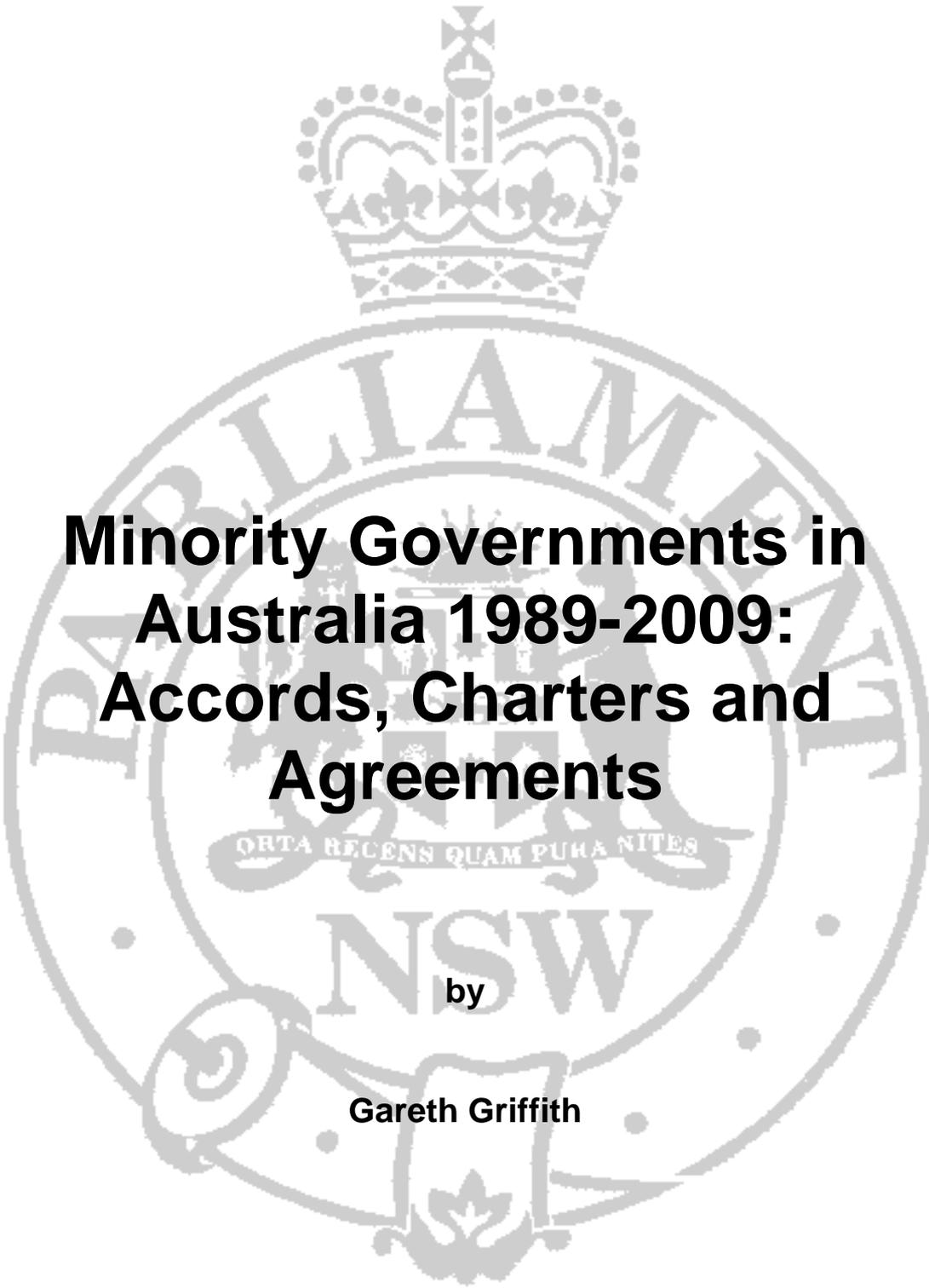


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**Minority Governments in  
Australia 1989-2009:  
Accords, Charters and  
Agreements**

by

**Gareth Griffith**

**Background Paper No 1/10**



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I am especially indebted to Jenni Newton-Farrelly of the South Australian Parliamentary Library who provided detailed notes on the history of minority governments in that State and also read and commented on a draft of the completed paper. Terry Newman of the Tasmanian Parliamentary Library advised on details relating to minority governments in Tasmania. As ever, responsibility remains with the author.

Thanks are also owed to all other Parliamentary Libraries in the States and Territories for help in tracking down copies of the Accords, Charters and Agreements discussed in this paper.

It is planned to make the full texts of these, as well as any future documents of this kind, available electronically, in the form of an Issues Backgrounder to be called *Minority Governments in Australia – Texts of Accords, Charters and Agreements*.

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**Gareth Griffith**

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## SUMMARY

This paper discusses minority governments in Australia between 1989 and 2009, a period of two decades in which there have been at least ten examples of this political phenomenon in the Australian States and Territories. This paper confines itself to those instances where a minority government has been based on an agreement, charter or accord between major parties on one side and minor parties and/or Independents on the other. In particular, in the context of the ACT, it looks only at the minority governments formed in 1998 and 2008. [1]

**Hung Parliament:** The focus is on those political circumstances where no party or formal coalition of parties has majority support in the Lower House of Parliament, that is, in the House in which governments are formed. This is what is meant by the term ‘hung Parliament’. [2.1]

It is said that ‘there are no “rules” about government formation from a hung Parliament’ – aside, that is, from the principle that the person best able to command a stable majority in the Lower House (or at least maintain a stable government) should be appointed. Australian experience over the past 20 years bears out that observation. In several instances minority governments have been formed on the basis of agreements with the major party holding the most seats in the Lower House, but not in every case. [5]

**Minority government:** A minority government is formed in those circumstances where, in the context of a hung Parliament, some accommodation is made between political rivals or competitors, be they political parties or Independent Members of Parliament. A minority government is therefore a form of government established under the conditions of a hung Parliament, but not as the inevitable effect or result of those conditions. Rather, it is a political creation, formed by means of compromise and negotiation. The detailed arrangements for a minority government can vary, from a loose coalition agreement entered into between political parties and/or Independents, to other kinds of ‘confidence and supply’ agreements, or ‘co-operation’ agreements. [2.1]

**Minority governments in Australia:** A feature of many minority governments in Australia since 1989 is that they have been based on a written accord, charter or parliamentary agreement, setting out the conditions under which the political arrangements are to operate, at least in relation to no confidence motions and supply bills. Further, as a condition for their support of a minority government, minor party or Independent Members of Parliament often require the inclusion of certain reform measures in these charters or agreements. Another innovation on this minority government theme is the inclusion in Cabinet of minor party or Independent Members in ‘loose coalition’ with a major party, again subject to a written statement of the terms and conditions for such involvement. [2.1]

**Models and Ideal Types:** Various models and ideal types of minority governments are discussed in the literature. The four ideal types formulated by Jeremy Moon are: Ersatz majoritarianism; Ersatz coalition; Ad hoc minoritarianism; and Minoritarianism. Moon’s ideal types concentrate on outcomes which may be: highly particularistic, based on personal or constituency needs (*Ersatz majoritarianism*); or limited to defined policy areas (*Ersatz coalition*). Alternatively, the intended outcomes under Moon’s ideal types may be: reformist in nature, albeit without a strategic policy agenda (*Ad hoc minoritarianism*); or a broad reformist agenda

outlined in a formal agreement with the governing party (*Minoritarianism*). [3.2]

**Reform agendas:** The first Australian example of a written accord was the Tasmanian Parliamentary Accord agreed to on 29 May 1989 between Labor's Michael Field and five Green Independent Members (Bob Brown, Gerry Bates, Dianne Hollister, Lance Armstrong and Christine Milne). Brian Costar has argued that the Tasmanian Accord is an example of a more policy based agreement with a strong environmental bias. In comparison, Costar argues, the Charter of Reform (and later Memorandum of Understanding) in NSW between 1991 and 1995 is more of an 'accountability' charter, including a broad agenda for constitutional and parliamentary reform. Both the Tasmanian and NSW agreements are examples of Moon's *Minoritarianism*. [3.4]

In broad terms, the Tasmanian and NSW models have set the tone for later accords or charters of reform, in which environmental, constitutional and parliamentary reforms have featured prominently. But of course each minority government situation is very much dependent on its own facts and must be understood in its own context. For example, where Independents have represented rural or regional constituencies, as in Victoria in 1999 and South Australia in 2002, a policy commitment to addressing the needs of these areas has tended to be built into the charters or agreements under which minority government operates. The same applies for the 2009 agreement reached in the Northern Territory between the Independent Gerry Wood and the minority Labor Government. [3.4]

**Loose or Ersatz coalitions:** A further development, away from the norms of the Westminster system of Cabinet government, starting in the ACT and spreading to South Australia, is where Independents and crossbenchers have taken Cabinet posts, subject to certain conditions. These are probably best seen as forms of 'loose' or *Ersatz Coalitions*. These arrangements involve the identification of issues to which Cabinet solidarity will not apply. They can also involve reformist agendas, notably on behalf of regional or rural interests, as in the case of the current agreement in place in WA with the Nationals. In that State there is currently an informal yet seemingly stable coalition of Liberals, Nationals, plus one Independent Member who has taken a Ministry (Elizabeth Constable). This informal or loose coalition must also rely on one of the two other Independent members (John Bowler and Janet Woollard) voting with the Government. [3.4]

**Constitutional issues:** It may be that the extent to which these 'loose' or *Ersatz Coalition* arrangements depart fundamentally from constitutional practice should not be overstated. This is especially the case in the light of British constitutional history, in which context the suspension of collective Cabinet responsibility has been achieved either by an 'agreement to differ' on certain issues, or by declaring certain issues to be 'open questions'. [5]

Ian Killy in *Constitutional Conventions in Australia* discusses these precedents. He also considers the New Zealand position where, in order to facilitate the formation of broad coalition administrations, the Cabinet Manual includes procedures for Ministers to 'agree to disagree'. The agreements reached in the ACT, South Australia and Western Australia discussed in this paper can be seen as extensions on this theme. Whereas the New Zealand arrangements are designed for actual coalitions, in the Australian precedents the participating Ministers retain their independence and operate only within a loose coalition,

subject to agreed conditions. [5]

Clause 3 of the Western Australian agreement, signed by Premier Barnett and Nationals Leader Brendon Grylls on 18 September 2008, sets out the procedures and rules involved for 'attendance at Cabinet'. Basically, after receiving Cabinet papers and finding that it would be inconsistent with their independent status to be bound by a Cabinet decision, Nationals Ministers must inform the Nationals Leader who must, in turn, meet with the Premier to seek an accommodation on the issue. The issues upon which Cabinet unanimity may not apply are limited to: issues which significantly affect regional Western Australia; and other matters as the National Leader may have advised the Premier from time to time. Despite the emphasis on regional matters, there is therefore no actual restriction on the issues upon which the parties may 'agree to disagree'. Where no accommodation can be reached, Cabinet papers are to be returned by Nationals Ministers who are to absent themselves from relevant Cabinet discussions. Subsequently, the Nationals Ministers may disagree publicly with the policy in question but only after it has been publicly announced. Clause 3 ends by stating that, except as provided in the agreement, Nationals Ministers will be 'full members of the Cabinet', subject to 'the usual rules of Cabinet solidarity'. [4.8 and 5]

The particular agreements in place in Australia are not discussed by Vernon Bogdanor in *The New British Constitution*. However, his commentary does suggest that such arrangements may be relevant in the future in Britain, especially in the devolved Scottish Parliament, where a loose coalition might exist 'on something like a "confidence and supply" basis, that is, to allow the convention of collective responsibility to be suspended for key matters on which the parties to the coalition disagree'. Indeed, having reviewed the constitutional precedents, Bogdanor goes on to say: 'The implication would seem to be that collective responsibility is as much a maxim of political prudence as it is a convention of the constitution'. [5]

**Conclusions:** Basically, what has emerged over the past 20 years or so is the normalization of accords, agreements or charters of reform as the basis of mostly stable minority governments in the Australian States and Territories. These agreements further suggest that balance of power holders are well positioned to gain certain pay-offs, be it in terms of official positions, constituency interests, broader policy interests and/or constitutional and parliamentary change. [6]

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## 1. INTRODUCTION

This paper discusses minority governments in Australia between 1989 and 2009, a period of two decades in which there have been at least ten examples of this political phenomenon in the Australian States and Territories.<sup>1</sup> It begins with a comment on terminology, specifically: ‘minority government’; ‘hung Parliament’; ‘minor party’; and ‘Independent Members of Parliament’.

With a view to updating the analytical literature in this field, presented next is a section setting out models, typologies and trends as these relate to minority governments in Australia. A chronological survey of these minority governments then follows, with particular reference to the accords, charters and agreements that have formed the basis of these minority arrangements. The emphasis is very much on the content of such agreements and their operation, as opposed to analysing the political conditions under which minority governments might be formed. The paper ends with a comment on constitutional issues.

## 2. DEFINING TERMS

### 2.1 Minority governments and hung Parliaments

The focus of this paper is on those political circumstances where no party or formal coalition of parties has majority support in the Lower House of Parliament, that is, in the House in which governments are formed. This is what is meant by the term ‘hung Parliament’. In a hung Parliament, the minority government must depend on other parties or Independent Members of Parliament who hold the balance of power in the Lower House. Neither the term ‘hung Parliament’ nor ‘minority government’ is used in this paper in connection with those situations where the government of the day does not have majority support in the Upper House, the Senate federally or the Legislative Council in five of the six States that have bicameral Parliaments. In those jurisdictions with unicameral Parliaments – Queensland, the ACT and the Northern Territory – the Lower/Upper House issue does not arise.

As formulated above, the terms ‘hung Parliament’ and ‘minority government’ might be considered to be interchangeable. On closer investigation, however, this is not the case. A hung Parliament, in which no single party or formal coalition of parties has an overall majority of seats in the Lower House, is a necessary condition or pre-requisite for the formation of a minority government. However, the one does not necessarily lead to the other as in a strict relationship of cause and effect. It

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<sup>1</sup> This paper confines itself to those instances where a minority government has been based on an agreement or accord between major parties on one side and minor parties and/or Independents on the other. In particular, in the context of the ACT, it looks only at the minority governments formed in 1998 and 2008. Minority governments have been the norm in the ACT, where the Assembly is elected by the Hare-Clark system of proportional representation. As Antony Green points out, the Stanhope Labor Government of 2004 was the first ACT administration to be elected with a majority, winning 9 of the 17 Legislative Assembly seats – Antony Green’s Election Blog [http://blogs.abc.net.au/antonygreen/act\\_elections/](http://blogs.abc.net.au/antonygreen/act_elections/)

may be that a coalition government will be formed.<sup>2</sup> Indeed, as Rodney Brazier points out, hung Parliaments present a 'broad range of possible procedures and resulting government structures'. From Britain's 20<sup>th</sup> century constitutional history he presents the following 'dazzling array of choice':

The administration which emerged could vary in its composition from a minority government enjoying no support from other parties, to a minority government which negotiated aid from others so as to ensure some degree of stability, to a majority coalition of two or three parties, or even a national coalition of all the main parties.<sup>3</sup>

Alternatively, it may be that no viable government can be formed from a hung Parliament, perhaps because the political differences between prospective power sharing partners are ultimately irreconcilable, or the personalities involved may be at loggerheads.<sup>4</sup> In such a case there may be no alternative but to dissolve Parliament and to call another election to try to resolve the political impasse. If so, the Queen or, from an Australian perspective, her representative would be drawn into the centre of the constitutional picture. For Brazier, this is the least favoured outcome. He argues that after an inconclusive general election the guiding light should be: 'political decisions, politically arrived at'.<sup>5</sup>

A minority government is formed in those circumstances where, in the context of a hung Parliament, some accommodation is made between political rivals or competitors, be they political parties or Independent Members of Parliament. A minority government is therefore a form of government established under the conditions of a hung Parliament, but not as the inevitable effect or result of those conditions. Rather, it is a political creation, formed by means of compromise and negotiation. The detailed arrangements for a minority government can vary, from a loose coalition agreement entered into between political parties and/or Independents, to other kinds of 'confidence and supply' agreements, or 'co-operation' agreements.<sup>6</sup>

A feature of many minority governments in Australia since 1989 is that they have

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<sup>2</sup> Coalition governments can result from a hung Parliament. This applies routinely in those countries with proportional representation systems of election for the Lower House of Parliament, such as Israel's Knesset, where no party can expect to gain the required majority to form government on its own behalf and a coalition must be formed by negotiation. A situation of this kind can be distinguished from the formal coalition arrangements that operate in Australia between the Liberal and National Parties. The term hung Parliament is not applied in this last context. The coalition arrangements that applied federally in the years of the Howard Governments can be contrasted with the current minority government arrangements in place in Western Australia, where the Liberal and National Parties have negotiated an agreement that amounts at most to a 'loose coalition'.

<sup>3</sup> R Brazier, *Constitutional Practice*, 3<sup>rd</sup> ed, Oxford University Press 1999, pp 30-31.

<sup>4</sup> As Brazier comments, 'It would be difficult to envisage a peacetime coalition between Mrs Thatcher and any Labour leader' – Brazier, n 3, p 31.

<sup>5</sup> Brazier, 3<sup>rd</sup> ed, n 3, p 37. For further commentary see R Brazier, *Constitutional Reform: Reshaping the British Political System*, 3<sup>rd</sup> ed, Oxford University Press 2008, Ch 7.

<sup>6</sup> V Bogdanor, *The New British Constitution*, Hart Publishing 2009, Ch 5. Bogdanor applies this terminology in a British context.

been based on a written accord, charter or parliamentary agreement, setting out the conditions under which the political arrangements are to operate, at least in relation to no confidence motions and supply bills. Further, as a condition for their support of a minority government, minor party or Independent Members of Parliament often require the inclusion of certain reform measures in these charters or agreements. Another innovation on this minority government theme is the inclusion in Cabinet of minor party or Independent Members in 'loose coalition' with a major party, again subject to a written statement of the terms and conditions for such involvement.

As for the incidence of minority governments in the States and Territories over past 20 years, three factors can be noted, some or all of which may apply in particular cases:

- the decline in support for major parties, a phenomenon occurring at every level of government in Australia and overseas;<sup>7</sup>
- the relatively small size of the Lower Houses in the States and Territories compared to national Parliaments operating under the Westminster model; and
- the use of proportional representation electoral systems, as in the ACT and Tasmania.

## 2.2 Minor parties and Independent Members of Parliament

Minor parties are defined in one of two ways. First, by the criteria of size, in the sense that minor parties are identified as 'smaller' parties in terms of their parliamentary seats or votes. As Rodney Smith comments, one difficulty with this approach is that it can present a misleading picture of the role played by minor parties in the political system.<sup>8</sup> Writing in an Australian context, he has in mind the National Party which, according to some commentators,<sup>9</sup> may be characterised as a 'smaller party' both in terms of the size of its overall vote and parliamentary seats, but which nonetheless serves as a regular Coalition partner in government. For Smith: 'The regular occupation of the government benches sets the Nationals apart from other parties such as the Democrats, Greens or One Nation'.<sup>10</sup>

Smith argues that a second and better approach to the characterization of minor parties is in terms of the party's role in the political system. He states:

Major parties can be defined as those that regularly form all or part of the government of the day. Minor parties are organisations that are brought into being to contest public office but consistently fail to form all or part of the

<sup>7</sup> S Bennet, *The Decline in Support for Australian Major Parties and the Prospect of Minority Government*, Commonwealth Parliamentary Library, Research Paper 10, 1998-99.

<sup>8</sup> R Smith, *Against the Machine: Minor Parties and Independents in NSW, 1910-2006*, The Federation Press 2006, p 12.

<sup>9</sup> Smith cites C Sharman, 'Political Parties', in J Brett, J Gillespie and M Goot (eds), *Developments in Australian Politics*, Macmillan 1994.

<sup>10</sup> Smith, n 8, p 13.

government, either through failing to contest seats, contesting but failing to win seats, winning too few seats to govern alone and being excluded from governing coalitions.<sup>11</sup>

In respect to Smith's analysis, the position of the Nationals tends to vary between jurisdictions. In Queensland, the party traditionally served as the senior Coalition partner, whereas in NSW and Victoria the Liberals have been the dominant Coalition party. In Western Australia and South Australia, on the other hand, the ties between the Nationals and Liberals seem looser and more likely to give rise to the kinds of arrangements discussed later in this paper. In South Australia at least, where this is only one elected National Party representative in the Lower House (Maywald), there is a case for treating them as a minor party. The same would not apply in NSW, for example, or federally for that matter. In both these cases, unlike minor parties and Independents, the Nationals do not occupy the cross benches in a parliamentary setting.

Definitional issues also arise in relation to Independent Members of Parliament. For Costar and Curtin:

a lower House MP must have won at least one federal, state or territory election as a non-party candidate; those who fall out of love with their political party and serve out their parliamentary term as an 'independent' are excluded.<sup>12</sup>

What is clear is that the numbers of Independents, those Members not endorsed by a registered political party, have increased over the past 20 years or so. Indeed, a feature of contemporary Australian politics is the fact that, whereas minor parties have tended to gain representation in those Lower Houses elected by proportional representation (Tasmania and the ACT), it is mostly Independents that have gained representation in the remaining Lower Houses. Admittedly, there are exceptions, notably the election of 11 Pauline Hanson's One Nation candidates in Queensland in June 1998. But note that, following the 2009 Queensland general election, One Nation has no representation in the Legislative Assembly, whereas there are 4 Independents. On the other hand, there is at present one Greens Member of the Western Australian Legislative Assembly, elected in 2008 along with 3 Independents.

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<sup>11</sup> Smith, n 8, p 13.

<sup>12</sup> B Costar and J Curtin, *Rebels with a cause: Independents in Australian Politics*, UNSW Press 2004, p 13. Rodney Smith on the other hand is inclined to take a more inclusive approach, one that recognizes the similarities between minor party and Independent support groups and the difficulties involved in distinguishing between 'defectors' and others when it comes to voting patterns and the like. He states: 'The use of the label 'Independent' or 'party' is very much a matter of self-definition by political candidates and their followers, rather than something that can be determined according to any sensible externally imposed criteria' - Smith, n 8, p 16.

The following table, from *Australian Political Institutions* by Gwyneth Singleton et al, shows the Independents in the Lower Houses of Australian Parliaments in 2008:<sup>13</sup>

**Table 1: Independents in Australian Lower Houses, 2008**

Parliament	Seats
Commonwealth	2
NSW	6
Victoria	1
Queensland	4
South Australia	3
Western Australia	3
Northern Territory	2

By way of brief comment, Singelton et al say that the following factors have been identified as facilitating the election of Independent candidates to Parliament:

- a strong engagement with a local community;
- a high profile, preferably associated with political activity;
- an objection to party discipline;
- a candidate selection procedure by the dominant major political party in the district that does not accommodate local preferences; and
- a dominant major party in the district becoming locked into politics that are seen to run against local interests.<sup>14</sup>

<sup>13</sup> G Singleton et al, *Australian Political Institutions*, 9<sup>th</sup> ed, Pearson Education Australia 2009, p 397.

<sup>14</sup> Singleton et al, n 13, p 397. This is based on C Sharman, *Politics at the margins: independents and the Australian party system*, Senate Occasional Lecture, 17 May 2002, p 14 - [http://www.aph.gov.au/Senate/pubs/occa\\_lect/transcripts/170502.pdf](http://www.aph.gov.au/Senate/pubs/occa_lect/transcripts/170502.pdf) Further to the last point, Sharman said: 'This is a particular hazard for rural districts represented by the National Party where the party is in coalition with the Liberals. Rural voters may feel betrayed by the compromises made by the National party parliamentarians in the interest of being part of a coalition government. Such tensions have twice split the National party in Western Australia over the last 80 years, and may go some of the way to explain the persistence of independents from rural areas of New South Wales'.

### 3. MINORITY GOVERNMENTS IN AUSTRALIA – MODELS, TYPES AND REFORM AGENDAS

#### 3.1 Five Models

These introductory observations can be placed in the context of the analysis of the models and types of minority governments found in the research literature. In an article published in 1997 four models of minority governments were outlined by Alan Ward, as follows:<sup>15</sup>

- a major party forms a coalition government with another party in order to achieve a majority in the Lower House (**Model A**);
- a major party with a minority of seats in the Lower House receives an assurance of support on appropriation bills and confidence motions from either minority parties or Independents. This ‘confidence and supply’ agreement may or may not be supplemented by an agreement as to the government’s legislative program (**Model B**);
- a major party with a minority of seats in the Lower House operates without assurance of its survival from minority parties or Independents (**Model C**); and
- a major party operates with a majority in the Lower House but a minority in the Upper House (**Model D**).

In light of developments in the ACT, South Australia and Western Australia, a further **Model E** can be added, where a major party with a minority of seats in the Lower House agrees to co-opt a minor party or Independents into the Ministry, subject to some commitments in respect to the legislative program, but also subject to an agreement maintaining a right to dissent from Cabinet decisions on certain issues. These arrangements fall short of coalition government under **Model A**. As set out in Table 1, it is this last **Model E**, together with **Model B**, which are most relevant to the Australian instances of minority government studied in this paper.

The **Model D** scenario in which governments lack majority support either in the Senate federally or in the Legislative Councils of the bicameral States is not treated in this paper as an instance of minority government. As noted, the term minority government excludes Upper Houses and is restricted to where a major party (or formal coalition of major parties) does not have control of the Lower House.

#### 3.2 Four ideal types

Jeremy Moon suggests that two important variables distinguish different types of minority governments:<sup>16</sup>

- firstly, whether the balance of power holders operate as individuals or as a group; and

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<sup>15</sup> A Ward, ‘Minority government and the redefinition of Parliaments in Australia and New Zealand’ (Autumn 1997) 11(2) *Legislative Studies* 1.

<sup>16</sup> J Moon, ‘Minority governments in the Australian States: from ersatz majoritarianism to minoritarianism’ (Special edition 1995) 30 *Australian Journal of Political Science* pp 142-163

- secondly, whether they operate for particularistic motives (personal or constituent) or to challenge wider aspects of the political system.

These variables relate to the modes of action and the motivations of balance of power holders. Based on these, Moon constructed the following four ideal types of minority government:

- ***Ersatz majoritarianism***, where individual members, in return for benefits to themselves (eg committee memberships or other Parliamentary positions) or their constituencies, effectively support the major party so that the political system operates as if a majority government was in place;
- ***Ersatz coalition***, where a collection of balance of power holders are united in respect of a particular social or economic interest which they wish to defend, but otherwise do not wish to challenge the government or the broader status quo. A commitment to its particular interests within government policy is obtained, so that as a result conflict with the major party is minimized or at least kept out of Parliament;
- ***Ad hoc minoritarianism***, where a single or disparate group of balance of power holders wishes to challenge aspects of the wider political system but does so on a sporadic or unsystematic basis, not guided by any sustained agenda; and
- ***Minoritarianism***, where a collectivity of balance of power holders is united by a platform of general reforms which they pursue systematically, as occurred in New South Wales in 1991-95.

Basically, Models A-E discussed above set out the political circumstances under which Independents or minor parties operate within a minority government. As formulated, **Models B** and **E** are predicated on an agreement with the major party, but only to ensure the survival of the government. No other outcomes are built into the various models.

On the other hand, the four ideal types outlined by Moon concentrate on outcomes which may be:

- highly particularistic, based on personal or constituency needs (***Ersatz majoritarianism***); or
- limited to defined policy areas (***Ersatz coalition***).

Alternatively, the intended outcomes under Moon's ideal types may be:

- reformist in nature, albeit without a strategic policy agenda (***Ad hoc minoritarianism***); or
- a broad reformist agenda outlined in a formal agreement with the governing party (***Minoritarianism***).

### 3.3 Table of models and types of minority governments in Australia

Table 2 indicates where each of the minority governments considered in this paper stand in respect to the models and ideal types discussed above. The Table also shows where Independents and cross benchers have accepted parliamentary or ministerial positions.

**Table 2: Models and Types of Minority Governments in Australia, 1989-2009**

	Parliamentary office	Ministry	Model	Type
Tasmania 1989	X	X	B	Minoritariansim
NSW 1991	X	X	B	Minoritariansim
Queensland 1996 (Cunningham)	X	X	B	Ersatz coalition/ Ad hoc Minoritariansim
Queensland 1998 (Wellington)	X	X	B	Minoritariansim
ACT 1998 (Moore)	X	✓	E	Ersatz Coalition
Victoria 1999	X	X	B	Minoritariansim
South Australia 2002 (Lewis)	✓	X	B	Ersatz majoritarianism
South Australia 2002 (McEwen)	X	✓	E	Ersatz Coalition
South Australia 2004 (Maywald)	X	✓	E	Ersatz Coalition
WA 2008 (Nationals and Independent)	X	✓	E	Ersatz Coalition
ACT 2008 (Greens)	X	X	B	Minoritariansim
Northern Territory 2009 (Wood)	X	X	B	Minoritariansim

### 3.4 Reform agendas

**Minoritarianism**, as defined by Moon, involves a group of balance of power holders united by a platform of general reforms which they pursue systematically. Consistent with this, a common feature of Independent or minor party involvement in minority governments in Australia since the late 1980s is that this is based on some kind of reform charter, parliamentary agreement or accord.

The first such example was the Tasmanian Parliamentary Accord agreed to on 29 May 1989 between Labor's Michael Field and five Green Independent Members (Bob Brown, Gerry Bates, Dianne Hollister, Lance Armstrong and Christine Milne). Brian Costar has argued that the Tasmanian Accord is an example of a more policy based agreement with a strong environmental bias.

In comparison, Costar argues, the Charter of Reform (and later Memorandum of Understanding) in NSW between 1991 and 1995 is more of an 'accountability' charter, including a broad agenda for constitutional and parliamentary reform.<sup>17</sup>

<sup>17</sup> B Costar. 'Independent parliamentarians and accountable government' (2008) 23(1) *Australasian Parliamentary Review* 96 at 97.

This last covered (among other things) changes to Parliamentary standing orders to facilitate debate and scrutiny, the introduction of fixed term Parliaments, and the entrenchment of the independence of the judiciary. In fact, while the Tasmanian Accord was weighted towards an environmentalist agenda, it also contained a significant agenda for broader parliamentary reform. It also contained an element of constitutional change, if only by the adoption of Labor's reform agenda, which formed an annexure to the Accord and which included fixed four-year parliamentary terms and freedom of information legislation.

The historic Tasmanian Accord was in a sense a first draft of such an agreement. For Reynolds, it is 'similar to the style of policy statements issued by traditional major parties, even if some of the specific policies were far more radical than those on any major party agenda'. In his view the NSW Charter was:

a more sophisticated document in that it had learnt from the failure of the Greens to implement many of their more far reaching reforms by looking at the structure and processes of reform rather than the policies needed for those reforms.<sup>18</sup>

The content of both these agreements is discussed in a later section of this paper. For the moment it is enough to say that, in broad terms, the Tasmanian and NSW models have set the tone for later accords or charters of reform, in which environmental, constitutional and parliamentary reforms have featured prominently. But of course each minority government situation is very much dependent on its own facts and must be understood in its own context. For example, where Independents have represented rural or regional constituencies, as in Victoria in 1999 and South Australia in 2002, a policy commitment to addressing the needs of these areas has tended to be built into the charters or agreements under which the resultant minority government operate. The same applies for the 2009 agreement reached in the Northern Territory between the Independent Gerry Wood and the minority Labor Government.

A further development, away from the norms of the Westminster system of Cabinet government, starting in the ACT and spreading to South Australia, is where Independents and crossbenchers have taken Cabinet posts, subject to certain conditions. These are probably best seen as forms of 'loose' or ***Ersatz Coalitions***. These arrangements involve the identification of issues to which Cabinet solidarity will not apply. They can also involve reformist agendas, notably on behalf of regional or rural interests, as in the case of the current agreement in place in WA with the Nationals. In that State there is currently an informal yet seemingly stable coalition of Liberals, Nationals, plus one Independent Member who has taken a Ministry (Elizabeth Constable). This informal or loose coalition must also rely on one of the two other Independent members (John Bowler and Janet Woollard) voting with the Government.

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<sup>18</sup> S Reynolds, 'Minority government from the other side of the fence' (Spring 1998) 13(1) *Legislative Studies* 17 at 34. Reynolds comments that 'The written form of the [Tasmanian] Accord gave the impression of virtually a coalition arrangement (Moon's ersatz coalition)'. In practice, however, he explains the Greens served more like a de facto Opposition (p 26).

### 3.5 Table of reform agendas of charters and agreements

Table 3 sets out the major areas of reform sought by Independents and minor parties holding the balance of power in the various agreements arrived at since 1989. Referred to in Table 3 are all those agreements discussed in this paper, which includes those **Model E** situations where Independents or cross benchers have accepted ministerial positions. However, it should be emphasised that the agreements in these **Model E** cases tend to be different in nature to their **Model B** equivalents. The key to the **Model E** scenario is the acceptance of an appropriate portfolio (health or regional development for example) as a means of progressing particular interests and concerns. Under the **Model B** scenario on the other hand the typical agreement is in the form of an accord or charter of reform.

**Table 3: Reform agendas of Independents/minor parties**

	Parliamentary reforms	Constitutional and accountability reforms	Rural and regional reforms	Environmental protection reforms
Tasmania 1989	✓	✓	X	✓
NSW 1991	✓	✓	X	X
Queensland 1996 (Cunningham)	X	X	✓	X
Queensland 1998 (Wellington)	✓	X	X	X
ACT 1998 (Moore)	X	X	X	X
Victoria 1999	✓	✓	✓	X
South Australia 2002 (Lewis)	✓	✓	✓	X
South Australia 2002 (McEwen)	X	X	✓	X
South Australia 2004 (Maywald)	X	X	✓	X
WA 2008 (Nationals and Independent)	X	X	✓	X
ACT 2008 (Greens)	✓	X	X	✓
Northern Territory 2009 (Wood)	✓	✓	✓	✓

## 4. CHRONOLOGY OF MINORITY GOVERNMENTS, 1989-2009

### 4.1 Tasmania 1989-1990

In May 1989 five Tasmanian Greens held the balance of power and an Accord was signed between them and the ALP, led by Michael Field. On the basis of the Accord the ALP and the Greens combined on the floor of the Parliament to pass a no confidence vote in the incumbent Liberal Government. The Accord set out the policies of the Greens that the ALP agreed to implement, in particular specific environmental policies such as nominating areas for World heritage and suspending logging in national estate forests. In return, the Greens agreed to support Supply Bills and to abstain from supporting Opposition no-confidence motions. The Greens expressly decided against taking Cabinet posts and therefore entering into a coalition.

In fact the Accord sets out the basic principles upon which agreements have since been reached between balance of power holders and major parties. These are:

- The maintenance of stable government;
- The creation of a more open, community-responsive style of government;
- Enhancing the role of Parliament; and
- Introducing specific social, economic, environmental and Parliamentary reforms.

Brian Costar argues that, while highly prescriptive in the area of environmental policy, only one of the Accord's 17 clauses exclusively addressed Parliamentary reform.<sup>19</sup> That is indeed the case, but it should be noted that clause 2 (headed 'Parliamentary reform') is expressed in broad terms, to include for example 'a total review of Parliamentary procedures and standing orders' and 'the creation of new Parliamentary committees including estimates committees'. On the accountability front, clause 1 (headed 'Input by Green Independent members into Government') includes a provision guaranteeing Green Independent Members 'pre-Cabinet consultation on legislation'. Clause 3 (headed 'Departmental Appointments') provides among other things for consultation on appointments to selection panels for heads of public service departments.

However, it remains the case that the Accord was highly prescriptive in key policy areas. For Costar and Curtin, the Accord's very prescriptive nature was the cause of its quick demise. They commented that 'The Greens demanded too much and Labor was naïve to believe it could deliver on those demands'.<sup>20</sup>

Reynolds agrees that the Tasmanian Accord was 'policy driven' and essentially a 'means of advancing the primary concerns of the Greens'. He writes that, in prosecuting this policy agenda, the Greens became the de facto 'Opposition within a minority government they had helped form'. Inevitable tensions emerged and 'the Accord itself ceased to be the basis for minority government by October 1990', with Reynolds commenting:

<sup>19</sup> B Costar. 'Independent parliamentarians and accountable government' (2008) 23(1) *Australasian Parliamentary Review* 96 at 97.

<sup>20</sup> B Costar and J Curtin, *Rebels with a cause*, p 29.

It broke down over issues of forestry management, bringing to a head clashes that began with education policy issues not long after the Accord was signed. It was formally dissolved in September 1991 when the ALP increased export woodchip quotas in specific violation of the Accord. The Greens continued to support the Field government over the Liberal alternative until the election held in February 1992.<sup>21</sup>

Costar and Curtin comment that, despite 'achieving some policy outcomes favourable to the Greens, the Tasmanian accord came to be associated with political instability'.<sup>22</sup> Reynolds sets out the outcomes achieved by the Tasmanian Greens under the Accord in table form, as follows:<sup>23</sup>

**Table 4: Tasmanian Greens Accord Commitments**

Accord Commitment	Implementation
Fixed four-year term	<i>The Constitution (Fixed Term Parliament) Special Provisions Act 1992</i> , which set a fixed term for that Parliament only. Achieved after breakdown of Accord and not entrenched in Constitution; limited impact
Input into executive government	Restructure of Cabinet office and many government departments; initial regular meetings held; later disputes over input caused breakdown of Accord. Some restructuring of government agencies (to which Labor Government committed) but ultimately no access to Cabinet decision-making process.
Parliamentary reforms	No significant improvements – for example, no estimates committees established
Consultation of Greens on departmental appointments	Initially made during Labor's restructuring of the bureaucracy; little interest outside environment and education; little impact on appointments
Legislative research service	Research service established in Parliamentary library; increased research capacity for Greens and backbench MPs
Increased access to staff and resources of Parliament by Greens	Increased staff resources made available to Greens; increased capacity for non-government parties to contribute to policy debate
Environmental commitments	Areas referred to in Accord given World Heritage Listing; considerable improvements in coastal management and marine parks; much consultation and discussion but little progress on reforms of forestry and restrictions on logging. Major achievements of lasting significance, overshadowed by bitter disputes over forestry reforms, woodchip quotas.

<sup>21</sup> S Reynolds, 'Minority government from the other side of the fence' (Spring 1998) 13(1) *Legislative Studies* pages 17 at 26.

<sup>22</sup> Costar and Curtin, p 30.

<sup>23</sup> Reynolds, n 21, p 32.

After another experiment in minority government from February 1996 to July 1998, this time with the Liberals in power supported informally by the Greens, the major parties combined to reduce the size of the Legislative Assembly from 35 to 25. Under Tasmania's proportional voting system, this disadvantaged minor parties by raising the quota for election from 12.5% to 16.7%.<sup>24</sup> This second period of minority government was not based on either an Accord or even a 'confidence and supply agreement'. Instead, it was founded on the twin rocks of the personality differences between the Labor and Greens leaders (Michael Field and Christine Milne), on one side, and on an 'open door' policy adopted by Premier Rundle towards the Greens, on the other. This policy permitted the minor party to pursue its agenda on such issues as an apology for indigenous Tasmanians and homosexual law reform.<sup>25</sup> On 13 July 1998 Rundle called a snap election, clearly 'disillusioned with the complexities and frustration of minority government'.<sup>26</sup>

#### 4.2 New South Wales 1991-95

The 1991 State election produced a hung Parliament where the balance of power was held by four independents: Tony Windsor; John Hatton; Clover Moore; and Peter Macdonald. The Coalition, which held more seats than Labor, initially came to an agreement with Tony Windsor (a former National Party member) to vote with the Government on all major bills and guarantee the stability of the Government. The situation changed in October 1991 when Terry Metherell defected from the Coalition and decided to sit as an Independent. In April 1992, Metherell resigned from Parliament and the Liberals regained his seat at a by-election on 2 May. The situation for the rest of the Parliament was that the Coalition needed the support of Windsor plus two of the three non-aligned Independents to win divisions.<sup>27</sup>

Reynolds explains that major differences existed between the three non-aligned Independents. In 1991 Hatton turned down Greiner's offer of the Speakership, just as he had turned down Wran's offer in 1976 of a junior ministry. 'Ersatz majoritarianism' was abandoned early. The Members considered that to hold out for specific promises to their electorates would weaken their position'. The upshot was that the Hatton, Moore and Macdonald coalesced around a shared concern – 'the need for open and accountable government'.<sup>28</sup>

This found expression in the Charter of Reform, a classic expression of **Minoritarianism** that was presented to the Premier in June 1991. The Charter set out an ambitious reform agenda under the headings: Open and accountable

<sup>24</sup> Costar and Curtin, n 12, p 30. Analysts predict a minority government following the general election on 20 March 2010 – A Darby, 'Labor begs forgiveness in Tasmanian election', *SMH*, 13-14 February 2010, p 6.

<sup>25</sup> For an overview see – K Crowley, 'Strained Parliamentary Relations: Green-supported minority governments in Tasmania' (2003) 17(2) *Australasian Parliamentary Review* 55-71.

<sup>26</sup> T McCall, 'Political Chronicles – Tasmania, June-December 1998' (1999) 45(2) *Australian Journal of Politics and History* 292.

<sup>27</sup> D Clune and G Griffith, *Decision and Deliberation: The Parliament of NSW, 1856-2003*, Federation Press 2006, pp 540-541.

<sup>28</sup> S Reynolds, 'Minority government from the other side of the fence' (Spring 1998) 13(1) *Legislative Studies* 17 at 22.

government; Law and justice; Parliamentary reform; and Electoral reform.

Not until October 1991 (with Metherell's defection) was the Greiner Government persuaded to sign a Memorandum of Understanding with the three non-aligned Independents, agreeing to most of the proposals set out in the Charter. The Memorandum of Understanding itself was very detailed, including under each category of reforms: (a) a statement of principle on the part of the Government acknowledging the need for reform; (b) a detailed listing of the elements of the reforms and the procedures by which they were to be implemented; and (c) a timetable for implementation. The annexures to the Memorandum of Understanding also included a draft bill, in the case of fixed-term Parliaments, and draft legislative amendments in the case of the entrenchment of the independence of the judiciary. Another annexure set out draft terms of reference for the NSW Law Reform Commission in respect to the reform of the legal profession.

The terms of the agreement were that the three non-aligned Independents would vote with the Government on:

- (a) Motions regarding Bills for Appropriation and Supply.
- (b) All Motions of No Confidence except where matters of corruption or gross maladministration are involved which reflect upon the conduct of the Government as a whole...

On all other matters the Independents were free to vote as they saw fit. The Independents reserved the right to move a no confidence motion in the Government in relation to matters of 'corruption or gross maladministration', or if the Government (defined so as to include Windsor) had fewer Members in the Assembly than the ALP and 'satisfactory government' was not being provided. An agreement was later signed with the Opposition to allow the continued implementation of the Charter of Reform if a so-called 'baton change' occurred where the Independents switched their support to Labor.<sup>29</sup>

An account of the operation of the Charter is presented by Rodney Smith who writes that, while not all of the reforms were achieved, 'most of the reforms were achieved in some part, easily making the "fabulous 50<sup>th</sup> Parliament" the period in which Independents played the greatest legislative role since 1910'. Smith continued:

Reflecting on the Charter in late 1994, Hatton's main regret – apart from the possibility that the accountability reforms achieved throughout the previous three years might be reversed by later governments – was that he had not included environmental protection measures in the Charter.<sup>30</sup>

Clover Moore, reflecting on the role of Independents in a speech on a Matter of Public Importance in June 2003, reviewed the achievements of the Charter, including the contribution it made to the reform of parliamentary procedures in such areas as question time, the introduction of estimates committees and the scrutiny of legislation. But she also went on to say: 'Since the return of majority government

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<sup>29</sup> Clune and Griffith, n 27, p 542.

<sup>30</sup> Smith, *Against the machines*, n 8, pp 157-158.

following the 1995 election, some of the parliamentary reforms we achieved have been watered down or effectively set aside'.<sup>31</sup> The same point is made elsewhere, where it is said: 'Many of the improvements to the way the Assembly operated that were made during the 50<sup>th</sup> Parliament did not survive the return to majority government'.<sup>32</sup>

In terms of the broader agenda for constitutional reform, based on the Reynolds article,<sup>33</sup> the following table is a revised and updated version of the achievements of the Charter of Reform.<sup>34</sup>

**Table 5: NSW Independents Charter of Reform Commitments**

Charter of Reform Policy	Implementation
Reform of electoral funding	Amendments were introduced in 1993 to fine tune the funding and disclosure scheme as a result of the report of the Joint Select Committee upon the Process and Funding of the Electoral System.
Constitutional guarantee of the independence of the judiciary	Referendum passed in 1995 (65.9% voting in favour) to entrench the independence of the judiciary in the Constitution. Judicial officers can only be removed by an address from both Houses of Parliament.
Fixed four-year terms	An initial Act was passed for the term of the 50 <sup>th</sup> Parliament. A referendum was passed in 1995 (75.5% voting in favour) to entrench the fixed term in the Constitution. General elections now held every four years on the fourth Saturday in March.
Strengthened powers for the Ombudsman and Auditor-General	The relevant parliamentary oversight committees now have a power of veto over Cabinet nominations for Auditor-General and Ombudsman. Provision was made for direct reporting to Parliament rather than through a Minister. Some restrictions on access to Government documents were removed although proposed reforms to allow access to Cabinet documents were rejected. A 1991 amendment gave the Auditor-General a fixed, non-renewable seven-year term. The overall result was a significant strengthening of the independence of both officers.
Defamation law reform to remove restrictions on full and fair media reporting	Amendments to the <i>Defamation Act</i> were introduced in 1994. Some improvements resulted but major problems remained.
Whistleblower protection	Implemented by the <i>Protected Disclosures Act</i> 1994. Improved protection and processes for public sector whistleblowers resulted.

<sup>31</sup> [NSWPD](#), 25 June 2003, p 2147. For an account of these parliamentary reforms and their implications see Clune and Griffith, n 27, pp 540-557.

<sup>32</sup> Clune and Griffith, n 27, p 614.

<sup>33</sup> Reynolds, n 18, pp 31-32.

<sup>34</sup> Clune and Griffith, n 27, p 543.

Legal Services Ombudsman to provide external accountability for the legal profession	The <i>Legal Profession Reform Act 1993</i> established the Legal Services Commission.
Reform of <i>Freedom of Information Act</i> to allow greater access to government information	The <i>Freedom of Information Act</i> was amended in 1992. Reforms were implemented but arguably only minor improvements in access to information resulted.
Third party standing in environmental issues	The <i>Environment Protection Administration Act 1991</i> , in practice, seems to have imposed a more restrictive test than already existed. Largely ignored by the Independents and the Government after the initial debate.

#### 4.3 Queensland 1996-98

Antony Green [writes](#):

In 1995, Wayne Goss's Labor government in Queensland seemed popular as it came to the end of its second three year term. Instead, the government copped a fierce backlash at that year's state election, left with just 45 seats in the 89 seat Legislative Assembly. Even worse, the closest of those seats, the Townsville based seat of Mundingburra, was decided by just 12 votes. As expected, the Court of Disputed Returns overturned the result and ordered a re-election. In February 1996, in the first week of the Federal campaign that Paul Keating was to lose, Labor lost the Mundingburra re-election and Wayne Goss resigned. Both Labor and the Coalition now had 44 seats, but conservative Independent Liz Cunningham chose to back the coalition. Seven months after the state election, the baton was passed to Rob Borbidge who became Coalition Premier. Borbidge governed for two years in minority and was to occasionally lose votes as Cunningham backed the opposition, on occasions even backing Labor motions to censure ministers.<sup>35</sup>

According to Wanna:

For the first time in the state's history a single Independent held the balance of power between two equally matched opponents. Parliament as an institution began to matter, for the first time in living memory.<sup>36</sup>

In respect to the agreement reached between Cunningham and the Coalition, Costar writes:

<sup>35</sup> Antony Green's Election Blog - <http://blogs.abc.net.au/antonygreen/2009/06/northern-territ.html> - more

<sup>36</sup> J Wanna, 'Political Chronicles – Queensland' (1996) 42(3) *Australian Journal of Politics and History* 419 at 426.

The compact struck between Queensland Independent Liz Cunningham and the National and Liberal parties in 1996 hardly qualifies as a Charter at all. It was completely devoid of detail and made no accountability demands on the in-coming minority government.<sup>37</sup>

In her speech on the formation of a minority government with Rob Borbidge, delivered on 12 February 'under a shady tree in Gladstone',<sup>38</sup> Cunningham indicated strong local constituency interests, expressing concerns about declining police numbers in her constituency, a leaking roof in the local hospital and the need for an additional high school. Statewide issues were also raised, notably small business concerns about financial imposts and administrative red tape. Cunningham said that her agreement to support the Borbidge Government was limited to no confidence motions and Supply bills. She declared:

It is my intention to retain my independence on all other Bills to come before Parliament. I ran and was elected as an Independent. I make the above decision only because of the unique situation we find ourselves in, in this State.<sup>39</sup>

This seems closer to Moon's ***Ad Hoc Minoritarianism*** (where a single or disparate group of balance of power holders wishes to challenge aspects of the wider political system but does so on a sporadic or unsystematic basis, not guided by any sustained agenda) than to full-blown ***Minoritarianism***, as that operated in NSW between 1991-95. Alternatively, it could be seen as an instance of what Moon calls ***Ersatz coalition*** (where a collection of balance of power holders are united in respect of a particular social or economic interest which they wish to defend, but otherwise do not wish to challenge the government or the broader status quo). Cunningham ended her speech by saying 'I believe that, given the choice, I can better represent my electorate in an atmosphere of co-operation rather than competition'. Wanna commented:

At no stage did she declare an ideological commitment publicly to the Coalition – although many regarded her as a closet National.<sup>40</sup>

Wanna further reported that on 19 August 1997, in the wake of a controversial inquiry into the Criminal Justice Commission, Cunningham voted to defeat a motion of no confidence in the Government. However, asserting her independence, the next day she voted with the Opposition to pass a no confidence motion in the Attorney General, Denver Beanland. When in an unprecedented turn of events Beanland refused to resign and the Premier refused to sack him, reliance was placed on:

comments made by Cunningham outside the House that the motion was

<sup>37</sup> B Costar. 'Independent parliamentarians and accountable government', n 17, p 98.

<sup>38</sup> Wanna, n 36, p 421.

<sup>39</sup> 'Full text of the historic speech', *The Gladstone Observer*, 13 February 1996.

<sup>40</sup> Wanna, n 36, p 421.

tougher than she would have preferred and that she did not intend Beanland to resign when she declared her lack of confidence in him as the first law officer.<sup>41</sup>

Early in the life of the minority government, Wanna described Cunningham's vote as 'uncertain'.<sup>42</sup> However, his later analysis suggests the development of something like an **Ersatz coalition**, with Wanna stating:

The difficulties of holding together a minority government seemed less pressing as the two parties [Nationals and Liberals] and Independent Liz Cunningham gradually developed reliable working relationships.<sup>43</sup>

#### 4.4 Queensland 1998

Antony Green [writes](#):

The 1998 Queensland state election that saw the sudden rise of One Nation also produced a hung parliament where Labor finished one seat short of a majority. In the end, newly elected Independent Peter Wellington offered in principle support to Labor to provide some stability in government. The only alternative would have been a ramshackle coalition of Liberal, National, One Nation and several Independents. Wellington chose to back stability, and by the end of the year, the Beattie government had gained an extra seat courtesy of a by-election. Labor's majority remained rocky throughout its first term and was hit by resignations following an inquiry into electoral rorts, but an early election in 2001 produced a landslide Labor majority.<sup>44</sup>

The position was that the Labor Party emerged from the general election with 44 seats, one short of a majority. The Coalition won 32 seats (23 Nationals and 9 Liberals), One Nation won 11 seats and there were two Independents, Liz Cunningham and Peter Wellington. The Independents entered into negotiations with both sides, with Wellington deciding to support Labor on the basis that it was

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<sup>41</sup> J Wanna, 'Political Chronicles – Queensland July to December 1997' (1998) 44(2) *Australian Journal of Politics and History* 262 at 265.

<sup>42</sup> J Wanna, 'Political Chronicles – Queensland' (1997) 43(2) *Australian Journal of Politics and History* 233 at 234. Writing in 1997, Noel Preston commented that that Cunningham's voting pattern suggested that she tended to oppose the Government mainly on 'procedural technicalities', although by doing so she demonstrated her concern for the 'rights' and 'status' of Parliament. Preston adds: 'Of course, this voting pattern does not reveal how many times her negotiations with the Government were so successful that she did not need to oppose them in the chamber'. He concluded on an equivocal note, saying: 'It must be said that she has provided the stability and consistency which minority government requires of Parliament's Independent members if government is to be workable. To some, of course, that pattern simply means she is a fellow-traveller for the conservatives and barely qualifies as an Independent' – N Preston, 'Parliament rediscovered? Parliament under minority government in Queensland' (1997) 11(2) *Legislative Studies* 88 at 90-91.

<sup>43</sup> J Wanna, 'Political Chronicles – Queensland, January to June 1998' (1998) 44(4) *Australian Journal of Politics and History* 588.

<sup>44</sup> Antony Green's Election Blog - <http://blogs.abc.net.au/antonygreen/2009/06/northern-territ.html> - [more](#)

the 'only party with the prospect of forming a stable government'.<sup>45</sup>

The agreement between Wellington and Labor was set out in a six-page letter, written by Labor's Peter Beattie, dated 25 June 1998. In substance, the letter listed 'commitments emphasising the issues of integrity in government and the opening up of Parliament to non-government members'. Specific reforms to parliamentary procedure were agreed to, 'allowing more questions, the opportunity to move and debate private members bills, participate in debates and committees, and have involvement in the budget process through estimates committees'.<sup>46</sup> Commenting on this agreement, Costar states:

Beattie committed to a range of relatively minor parliamentary reforms, to maintain a budget surplus and to better regulate ministerial expense accounts. He refused, however, to agree to the implementation of Citizen Initiated Referendums.<sup>47</sup>

In reply, Wellington agreed to support:

your Government on Confidence motions unless there is evidence of gross fraud, misappropriation or like illegal activities, and, that I will support your Appropriation Bill and not abstain from voting.

In the event, on the first day of the new Parliament both Wellington and Cunningham supported the Government on a confidence motion. Cunningham explained her change of allegiance in terms of 'the fragmented nature of the vote in 1998 (where no one group had a clear two-party majority of support) compared with 1995 when the Coalition parties claimed around 57 per cent of the two-party vote'.<sup>48</sup>

If the Cunningham agreement with the Borbidge minority government is hard to categorise, a hybrid between *Ersatz coalition* and *Ad Hoc Minoritarianism*, the agreement in the Wellington case is also hard to place. Perhaps it is best looked upon as a case of low-level *Minoritarianism*. At any rate, with the Beattie Government securing a parliamentary majority of one seat in November 1998, the arrangements were short-lived, too short for Wellington's agenda of parliamentary reform to be fulfilled.

#### 4.5 Australian Capital Territory 1998-2001

Brian Costar and Jennifer Curtin write:

In April 1998 the Liberal cabinet in the ACT was expanded to five to accommodate the independent member Michael Moore, who was made Health, Housing and Community Services Minister. Moore remained an

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<sup>45</sup> J Wanna, 'Political Chronicles – Queensland July to December 1998' (1999) 45(2) *Australian Journal of Politics and History* 271.

<sup>46</sup> Wanna, n 45, p 272.

<sup>47</sup> B Costar. 'Independent parliamentarians and accountable government', n 17, p 98.

<sup>48</sup> Wanna, n 45, p 273.

independent and negotiated an unprecedented arrangement with the Chief Minister, Kate Carnell, binding him to the conventions of collective cabinet solidarity only in relation to his own portfolio areas and the annual budget bills.<sup>49</sup>

Earlier David L Hughes had explained:

On 28 April, Moore became the fifth minister, taking up the health portfolio. It was an intriguing innovation. He stayed an Independent, but agreed to certain conditions, including maintaining cabinet solidarity in regard to his portfolio and the budget. He also presented a list of those matters on which he would still operate as an Independent. When Cabinet discusses those matters he will absent himself. In regard to issues not on the list he would observe cabinet solidarity.<sup>50</sup>

Sonia Palmieri commented on the 'oddity' of these arrangements under the Westminster Parliamentary system, stating:

Whereas all ministers of the political party that forms the government are expected to acknowledge that collective decisions of Cabinet are binding on them individually, the same does not apply directly to Mr Moore. While a Liberal Minister would have to resign if unable to support a cabinet decision, the code of conduct [for MLAs] said of Mr Moore that he 'retains his status as an Independent Member'. The guidelines further stated 'In respect of Mr Moore, collective responsibility will apply except for those issues identified by Mr Moore as matters on which he will continue to dissent from stated Government policy in respect of which he will not participate in the discussions and decisions of Cabinet.'<sup>51</sup>

This was a novel experiment in the Westminster model of Cabinet government. It was based on the April 1998 Pettit report, *Review of the Governance of the ACT*. The report had recommended increasing the number of Ministers from 4 to 5 and had posed the question 'whether it is possible to envisage a looser coalition arrangement that would enable some cross-benchers to serve as Ministers'. The report continued:

We can envisage an arrangement under which a loose coalition might work, provided that there is a high level of personal trust between the Chief Minister and the cross-bencher involved.

There are three elements to the arrangement we have in mind. The first is that that the cross-bench Minister should be willing to give prior notice of the sorts of issue on which they reserve the right to dissent in public and in the Assembly. The second is that the Minister should be willing, where it falls within their brief, to act in implementation of a decision from which they

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<sup>49</sup> B Costar and J Curtin, *Rebels with a cause*, n 12, p 23.

<sup>50</sup> DL Hughes, 'Political Chronicles - Australian capital Territory, January to June 1998' (1998) 44 *Australian Journal of Politics and History* 623 at 624.

<sup>51</sup> S Palmieri, 'Political Chronciles - Australian Capital Territory, July to December 1998' (1999) 45 *Australian Journal of Politics and History* 306 at 308.

dissent. And the third is that the Minister should be prepared to renounce the use in Cabinet negotiations of the threat to resign.<sup>52</sup>

The issues upon which Moore sought to retain his normal voting rights as an Independent were set out in a letter from him to Chief Minister Carnell on 26 April 1998. By way of preamble, he noted:

By accepting a Ministry, I accept that I become part of a Carnell Government, even though the arrangement has been appropriately described by the Pettit Inquiry as a 'loose coalition'...I agree to our arrangement being based on the three conditions set out in the Pettit Report as well as the general tenor of the report in dealing with this issue. Additionally, it is appropriate for me to step aside from cabinet when the issues before cabinet are ones that I have identified before hand as issues where I might have a difference of approach.

The list of such issues, upon which Moore claimed normal debating and voting rights, was wide-ranging. Included were detailed entries under the headings: environment, planning and leasehold system; education, open government; justice; social justice; and private member issues. It even included matters under health, social justice and community services. However, in her letter of 27 April 1998 Carnell made it clear that Moore would have to accept the conventions of Cabinet solidarity in respect to his portfolio. In addition, he was 'required to fully support all Budget decisions and share the Cabinet's corporate responsibility for what may at times be very difficult decisions'.

On the operation and ultimate political fate of this ACT experiment, Costar and Curtin write:

Moore was personally committed to drug law reform and in late 1999 was successful in having legislation to establish supervised drug-injecting rooms accepted by the majority of the Assembly, despite the fact that two of his ministerial colleagues voted against it. Moore had been recruited by Carnell, but he survived her forced resignation in October 2000 and remained Health Minister until retiring from Parliament at the 2002 election after thirteen years in the Assembly.<sup>53</sup>

The same authors quote Moore as saying:

I have achieved more in the three and a half years that I spent as a minister than the years I spent on the cross-benches...I make no bones about it, it was a trade-off and in accepting a ministry I did lose some of my independence, but not all of it by any means.<sup>54</sup>

As Michael Moore acknowledged, this was essentially a loose coalition form of minority government, more like Moon's *Erstaz coalition* than any other type. The

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<sup>52</sup> P Pettit, *Review of the Governance of the ACT*, April 1998, p 54.

<sup>53</sup> Costar and Curtin, n 12, p 23-24.

<sup>54</sup> Costar and Curtin, n 12, p 24.

arrangements were decidedly 'odd' in 1998, but are less so now that similar arrangements have been adopted in South Australia and Western Australia. In an Australian context at least these developments seem to point to a new form of cross bench involvement in minority government.<sup>55</sup>

#### 4.6 Victoria 1999-2002

Antony Green [writes](#):

A similar situation arose at the 1999 Victorian election, when a surprise swing deprived the Kennett Coalition government of its majority. The state went into political limbo for a month awaiting a supplementary election in Frankston East where the sitting Independent had died on polling day. Labor won the by-election with a huge swing, and despite Labor holding fewer seats than the combined Liberal and National Parties, the three cross-bench Independents chose to back Labor under Steve Bracks.

The Frankston East result brought the ALP's representation in the lower house to 42, one less than the Coalition's 43. Before the Independents could officially announce which side they would support, *The Age* revealed that the Independents had in fact agreed to support Bracks on the morning of the Frankston East election.<sup>56</sup> This was based on a Charter released by the Independents in late September 1999. There followed, on 18 October 1999 a formal Memorandum of Understanding, signed by Bracks and the three Independents (Russell Savage, Susan Davies and Craig Ingram). All three Independents represented regional constituencies outside Melbourne: Mildura (Savage); Gippsland West (Davies); and Gippsland East (Ingram). Savage and Ingram had been National Party supporters in the past, while Davies was once an ALP candidate.<sup>57</sup>

The terms upon which the Independents entered into this agreement were essentially the same as that applying in NSW in 1991. In the Charter they undertook to vote with the government on 'appropriation and supply bills' and all motions of no-confidence 'unless there is evidence of fraud, misappropriation or illegal activities'. Otherwise, they reserved the right to vote as they wished. They also reserved the right to withdraw support from a government that:

- demonstrates mismanagement or misuse of public finances;
- is shown to be corrupt, which supports any practices which are corrupt or

<sup>55</sup> Following the 2001 general election a minority Labor administration was formed, led by John Stanhope. Upon his election as Chief Minister, Stanhope seemed to reject the innovative constitutional arrangements used under the previous Government, saying 'Our electoral system has meant minority governments have had to deal with a Parliament in which they did not control the numbers. Too often this has led to the practices and traditions of Westminster being compromised; to a blurring of the necessary distinction between executive and legislature; to the requirements of cabinet government and the demands of ministerial responsibility, that are a fundamental characteristic of the system, not being met': [ACT Parliamentary Debates](#), 12 November 2001, pp 6-7.

<sup>56</sup> For a detailed account of the 1999 election and its aftermath see – D Woodward and B Costar, 'The Victorian election of 18 September 1999: another case of electoral volatility?' (2000) 35 *Australian Journal of Political Science* 125-133.

<sup>57</sup> J Waugh, 'Minority government in Victoria' (March 2000) 11 *Public Law Review* 11.

- which violates accepted standards of public probity;
- abuses the spirit of democratic parliamentary practice and procedure.

In terms of substance, John Waugh commented that the 1999 Charter resembled the NSW model 'but is far less detailed, with none of the memorandum's draft bills and detailed timetables'. Waugh continued: 'Nor does the Victorian Charter seek to involve Independents in general government policy and administration, as did the Tasmanian Parliamentary Accord of 1989'. As for the proposals contained in the Victorian Charter, Waugh wrote that those for:

rural Victoria have the most immediate electoral importance for the Independents, but some of the proposals for the machinery of government are far-reaching. They include reform of the Upper House, freedom of information laws and legislation concerning the Auditor-General and the Director of Public Prosecutions.<sup>58</sup>

The Charter was under three broad headings: 'promoting open and accountable government'; 'improving the democratic operation of Parliament' and 'establishing clear plans, strategies and targets to address the urgent needs of rural Victoria'. Certain assurances for Independents were also sought, including establishing an 'ongoing consultative mechanism' between government and themselves. An end to the privatisation of public assets was another item on the Charter's agenda.

This is an instance of full-blooded *Minoritarianism*, where a general reform package for parliamentary and constitutional reform was supplemented by a distinct policy agenda on behalf of rural constituencies. In respect to this last issue, Costar writes:

The general consensus is the Bracks' government delivered on its commitment to regional Victoria. It was in its electoral interest since it was part of the state that turned out the Kennett coalition government. Yet the promise to re-open the Vineland rail service to north western Victoria was not honoured and the allocation of water between city and country was a contentious issue at the 2006 state election.<sup>59</sup>

In terms of the broader agenda of constitutional reform, it is fair to say that, lacking a majority in both the Lower and then unreformed Upper House, the Brack's Government could not move too far or too quickly. However, taking a longer view many of the key elements of the Charter were adopted, including restoring the powers of the Auditor-General, introducing fixed four-year terms and reforming the Legislative Council.<sup>60</sup>

As to the eventual demise of the minority government, Green [writes](#):

The Frankston East result had revealed a change in electoral mood, and

<sup>58</sup> Waugh, 'Minority government in Victoria', n 57, pp 12-13.

<sup>59</sup> Costar. 'Independent parliamentarians and accountable government', n 17, p 99.

<sup>60</sup> For a more detailed analysis see Costar, 'Independent parliamentarians and accountable government', n 17, p 99.

over the next eight months Labor won two extra-ordinary by-election victories, first winning the Burwood seat of former Premier Kennett, and later winning the rural Benalla seat previously held by Nationals Leader and Deputy Premier Pat McNamara. The good news continued for Labor and at the 2002 election, Labor won its greatest ever victory in Victoria, for the first time winning a clear majority in the Legislative Council.

#### 4.7 South Australia 2002-2006

**1989-2002.**<sup>61</sup> The most recent period of minority government in South Australia began with the 1989 State election, when in the 47 seat House of Assembly the Liberal Party won 22 seats and also had the support of the National Party member Peter Blacker. The Labor Party won 22 seats, and two Independents held the balance of power. They were Martyn Evans and Norm Peterson; both were elected by city electorates, solidly Labor, and both stood as 'Independent Labor' candidates. Hence it was not surprising that they gave their support to the ALP (under Premier John Bannon). The ALP governed for the full 1989–1993 term in a minority status (although Evans was readmitted into the ALP in October 1993). The ALP still only held 23 of the 47 seats and Peterson's support was still required to keep the Government in office.

At the 1993 election the Liberal Party won office with a large swing, which gave them a clear majority of seats.

In 1997 the Liberal Party lost its clear majority, winning only 23 of the 47 seats in its own right, but another seat was won by the National Party (Karlene Maywald), one more was won by an IND Liberal (Mitch Williams) and a third seat was won by an Independent who had previously been a member of the Liberal Party (Rory McEwen). The Liberal Party was returned to government with the support of these three members, and when Mitch Williams rejoined the Liberal Party two years into the term, the Liberal Party had a majority of seats in its own right. This status only lasted for a year. In October 2000 Dr Bob Such resigned from the Liberal Party and returned the Liberals to minority government status. Even if Such had given his support to the ALP, the Liberals would have been able to retain government as long as they had the support of Maywald and McEwen.

***The Rann experiment – Lewis as Speaker.*** At the State election of 2002 the ALP won 23 seats and the Liberals won 20. Another 2 seats were held by Rory McEwen and Dr Bob Such as Independents, one by the National (Karlene Maywald) and one by Peter Lewis, a former Liberal who had formed his own party (Community Leadership Independence Coalition)<sup>62</sup>. Peter Lewis prepared an agreement which would allow him an independent vote on most matters as long as he supported the government in matters of confidence and Supply. When both of the major parties signed his agreement Lewis gave his support to the ALP, and the Liberals lost government. Lewis was made Speaker. Lewis was sworn in as Speaker on 5 March 2002.

<sup>61</sup> This commentary on South Australia is based on notes prepared by Jenni Newton-Farrelly of the South Australian Parliamentary Library.

<sup>62</sup> The CLIC was disbanded soon after Lewis's election and he was referred to as an Independent for the remainder of his time in the Parliament (until the state election of March 2006).

The final agreement between Lewis and the Government was the *Compact of Good Government*. In respect to this, Scott Bennett commented as follows:

Much of *Peter Lewis' Compact for Good Government*, was taken from the *Independents' Charter Victoria 1999* signed by Victorian independents and the Labor Party. Lewis said he was willing to support a government which undertook to promote 'open and accountable government', improve 'the democratic operation of Parliament', establish plans and strategies to deal with 'the urgent needs of rural South Australia', 'co-operate meaningfully' with independent MPs, and 'improve Ministers' and MPs' codes of conduct'. As part of the reform of Parliament, Lewis will be seeking the establishment of a Constitutional Convention that will consider various matters, including citizen initiated referenda, removal of Ministers from the Legislative Council, removal of most committees from the House of Assembly, reduction of the size of Parliament, removal of parties from the upper house, and establishing a different mode of selection for the position of Governor.<sup>63</sup>

Peter Lewis's Speakership was widely regarded as a difficult one for the Parliament and the Government. After a series of acts and statements that stretched the limits of propriety, in March 2005 he made allegations that a serving MP and two serving police officers were paedophiles, and refused to provide evidence. The *Sunday Mail* editorialised that 'His shoot-from-the-hip approach has caused enormous damage to the reputations of the people named, to the office of Speaker, Parliament and the state'.<sup>64</sup> Lewis resigned as Speaker on 4 April 2005. The same day Dr Bob Such, the fourth of the group of Independent and minor party Members elected to the House of Assembly during the 2002-2006 Parliament, was sworn in as Speaker.

In respect to Lewis's Speakership, of the many forms of minority government discussed in this paper it appears the closest to Moon's *Ersatz majoritarianism*. That is, where an individual Member, in return for benefits to themselves (such as committee memberships or other Parliamentary positions) or their constituencies, effectively support the major party so that the political system operates as if a majority government was in place.

***The Rann experiment – McEwen and Maywald as Ministers:*** The decision to make Lewis the Speaker was a bold political move. Even bolder was the decision to follow the ACT 1998 example and bring an Independent Member into the Ministry. As in the original ACT model, this was made subject to the recognition of major limits to the application of the doctrine of ministerial collective responsibility in respect to the Independent.

On 4 December 2002 the Independent Rory McEwen was sworn in as Minister for

<sup>63</sup> S Bennett, *South Australian Election 2002*, Commonwealth Parliamentary Library Research Note No 32 of 2002-02. Further to this agenda for constitutional reform, a Constitutional Convention was held in 2004. Prior to that Convention there was a conference on constitutional change – Clem Macintyre and John Williams edited the papers from that conference and published them as *Peace order and good government: state constitutional and parliamentary reform* (2003, Adelaide: Wakefield Press).

<sup>64</sup> 'Editorial', *Sunday Mail*, 3 April 2005.

Trade and Regional Development, Minister for Local Government and Minister Assisting the Premier for Federal/State Relations. As McEwen had been mayor of the regional city of Mt Gambier prior to coming into the Parliament, responsibility for these areas seems to have been particularly suited to McEwen's interests. There was an agreement signed between McEwen and the government. The key terms of this agreement were as follows:

- McEwen would have a special position in Cabinet in that, by reason of his independence, there would be a class of issues in respect of which it would not be possible for McEwen (as Minister) to be bound by a Cabinet decision;
- This class of issues, it was agreed, would be limited to: (a) issues with direct and immediate effect upon the Minister's electorate; (b) significant matters affecting the business community; or (c) such other matters as the Minister has advised the Premier in writing;
- With the exception of matters where McEwen had absented himself from Cabinet (as provided for under the agreement), or the class of issues noted above, he agreed to support the government in Parliament, and in particular in relation to any 'confidence' motion.

Continuing with this experimental approach to Cabinet government, on 23 July 2004 the National Party Member, Karlene Maywald, was sworn in as Minister for the River Murray, Minister for Regional Development, Minister for Small Business and Minister for Consumer Affairs. Maywald is not an Independent. However, she is the only National Party Member in the South Australian Parliament and, as such, can be described as a member of a minor-party.

The agreement between Maywald and the Government, signed by the Premier, Deputy Premier and Leader of Government Business in the House of Assembly, was based on the McEwen agreement. This was another case of the appropriate allocation of ministerial responsibilities, as Ms Maywald represents the electorate of Chaffey, which covers most of the irrigation communities along the River Murray. The appointment was also a major surprise to Liberal supporters across the State. While the National Party is not in coalition with the Liberals in South Australia, the Chaffey electorate is a conservative one and the appointment was seen by many as risking National support in the seat.

As in the case of the ACT in 1998-2001, in terms of Moon's four ideal types of minority government these arrangements seem closer to a form of **Ersatz coalition** – where, in this case, an Independent or minor-party Member holding the balance of power agrees to participate in government, both for the purpose of advancing the particular interests of their own constituency and to secure stable government, but without making a formal commitment to supporting the government's full legislative agenda.

**The 2006 election campaign:** In the lead-in to the 2006 State election Premier Rann announced that Maywald and McEwen would be offered their Ministerial positions again if the ALP won government in its own right. Such's acceptance of the Speakership was not targeted by the Liberal Party during the election campaign, but the Liberal Party did campaign in Chaffey against Maywald and in Mt Gambier against McEwen. The Liberals particularly emphasised the support of the two Ministers for a Labor rather than conservative government, together with

Premier Rann's statement that they would be reappointed if the ALP won government again.

Both seats had been regarded as quite safe for their incumbents, but the Liberal campaign against these Members seemed likely to cause them some trouble in their electorates. In fact, although McEwen did suffer a loss in support, Maywald's support actually rose, and both Maywald and McEwen were returned to the Parliament.

In 2002 McEwen had won Mt Gambier with a two candidate preferred result of 77%, and this was reduced in 2006 to 56% (both two candidate preferred results were against the Liberal candidate). In first preference terms, McEwen's vote dropped in 2006 from 59% to just 35%. The Liberal first preference vote improved by 14% and Labor by 5%.

In Chaffey, Maywald's two candidate preferred result rose from 64% in 2002 to 67% in 2006 (both results were against a Liberal candidate). Her first preference vote rose from 49% to 53% and she received a larger share of preferences than in 2002.

At the 2006 state election the Labor Party won a majority of seats in the House of Assembly<sup>65</sup> and did not need the support of either Maywald or McEwen to win or retain government. Nonetheless after the election they were both reappointed as Ministers. Bob Such lost the Speakership to an ALP Member. Karlene Maywald remains a Minister (for Water Security) and McEwen served as Minister for Agriculture, Food and Fisheries until March 2009 when he retired from the Ministry. He will retire from the Parliament at the March 2010 State election.

***Working with the government.*** Although the Ministers have supported the Government under most circumstances in the Parliament, they have not caucused with the ALP, and they have on occasion voted against government legislation. On the most recent occasion both McEwen, when retired from the Ministry, and Maywald voted against the Government's proposed changes to the Legislative Council. Neither spoke on the Bill.<sup>66</sup>

At a recent *Balance of Power for the Regions Forum*<sup>67</sup> in Adelaide, Brendon Grylls (National Party Leader and Minister for Regional Affairs in the WA Parliament) made it clear that Maywald's position as a National Party MP serving as a Minister in a Labor Government had been an effective role model for him. This served to guide Grylls in his own negotiations with the Labor and Liberal Parties after the Western Australian election when the Nationals held the balance of power in that Parliament.

<sup>65</sup> The current composition of the 47 Member SA House of Assembly is: ALP 28; Liberals 14; Nationals 1; Independents 4.

<sup>66</sup> Second and third reading debates on the Constitution (Constitution (Reform of Legislative Council and Settlement of Deadlocks on Legislation) Amendment, SA Parliamentary Debates, 9 September 2006 and 22 September 2006.

<sup>67</sup> Held on 2 October in Adelaide under the auspices of the National Party.

#### 4.8 Western Australia 2008-to date

Since becoming National Party leader in 2005, Brendon Grylls pushed for an independent National Party and refused to enter into a coalition with either of the major parties before the 2008 State election.

In that election the Nationals in WA ran on a policy of giving a proportion of royalties received by the State government back to the regions. Brendon Grylls made acceptance of a 25% return of royalties to the regions a condition of his agreement to support either party into government. Key elements of the royalties for regions policy were as follows:

- 25% of all royalty payments to the state to be set aside for reinvestment into regional WA Funds to be held in a special investment fund (SIF), capped at \$1 billion annually. Disbursements from the SIF to be over and above consolidated revenue allocations for the regions. SIF funds to be distributed on an agreed formula to:
  - Regional councils for local projects;
  - Regional projects developed and prioritised with the involvement of Regional Organisations of Councils and Regional Development Commissions;
  - Statewide projects developed and prioritised by the Regional Development Council; and
  - State Government initiatives that boost and leverage regional growth and investment.

On 7 August 2008, Premier Alan Carpenter called an early election for 6 September 2008. Colin Barnett led the Liberal Party to the election, which saw a significant swing away from the incumbent Labor Party, leading to a hung parliament. On 14 September 2008, the National Party agreed to support the Liberal Party as a minority government, and Barnett was sworn into office as Premier on 23 September 2008. At that time, the [party composition](#) of the WA Legislative Assembly was as follows:

Party	Seats
ALP	28
Liberal	24
National	4
Independents	3
Greens	-

With the Liberal Government requiring support from at least one Independent, Elizabeth Constable, a former Liberal, was appointed Minister for Education, Tourism and Women's Interests.<sup>68</sup> She does not appear to have entered into any formal agreement with the Liberals, comparable to that entered into by McEwen in

<sup>68</sup> On 9 February 2009 she was appointed Minister for Education and Tourism. Constable was once a member of the Liberal Party before becoming an independent. She left the Liberal Party when it became clear that the favoured candidate of power-broker, Noel Crichton-Browne, would be given preselection for the safe seat of Floreat in 1991 at her expense. Constable contested the seat as a conservative independent and won easily with 49% of the primary vote. - [http://en.wikipedia.org/wiki/Liz\\_Constable](http://en.wikipedia.org/wiki/Liz_Constable)

South Australia. Significantly, the Liberals did not contest her seat of Churchlands at the 2008 election. The other two Independent Members (Janet Woollard<sup>69</sup> and John Bowler), who have not accepted government or parliamentary positions, have supported the Liberal minority government in the main. Indeed, it was not until 6 May 2009 that the Government lost its first vote on the floor of the Assembly, this on a Bill to introduce first past the post voting in local government elections.<sup>70</sup> Bowler, a former Labor Party Minister, is the Member for Kalgoorlie; Woollard is the Independent Member for Alfred Cove, named after the southern riverside suburb of Perth.<sup>71</sup> Of the three Independents, only Bowler represents a non-metropolitan constituency.

After the 2008 election Labor representation declined temporarily by three seats: one defection to the Nationals; one by-election victory to the Greens, following the resignation of JA McGinty; and one vacancy arising from the resignation of Alan Carpenter. At the by-election held on 28 November 2009, this last Willagee vacancy was won by Labor's Peter Tinley, thereby reducing the decline in seat numbers to two. The current party composition of the WA Legislative Assembly is as follows:

Party	Seats
ALP	26
Liberal	24
National	5
Independents	3
Greens	1

What has emerged is an informal coalition government of Liberals and Nationals based on an agreement between Barnett and Grylls, signed on 18 September 2008. The Government also retains office by virtue of continuing support on the floor of the Assembly from one Independent who sits in Cabinet and at least one other Independent.<sup>72</sup> The Government is known as the Liberal/National Government, yet the agreement states that while the parties will operate as a partnership, they 'will not be a coalition'. As in the South Australian agreements

<sup>69</sup> Co-founder with her husband of the Liberals for Forests Party. The Party generally professed itself to be ideologically aligned with the centre-right sympathies of the Liberal Party, but with a greater regard for environmentalism - [http://en.wikipedia.org/wiki/Liberals\\_for\\_Forests](http://en.wikipedia.org/wiki/Liberals_for_Forests)

<sup>70</sup> 'WA government loses first vote since election', [ABC News](#), 6 may 2009.

<sup>71</sup> For an analysis of the electorate see Antony Green's [ABC Elections](#) website - <http://www.abc.net.au/elections/wa/2008/guide/alfr.htm>

<sup>72</sup> Note that an offer of an agreement with the ALP was also made by Alan Carpenter on 12 September 2008 and an agreement drawn up for this purpose. This was in similar terms to that signed with the Liberals, except that certain details varied. For example, clause 2.7 set out those areas where Nationals Ministers would not have to comply with Labor policies in relation to: issues relating to the mining of uranium; issues relating to the growing of genetically modified crops; and issues believed to be matters of conscience. By clause 3.5 the class of interests upon which Nationals Ministers would not have to comply with Cabinet collective responsibility was defined as: issues with direct and immediate effect upon the Nationals' ministers electorates; and such other matters as the Nationals ministers have advised the Premier from time to time in writing.

relating to McEwen and Maywald, the National Party Ministers are exempted from the usual requirements of Cabinet collective responsibility in respect to a defined 'class of issues'. Clause 3.5 sets these out as follows:

- Issues which significantly affect regional Western Australia; and
- Such other matters as the Nationals Leader may have advised the Premier from time to time in writing.

Further, clause 2.8 of the agreement sets out that Nationals Ministers may not have to comply with Liberal policies in relation to: issues which significantly affect regional Western Australia; and issues believed to be matters of conscience.

In two letters from Barnett to Grylls, dated 12 and 13 September 2008, the commitment of the Liberals to the 'royalties for the regions' policy was set out. The policy would be administered by the new Minister for Regional Development, a portfolio that would be filled by the Leader of the National Party. This policy is now in place. The Departmental [website](#) provides this update:

Royalties for Regions is an historic agreement that underlines the State Government's long-term focus on regional development throughout Western Australia. Through Royalties for Regions, the equivalent of 25 per cent of the State's mining and onshore petroleum royalties will be returned to the State's regional areas each year as an additional investment in projects, infrastructure and community services. The money is in addition to regular Budget programs and in 2009-10 it will provide an additional \$619million for regional communities, this represents less than 4 per cent of Western Australia's total budget. The money is being distributed through three funds:

- the Country Local Government Fund;
- the Regional Community Services Fund; and
- the Regional Infrastructure and Headworks Fund (including the Regional Grants Scheme).<sup>73</sup>

In terms of the models and types of minority government, these arrangements do not constitute a concerted reformist agenda. Rather, they express a particular constituency emphasis on regional issues. In keeping with Moon's formulation, the arrangements seem closest to an *Ersatz coalition*, where a collection of balance of power holders are united in respect of a particular social or economic interest which they wish to defend, but otherwise do not wish to challenge the government or the broader status quo. As noted, the one Independent Minister does not seem to have signed any formal agreement in respect to her agenda. The same applies for the other two Independents whose support is more ad hoc yet reliable enough for the Government to have lost very few votes on the floor of the Assembly.

#### 4.9 Australian Capital Territory 2008–to date

The 2008 election for the Australian Capital Territory Legislative Assembly was held on 18 October 2008. The incumbent Australian Labor Party, led by John

<sup>73</sup> Department of Regional Development and Lands (WA) website - <http://www.royaltiesforregions.wa.gov.au/>

Stanhope, was challenged by the Liberal Party, led by Zed Seselja. Full results were officially declared on 29 October, with Labor winning 7 seats, the Liberals 6 seats and the Greens finishing with 4 seats, giving them the balance of power in the 17 Member Legislative Assembly. On 31 October, after almost two weeks of deliberations, the Greens chose to support a Labor minority government. Consequently, Labor was re-elected to a third consecutive term of government in the ACT.

The basis of this arrangement is a Parliamentary Agreement signed on 31 October 2008 by Jon Stanhope and Meredith Hunter, Parliamentary Convenor of the ACT Greens. This agreement is broad based, combining a policy program on such issues as climate change, transport, waste, planning and housing, with an ambitious agenda for parliamentary reform. This includes reforming the committee system to include regular briefings for committees from Ministers in what are called 'collaborative meetings'. Committees would also continue their more adversarial role in scrutinizing the Executive. The establishment of a new system of standing committees is also part of the agreement, as are a review of standing orders and the resources of the Assembly.

In April 2009 the operation of this Parliamentary Agreement was considered by Professor Jenny Stewart in the *Canberra Times*. She said that 'After a scheduled review, both the Greens and Labor have announced they are quite pleased with the way the agreement is working'. However she adds:

But a great deal has changed since November 2008. With the ACT's revenue projections being rapidly revised downwards, the policy commitments will have to wait for better times. Commitments to reductions in greenhouse gas emissions, except insofar as they result from the economic downturn, will also have to wait. The Greens' core constituency will no doubt be disappointed.

On the issue of parliamentary reform, Stewart writes:

What of the Greens' plan to turn the Assembly, as far as its Westminster structures permit, into a much more deliberative chamber? This is a move that will be welcomed by most Canberrans. We know that the ACT runs state-type functions (such as health and education), but with a city rather than a large state or territory to manage, a more collegial, council-style of operation has always seemed preferable to conventional parliamentary proceedings.

As to the implementation of the reform package, Stewart comments:

The agreement sets out a plan for change for both the House and its committees. Firstly, the Greens want to see less political gamesmanship and a more collaborative ethos in the way the Assembly operates. Second, they see an expanded role for parliamentary committees, with a much stronger emphasis on policy-related work.

So how has it been going? So far, at least, it is difficult to find much improvement in the Assembly's proceedings, which remain as politicised (in the form of personality-based contestation) as ever. For many of the

Assembly's members, old habits clearly die hard.

The new committees are just getting underway, and if the Greens retain their energy and commitment, the scrutiny of Bills will be improved, and through appropriate references, the committees will be able to play a much stronger investigatory role than in the past.<sup>74</sup>

More positive was an earlier review by Victor Violante, from 13 February 2009, in the *Canberra Times*. He noted that an independent officer would be created to 'determine whether claims of executive privilege on Government documents were legitimate'. It was also noted that the FOI Act had been amended to remove the Government's 'right to restrict access to documents through the use of conclusive certificates'.<sup>75</sup>

Similarly upbeat is the assessment of the Speaker, the Greens Member Shane Rattenbury. His detailed account of the parliamentary reforms introduced under the agreement, including in respect to the requirement that non-government Members chair certain parliamentary committees, concluded:

good progress has been made in a short period of time on strengthening democracy and asserting the primacy of the Legislature. I believe that this has reasserted the authority of the Legislature in terms of its legislative, accountability and representational responsibilities.<sup>76</sup>

With the articulation of such an ambitious reform agenda, the ACT Parliamentary Agreement is a clear instance of Moon's *Minoritarianism*. It is also clear that the implementation of such an agenda will not be realised over night. A feature of the agreement is that its implementation is to be reviewed by the parties every four months. The second review was at 30 June. The [communiqué](#) on the second joint meeting between the Government and the ACT Greens reported that:

The Government and the Greens have today confirmed that 40 items from the Parliamentary Agreement have now been implemented, another 4 have been partially completed, a further 23 are in the process of being implemented and options are being developed regarding the delivery of another 20 actions. It has been agreed the remaining 12 items will be the subject of further discussion before being progressed.

The communiqué continued:

Actions implemented in full since the last progress meeting, held on 19 February 2009, include:

- Funding appropriated for the reestablishment of an inner south public library service;

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<sup>74</sup> J Stewart, '[Will the Assembly eat its greens?](#)' *The Canberra Times*, 6 April 2009.

<sup>75</sup> V Violante, '[Confidentiality claims will now face scrutiny](#)' *Canberra Times*, 13 February 2009.

<sup>76</sup> S Rattenbury, 'The effect of the ACT Greens/ALP Parliamentary Agreement' (2009) *The Parliamentarian* 240-245.

- Funding for additional resources for the Forensic Mental Health team at the Magistrate's Court;
- The transfer of the Assembly Library to the Assembly's secretariat;
- Funding for a free legal service for people experiencing homelessness;
- A call for expressions of interest in a solar power station;
- Greater resources for cycling infrastructure and an additional \$500,000 per annum of footpath upgrades;
- Early implementation of Stage 1 of the Government's Feed-in Tariff;
- Acceleration of urban creek and wetlands projects including Sullivans Creek; and
- A new Standing Order requiring that all Government amendments to Bills will not be able to be debated unless a scrutiny report from the Scrutiny of Bills Committee has been provided or unless the Assembly agrees the amendment is of an urgent, minor or merely technical nature.

According to the communiqué:

Actions being implemented but not yet fully completed include:

- New Park & Ride facility at Mawson and funding for feasibility studies to investigate locations for facilities at Erindale and Mitchell;
- Standing Committee established on greenhouse gas reduction;
- Planning for a pilot small and micro business forum in conjunction with Focus on Business Month, to test new ways of engaging the small and micro business communities.
- Funding for the development of a Future Waste strategy to include commercial, electronic and organic waste disposal;
- Establishment of an Assembly inquiry into the achievement gap and needs of students with a disability;
- Pilot of gender analysis report in ACT Women's Health Services Plan; and
- Consultancy with the University of Canberra to conduct a scoping study as the first step in the development of a green economy strategy.<sup>77</sup>

Reflecting on the first anniversary of the Parliamentary Agreement, Greens MLA Meredith Hunter said she and her colleagues 'were satisfied the agreement had been given its dues over the past 12 months'. It was reported that the Greens had been criticised for failing to negotiate a Cabinet seat (as in South Australia and Western Australia), but Hunter said the 'party was determined to be its own entity'. She stated:

The Government has to take notice of us. If it wants our support and our vote, it needs to consider our views and negotiate accordingly. We are not here just to support Government measures and our voting record shows

<sup>77</sup> Second Joint Meeting between the ACT Labor Government and the ACT Greens, *Communique*, 30 June 2009 - <http://act.greens.org.au/documents/SecondMeeting.pdf> For the text of the communiqué for the Third Joint Meeting between the ACT Labor Government and the ACT Greens, dated 24 November 2009, see - <http://act.greens.org.au/wp-content/uploads/2009/02/Parliamentary-Agreement-Communique.pdf> A fourth such meeting was held on 16 February 2010.

this clearly. The agreement hasn't stopped us running our own agenda.<sup>78</sup>

On the Greens' voting patterns, Dr Norman Abjorensen commented in October 2009:

To date Labor and Greens have had a harmonious co-existence, but the Greens have also sided with the Opposition almost equally in the chamber. While they have voted with the Government on things such as the 2009-10 budget and the fireworks ban, they have not been constrained from supporting the Opposition's Freedom of Information and proposed election campaign finance reforms.<sup>79</sup>

Similarly, writing of the January to June 2009 period Scott Brenton states:

While the Greens' support of Labor's budget was consistent with the terms of their Parliamentary Agreement, they have also sided with the Liberals on many occasions to scrutinise the Labor government.<sup>80</sup>

#### 4.10 Northern Territory August 2009–to date

On 14 August 2009 Gerry Wood, Independent member for Nelson, signed a Parliamentary Agreement with Paul Henderson, Chief Minister in the minority Labor Government. In a 25 member Assembly the current party political composition is as follows:

Party	Seats
Labor	12
CLP	11
Independents	2

One Independent (Alison Anderson) is a defector from Labor, having resigned from the Government on 4 August 2009, thus precipitating a crisis.<sup>81</sup> The second Independent, Gerry Wood, was left holding the balance of power and he decided to support the incumbent Government. His reasoning was set out in his [speech](#) on the no confidence motion on 14 August 2009. Wood noted that three options lay before him.<sup>82</sup>

<sup>78</sup> J Wright, 'Reflections on a Green year', *Sunday Canberra Times*, 18 October 2009, p 14.

<sup>79</sup> V Violante, 'Lessons learned, an uneasy calm prevails', *Canberra Times*, 17 October 2009, p 1. Abjorensen was reported to be an associate lecturer at ANU and former staffer to Liberal MLA Vicki Dunne. The same report also presents a more critical perspective from former *Canberra Times* editor Crispin Hull, stating: 'The history of the Greens in the ACT is that they are a shadow of the Labor Party. They're almost part of the Labor Party...Sure, they vote against things here or there, but on nothing of major significance have they stared Labor down'.

<sup>80</sup> S Brenton, 'Political Chronicles – ACT, January to June 2009' (2009) 55(4) *Australian Journal of Politics and History* 635 at 636.

<sup>81</sup> For a brief period there were in fact three Independent, but Ms Scrymgour decided to return to the Government ranks.

<sup>82</sup> *Northern Territory Parliamentary Debates*, 10 August 2009 -

- (1) an election which would happen if I could not support either party;
- (2) an agreement with the Country Liberals and an agreement with the member for Macdonnell, the other Independent; and
- (3) an agreement with the Labor government.

Wood opted for Option 3, which involved an agreement with the Chief Minister. He explained 'my prime reasoning was based on stability of government'. Labor was still the majority party, Wood said, and as it was in government no changeover would be required. Having looked at minority governments elsewhere, notably experiences in Canada, he made this statement of constitutional principle:

It should be noted that the accepted process for forming a minority government indicates that the majority party has the first opportunity to try to form government with the support of members of parliament from other parties or Independents.

Wood made it clear that he would remain an Independent, sitting on the crossbenches, and that his support (in respect to Supply and no confidence motions) for the Government was conditional on them delivering on the promises set out in the [Parliamentary Agreement](#), which is a further instance of Moon's ***Minoritarianism***.

The terms of this agreement are wide ranging, including substantial parliamentary and constitutional reforms, as well as other policy measures. Perhaps the most interesting constitutional aspect is the agreement to establish a cross-party Council of Territory Cooperation, comprising 2 Government members, 2 Opposition members and at least one Independent. Among its objects would be to enhance inclusion and transparency in decision making. The Council would be empowered to conduct inquiries, either referred to it from the Assembly or self-referred, and to make recommendations on matters of public importance.

The Government also agreed to reform parliamentary procedures, including reform of question time to allow more non-government questions.

Appendix A to the agreement sets out specific policy commitments. These are under the following headings:

- prison location;
- caravan legislation;
- property law reform;
- lands and planning issues;
- environment protection authority;
- public housing;
- natural resource and the environment;
- strategic indigenous housing and infrastructure program;
- youth; rural area issues;
- special education;

- agriculture;
- local government; and
- miscellaneous.

A broad policy agenda is envisaged therefore, which was expanded upon in Wood's speech of 14 August 2009. While certain deadlines are included under the agreement, implementation remains in its early stages. To offer some indication, consistent with the Parliamentary Agreement, the powers of the Environment Protection Authority have been strengthened.<sup>83</sup> Under the Agreement, legislation was to be introduced by November 2009. Progress has also been made on establishing the Council of Territory Co-operation, which was established as a sessional committee on 14 October and held its first round of public hearings in Darwin on 9 November 2009, chaired by Gerry Wood.<sup>84</sup> The six-person Council, comprised of two Labor, two CLP and two Independent Members, tabled its first report on 24 February 2010.<sup>85</sup>

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<sup>83</sup> Minister for Natural Resources, Environment and Heritage (NT), 'More power to protect our environment', *Media Release*, 18 February 2010 - <http://newsroom.nt.gov.au/index.cfm?fuseaction=viewRelease&id=6562&d=5>

<sup>84</sup> Council of Territory Co-operation website - [http://www.nt.gov.au/lant/parliament/committees/CTC/Council\\_of\\_Territory\\_Cooperation.shtml](http://www.nt.gov.au/lant/parliament/committees/CTC/Council_of_Territory_Cooperation.shtml) Woods has said that the Council's first report will include 20 recommendations – A Middleton, 'Cooperation council to make 20 recommendations', *ABC News*, 22 February 2010 - <http://www.abc.net.au/news/stories/2010/02/22/2826590.htm>

<sup>85</sup> Northern Territory Chief Minister, 'Council delivers landmark report', *Media Release*, 24 February 2010 - <http://www.newsroom.nt.gov.au/index.cfm?fuseaction=viewRelease&id=6588&d=5>

## 5. CONSTITUTIONAL ISSUES

It is said that ‘there are no “rules” about government formation from a hung Parliament’ – aside, that is, from the principle that the person best able to command a stable majority in the Lower House (or at least maintain a stable government) should be appointed.<sup>86</sup> Australian experience over the past 20 years bears out that observation. In several instances minority governments have been formed on the basis of agreements with the major party holding the most seats in the Lower House, but not in every case, as illustrated by the following table.

**Table 6 – Minority government ruling parties that did and did not have more seats in the Lower House than any other party**

State/Territory	Ruling party had more seats than any other party	Ruling party did not have more seats than any other party
Tasmania 1989		✓
NSW 1991	✓	
Queensland 1996	Equal numbers	Equal numbers
Queensland 1998	✓	
ACT 1998	✓	
Victoria 1999		✓
South Australia 2002	✓	
Western Australia 2008		✓
ACT 2008	✓	
Northern Territory 2009	✓	

Under the NSW Charter of Reform of 1991, the Independents reserved the right to move a no confidence motion in the Government if the Government (defined so as to include the Independent Tony Windsor) had fewer Members in the Assembly than the ALP and ‘satisfactory government’ was not being provided. This last condition, concerned with the provision of ‘satisfactory government’, suggests that the formation and maintenance of stable government is the key consideration in respect to minority government. It is substance not form that matters, with the actual operation of government taking precedence over the mere counting of numbers.

There are sure to be different perspectives on this issue, but generally on the evidence from the Australian States and Territories is that hung Parliaments can produce workable, stable minority administrations, based on agreed rules as to the circumstances under which Independents and minor parties will and will not support the government of the day. From this, as from recent experience with minority governments in New Zealand, Scotland and Wales, there is no doubt that they can be compatible with the Westminster model of parliamentary government.<sup>87</sup>

If there is a departure from that model it is in respect to the ‘loose coalitions’

<sup>86</sup> J Waugh, ‘Minority government in Victoria’ (March 2000) 11 *Public Law Review* 11. Waugh was writing with reference to Rodney Brazier, *Constitutional Practice*, 2<sup>nd</sup> ed, Clarendon Press 1994, p 26. See also Brazier, 3<sup>rd</sup> ed, n 3, p 31.

<sup>87</sup> V Bogdanor, n 6, Ch 5.

operating in the ACT in 1998-2001, South Australia in 2002-2006 and in Western Australia since the general election of 2008. As noted, the original ACT experiment followed on from the April 1998 Pettit report, *Review of the Governance of the ACT*, which envisaged a 'looser coalition arrangement that would enable some cross-benchers to serve as Ministers'. As formulated in the Pettit report, the key elements to the arrangements were that:

- the cross-bench Minister should be willing to give prior notice of the sorts of issue on which they reserve the right to dissent in public and in the Assembly;
- the Minister should be willing, where it falls within their brief, to act in implementation of a decision from which they dissent; and
- the Minister should be prepared to renounce the use in Cabinet negotiations of the threat to resign.<sup>88</sup>

The seemingly novel aspect of these arrangements refers to the suspension of the unanimity element of collective responsibility on certain issues. The centrality of that doctrine to the working of responsible government was discussed in *Egan v Chadwick* where Spigelman CJ observed:

The Cabinet has remained the 'cornerstone' of the system of government in New South Wales. Collective responsibility to Parliament, even if sometimes honoured in the breach, has remained a distinctive characteristic of that system. It is usually referred to as a constitutional convention.<sup>89</sup>

Twomey explains:

One aspect of collective ministerial responsibility is that Ministers share responsibility for major government decisions, particularly those made by the Cabinet and, even if they personally object to such decisions, Ministers must be prepared to accept and defend them or resign from the Cabinet.<sup>90</sup>

On the subject of Cabinet unanimity or solidarity, RAW Rhodes, John Wanna and Patrick Weller present this formulation of principle:

Cabinet solidarity and collective responsibility are twin dimensions of responsible government that enjoy constitutionality, albeit informally. They lie at the core of ministerial governance. Cabinet solidarity is purely a political convention designed to maintain or protect the collective good as perceived by a partisan ministry. It rests on the notion that the executive ought to appear a collective entity, able to maintain cohesion and display political strength.<sup>91</sup>

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<sup>88</sup> P Pettit, *Review of the Governance of the ACT*, April 1998, p 54.

<sup>89</sup> (1999) 46 NSWLR 563 at para 43.

<sup>90</sup> A Twomey, *The Constitution of New South Wales*, Federation Press 2004, p 694.

<sup>91</sup> RAW Rhodes, John Wanna and Patrick Weller, *Comparing Westminster*, Oxford University Press 2009, p 127.

It may be that the extent to which the arrangements discussed in the Pettit report and later implemented in three Australian jurisdictions depart fundamentally from constitutional practice should not be overstated. This is especially the case in the light of British constitutional history where, in exceptional cases, the suspension of collective Cabinet unanimity has been achieved either by an 'agreement to differ' on certain issues, or by declaring certain issues to be 'open questions'. Ian Killey states:

The issue of Catholic Emancipation was regarded as an 'open question' by the British Cabinet between 1812 and 1829, as was women's suffrage in 1884 and between 1906 and 1914 and tariff reform between 1903 and 1905 and in 1932. More recently in 1975, Harold Wilson allowed Ministers to 'agree to differ' on the question of whether the UK was to remain in what was then known as the Common Market. Ministers were, however, not permitted to differ in the house, but only 'in the unique circumstances of the referendum campaign in the country'.<sup>92</sup>

Likewise, exceptional cases have arisen in Australia, where similar arrangements for 'open questions' have been made. Discussed by Killey are the examples of the republic referendum and stem cell research federally, and in Victoria the instance of legislation to decriminalize abortion. Somewhat different is the New Zealand position where, in order to facilitate the formation of broad coalition administrations, the Cabinet Manual includes procedures for Ministers to 'agree to disagree'. Clause 5.25 of the Cabinet Manual provides:

Coalition governments may also decide to establish 'agree to disagree' processes, which may allow Ministers to maintain, in public, different party positions on particular issues or policies. Once the final outcome of any 'agree to disagree' issue or policy has been determined (either at the Cabinet level or through some other agreed process), Ministers must implement the resulting decision or legislation, regardless of their position throughout the decision making process.<sup>93</sup>

Clause 5.26 adds:

'Agree to disagree' processes may only be used in relation to different party positions within a coalition. Any public dissociation from Cabinet decisions by individual Ministers outside the agreed processes is unacceptable

The agreements reached in the ACT, South Australia and Western Australia discussed in this paper can be seen as extensions on this theme. Whereas the New Zealand arrangements are designed for actual coalitions, in the Australian precedents the participating Ministers retain their independence and operate only within a loose coalition, subject to agreed conditions. For Killey, this is a 'new experiment'.<sup>94</sup> He quotes the leader of the Western Australian Nationals, Brendon

<sup>92</sup> I Killey, *Constitutional Conventions in Australia*, Australian Scholarly Publishing 2009, p 78.

<sup>93</sup> Quoted in Killey, n 92, p 82. New Zealand Cabinet Manual 2008 - <http://www.cabinetmanual.cabinetoffice.govt.nz/5.11>

<sup>94</sup> Killey, n 92, p 85.

Grylls, on the subject of Cabinet unanimity as follows:

We are not prepared to go into a traditional coalition so we will be accepting ministries dependent on being independent Ministers who reserve the right to exempt ourselves from cabinet and vote against an issue on the floor of the Parliament if it's against the wishes of the people we represent.<sup>95</sup>

The terms of the Western Australian agreement, signed by Premier Barnett and Brendon Grylls on 18 September 2008, are based squarely on the earlier agreement reached in South Australia between Premier Rann and Rory McEwen. The Western Australian agreement provides:

The Premier and Nationals Leader agree that Nationals Ministers will have a special position in Cabinet in that, by reason of their non-affiliation with the Liberal Party, there is a class of issues in respect of which it will not be possible always for the Nationals Ministers to be bound by a Cabinet decision (the class is defined in clause 3.5 and are referred to in this Agreement as 'Issues'). The agreement reached between the Premier and Nationals Leader is intended to reduce to a minimum any matters where the Nationals Ministers will not be able to agree to a decision of Cabinet, but acknowledges that when such a circumstance arises, the parties will seek to identify it as early as possible and the Nationals Ministers will absent themselves from the Cabinet discussion at the earliest time.

Clause 3 of the agreement then sets out the procedures and rules involved for 'attendance at Cabinet'. Basically, after receiving Cabinet papers and finding that it would be inconsistent with their independent status to be bound by a Cabinet decision, Nationals Ministers must inform the Nationals Leader who must, in turn, meet with the Premier to seek an accommodation on the issue. The issues upon which Cabinet unanimity may not apply are limited to: issues which significantly affect regional Western Australia; and other matters as the National Leader may have advised the Premier from time to time. Despite the emphasis on regional matters, there is therefore no actual restriction on the issues upon which the parties may 'agree to disagree'. Where no accommodation can be reached, Cabinet papers are to be returned by Nationals Ministers who are to absent themselves from relevant Cabinet discussions. Subsequently, the Nationals Ministers may disagree publicly with the policy in question but only after it has been publicly announced. Clause 3 ends by stating that, except as provided in the agreement, Nationals Ministers will be 'full members of the Cabinet', subject to 'the usual rules of Cabinet solidarity'.

The particular agreements in place in Australia are not discussed by Vernon Bogdanor in *The New British Constitution*. However, his commentary does suggest that such arrangements may be relevant in the future in Britain, especially in the devolved Scottish Parliament, where a loose coalition might exist 'on something like a "confidence and supply" basis, that is, to allow the convention of collective responsibility to be suspended for key matters on which the parties to the coalition disagree'.<sup>96</sup> Indeed, having reviewed the constitutional precedents, Bogdanor goes

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<sup>95</sup> Killey, n 92, p 86

<sup>96</sup> Bogdanor, n 6, p 133.

on to say: 'The implication would seem to be that collective responsibility is as much a maxim of political prudence as it is a convention of the constitution'.<sup>97</sup>

## 6. CONCLUDING COMMENTS

What has emerged over the past 20 years or so is the normalization of accords, agreements or charters of reform as the basis of mostly stable minority governments in the Australian States and Territories. While the arrangements in place are the products of their own unique political circumstances, the history of these agreements also shows the extent to which each instance builds on the accumulated experience of minority governments in Australia. These agreements further suggest that balance of power holders are well positioned to gain certain pay-offs, be it in terms of official positions, constituency interests, broader policy interests and/or constitutional and parliamentary change.

Conversely, such arrangements tend to involve costs for the major parties that form government, for example, in terms of compromised legislative programs, time spent in negotiation and the potential for the emergence of personality differences between the leading political players. Nonetheless, the evidence suggests that such costs are generally outweighed by the perceived benefits of office, especially in those circumstances where more or less stable minority government is formed on the basis of an accord, charter or agreement. Exceptions will apply, but for the most part qualified or conditional power of the kind enjoyed by minority governments is, it seems, preferable to Opposition.

It may also be the case that minority governments can be formed more readily and successfully at a time when, at State and Territory level, the distinctions between the major parties tend to be expressed more in terms of claimed administrative competence than in terms of deeper ideological or policy differences. But, again, exceptions are sure to arise.

A final reflection relates to the argument that the Accord reached between the Tasmanian Greens failed in part because it was so highly prescriptive, in terms of desired policy outcomes and deadlines for their achievement. Another way of looking at the Tasmanian example is that the Accord was prescriptive about forestry and related issues over which the major parties could not deliver without alienating a significant proportion of their own supporters. This contrasts with more recent agreements, which are also prescriptive in nature, but where the issues tend to focus more on local issues, or on rural and regional interests generally. In the context in which they were formulated, these are less divisive and contested policies than those of the Tasmanian Greens and are therefore less likely to undermine government stability, or to result in frustrating outcomes. To take one example, the fact is that the environmental demands of the ACT Greens function in an entirely different political context to those of their Tasmanian counterparts. Politics is ever the art of the possible.

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<sup>97</sup> Bogdanor, n 6, p 136.