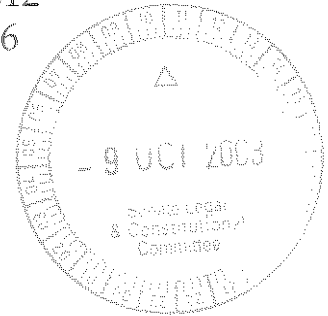


Malcolm Mackerras
35 Creswell Street
Campbell ACT 2612
Tel: (02) 6248 8396
1 October 2003



Ms Louise Gell
Secretary
Legal and Constitutional Legislation Committee
Department of the Senate
Parliament House
Canberra, ACT, 2600

Dear Ms Gell

You wrote to me a letter dated 15 September 2003 which informed me that the Senate had referred Senator Andrew Murray's State Elections (One Vote, One Value) Bill for inquiry by the Committee of which you are the secretary. Your letter contained this sentence: "The Committee would be very grateful for your input to this inquiry . . ."

To be honest with you my indifferent attitude to this Bill led me initially to ring you to say why I did not feel disposed to help. However, your encouragement caused me to change my mind. I decided I would write down my views which should be lengthy and considered. In consequence I thank you for sending to me (at my request) a copy of the Bill itself, plus the Second Reading speech by Senator Andrew Murray on Tuesday, 7 August 2001 (Senate Hansard pages 25746 to 25748) plus the debate on Thursday, 21 August 2003 (Senate Hansard pages 13855 to 13872). I have read all that material enough to be informed. Since I am in regular receipt of media releases from Senator Murray I had already received his one-page release on the day of the recent debate. That release was headed "Malapportionment Sets WA Back - State Needs Reform Now".

I admit that my indifference is due, in part, to my assessment that this Bill will not pass through the current (Fortieth) Parliament. In that it contrasts greatly with the Commonwealth Electoral Amendment (Representation of Territories) Bill 2003 which excites my hostility largely because of my expectation that it will pass

through the Fortieth Parliament. In order to inform you and the senators of the state of my mind I enclose a recent (23 September) article in "The Canberra Times" on that subject. That was a case where I took the initiative. On Senator Murray's Bill, by contrast, I write opinions solely because they have been requested of me.

If I were presently an Independent senator how would I vote on this Bill? Having read the speeches by senators Johnston, Boswell and Lightfoot I have to say that I would vote with them against this Bill. My speech as a putative Independent senator would be very different in tone from their speeches but I would still vote with them none-the-less.

Twenty years ago my views on these questions were rather different from what they have now become. Twenty years ago I thought of Proportional Representation as merely an option, but of One Vote, One Value as a democratic principle handed down from the moral high ground. Today I think of both these things as being options which, broadly speaking, are desirable but which are not (neither of them) indispensable to a democratic order. No Australian jurisdiction today embraces any electoral practice which excites my hostility. To the extent that different party systems exist in our different legislatures I explain the differences with Tom Stoppard's remark that "It's not the voting that's democracy, it's the counting". Different forms of counting can each be quite legitimate, depending upon the circumstances. Essentially legitimacy is conferred by acceptance.

During the period when Bob Hawke was Prime Minister two events occurred which changed my thinking. The first was a Queensland state election held on Saturday, 1 November 1986. The second was a referendum question with the title "Constitution Alteration (Fair Elections) 1988". This latter was one of four questions placed before the Australian people at the referendum held on Saturday, 3 September 1988. I want to say something about each of these events.

That 1986 Queensland election was the last which returned Joh Bjelke-Petersen as Premier. The political class had largely convinced itself that Joh's tenure as Premier was explained by what it would usually call the "infamous National Party gerrymander". Many commentators predicted Joh's defeat at that election. When he stormed back to yet another victory they were

quick to explain it as proof of the gerrymander's existence. The statistics seemed plausible. Joh's National Party secured 40 per cent of the vote and won 49 seats. Labor secured 41 per cent of the vote and won 30 seats. The Liberal Party secured 17 per cent of the vote and won 10 seats. All the rest collected the remaining two per cent of the vote and won no seats. The proof of the gerrymander's existence required no further evidence!

My reaction was to analyse the figures properly. I discovered that the result would have been exactly the same even if the electoral boundaries had been based on One Vote, One Value. I was able to find plenty of interstate election results of similar kind occurring under One Vote, One Value. Consequently I wrote several articles in newspapers and academic journals to prove that Queensland's system of single-member electorates with preferential voting explained the disproportionalities which the propagandists claimed were proof of the gerrymander. They were nothing of the kind. The disproportionalities were not the consequence of the malapportionment. They merely proved that Queensland did not employ a system of Proportional Representation.

I now move forward to 1988. When "Constitution Alteration (Fair Elections)" was being debated there were people who wanted to know my views. Consequently I wrote newspaper articles explaining why I would be voting NO. Essentially I saw that referendum as being about dismantling the "infamous Queensland National Party gerrymander". Consequently I explained that the beast in question was nowhere like as bad as it had been made out to be. More importantly I considered that this was a question to be settled within Queensland itself. Reformers should, I argued, operate within the processes provided by Queensland. The question was none of my business.

The typical Australian intelligence operated yet again. The YES vote was 3,538,817 and the NO vote was 5,874,558. These latter were those who joined me in saying: "It is none of my business". Their number exceeded the busybody ideologues by more than two million and they prevailed in every state including, be it noted, both Queensland and Western Australia.

Herein lies the nub of my objection to the State Elections (One Vote, One Value) Bill 2001. The Bill is an attempt to get around the

clearly expressed (and intelligently expressed) verdict of the Australian people delivered in September 1988. Those who want to reverse that verdict should try for another referendum. They should not attempt to get around the popular verdict by the employment of the external affairs power of section 51 of the Constitution, about which I have more to say later in this letter.

Back in 1988 Queensland was the Bad State in the eyes of the One Vote, One Value ideologues. Today Western Australia is the Bad State so I propose now to say something about Western Australia specifically, comparing it first with Queensland and then with New South Wales. In particular I hope to tender some friendly advice to Senator Bartlett.

I attach four tables. They were not prepared specifically for this submission. Rather, they were prepared for my students to accompany lectures I gave a couple of months ago. I take the tables in turn. The Legislative Assembly of Western Australia is now the only malapportioned Australian lower house. However, the disproportionalities shown in Table 1 are not explained by that fact. More interesting, perhaps, is the point that the party most over-represented (Labor) is the one now pressing for reform.

The point about Table 2 is that the malapportionment for the WA Legislative Council is now the second worst in Australia, second only to the federal Senate. If "unrepresentative swill" is an appropriate term for a malapportioned upper house then they are the two which merit that particular porcine description.

Yet for many years I have argued that the Senate is the most valuable house of all Australian legislatures. That is why I have always instinctively said NO to "Senate reform" as proposed by successive Prime Ministers – and I would do so again. I am dead against any Senate reform. It is the House of Representatives which is "unrepresentative swill". At a state level it seems to me that the WA Legislative Council is the chamber most like the Senate – malapportioned, indeed, yet turning in results which are very fair. That is the point of Table 2.

The interesting feature of Table 3 is that it shows the situation in Queensland now that the "infamous National Party gerrymander" has been dismantled. Yet imagine this possible result when Joh was Premier. Suppose the National and Liberal parties had each

received the same vote but the Nationals had won four times as many seats as the Liberals. Those statistics would have been taken as the ultimate proof of the existence of the gerrymander!

The point about Table 4 is to demonstrate to my students how Labor can no longer complain about the electoral system anywhere in Australia. For all jurisdictions the votes are taken from the most recent general election statistics. Seats are the current number of Labor seats taken as a percentage of the total lower house. Clearly Labor, even in Western Australia, has no ground to complain that lower house results there are unfair. All Labor can do is state their ideological objections – as distinct from unfairness of actual results. However, what about the upper house in Western Australia?

The interesting point from Table 2 is that the combined parties of the Left (Labor and Greens) have a majority there (18 to 16) yet they combine to secure only 46 per cent of the vote. It seems to me, therefore, that Australian parties of the Left should join with me in praising the two most malapportioned houses in this country, the Senate and the WA Legislative Council.

I wrote above that “I hope to tender some friendly advice to Senator Bartlett”. What did I mean? In his speech on 21 August 2003 (Senate Hansard page 13856) Senator Bartlett quoted enrolment statistics from the February 2001 WA general election. My advice to him is that next time he should quote from the subsequent redistribution of seats. These figures were available when he made his speech so let me give them now. Although the redistribution was completed this year the statistics are for 2002. Thus when I say that “Wanneroo has 22,525 electors” I mean that, at the relevant date in 2002, it had that number. (Senator Bartlett quoted the Wanneroo number as 37,720 which was the number at the February 2001 general election).

Under the current redistribution (the maps for which will apply at the general election likely to be held in February 2005) the total number of electors is 1,215,377, being 899,450 in the Metropolitan Area and 315,927 in the Country Area. There being 34 seats in the Metropolitan Area the quota there is 26,454. There being 23 seats in the Country Area the quota there is 13,735. In the Metropolitan Area the range is from a high of 28,614 in Riverton to a low of 22,525 in Wanneroo. In the Country Area the range is from a high

of 15,335 in Warren-Blackwood to a low of 12,104 in Leschenault, a district whose enrolment is growing very rapidly. The district largest in area is Murchison-Eyre and it has an enrolment of 15,174.

At the next general election it will probably be true that the biggest enrolment will be double that of the smallest. A One Vote, One Value ideologue will be shocked by that. I am not shocked because I know that the most recent map produced results that were as fair in practice as would have been produced by a One Vote, One Value distribution. I have also analysed the new boundaries and come to the conclusion that the result of the next WA election will be as fair as would be the case if the whole operation were to be done all over again to conform to the principle of One Vote, One Value.

Let me explain why I praise the current redistribution of seats in Western Australia and let me contrast this with the situation for the New South Wales Legislative Assembly. For that reason I enclose three pendulums which I now explain.

The first pendulum for Western Australia is simply the result of the 2001 general election. Given that the median seat of Riverton had a Labor two-party preferred vote of 53 per cent it is difficult for Labor to complain when its overall vote was 52.7 per cent. Labor is entitled to have an ideological objection to the 2001 boundaries but it cannot complain that the result was any less fair between the parties than that which would have occurred on boundaries meeting Labor's idea of fairness.

The next WA pendulum transposes the vote to the new boundaries. The position of the median seat remains almost unchanged. Therefore, in my opinion this is a good redistribution which is a malapportionment but is certainly not a gerrymander.

It is at this point that I have fun with my students. I ask them this question: in which seat will you get the better value for your vote at the February 2005 general election – Riverton or Merredin? The correct answer ideologically is that Merredin voters (of which there are now 14,244) will get twice as good a vote as those of Riverton (of which there are now 28,614). However, that is not the answer they give. They say that a vote in Riverton is really worth casting because such a vote could be critical to the future of

Doctor Geoff Gallop and Mister Colin Barnett. By contrast a vote cast in Merredin is effectively worthless because Labor cannot possibly win Merredin. Who can dispute the common sense answers they give to my question?

My reason to include the pendulum for New South Wales is to illustrate my skepticism about One Vote, One Value. If the Coalition were to secure, say, 52 per cent of the overall two-party preferred vote at the next NSW general election they would not be likely to win. Nor is it likely that the forthcoming redistribution (based impeccably upon the principle of One Vote, One Value) will rectify that.

Back on page 2 of this letter I wrote:

If I were presently an Independent senator how would I vote on this Bill? Having read the speeches by senators Johnston, Boswell and Lightfoot I have to say that I would vote with them against this Bill. My speech as a putative Independent senator would be very different in tone from their speeches but I would still vote with them none-the-less.

Now I want to qualify that. I want to say that I agree explicitly with the third, fourth, fifth, sixth, seventh, eighth, ninth and tenth paragraphs of the speech of Senator Johnston (Senate Hansard pages 13860 to 13861) dealing with the external affairs power under section 51 placitum (xxix) of the Australian Constitution. In case my opinion not be understood I indicate the portion of his speech as being that quoted below:

In the time allocated to me I seek to argue against this bill on the following bases: firstly, that article 25 is already being fully complied with and is therefore superfluous and irrelevant to the states . . .He (Senator Murray) needs to further engage the powers contained within section 109 of the Constitution in order to override the present constitutional electoral enactments contained within each of the states.

I have used those middle dots to save space in my quotation. I suggest senators read that whole passage because his views are mine also. That is not to say that I agree with Senator Johnston on

other cases coming under section 51 (xxix). For example, I favour the use of that power in relation to moral issues as opposed to political issues. I favour the use of that power for the conservation of world heritage properties. And I could probably think of other cases where I would favour the use of that power where Senator Johnston would not.

However, even an avowed centralist must draw the line somewhere and I make no secret of where I draw my line. I am opposed to the use of the external affairs power in respect of this political issue in the circumstance where the intention is to bypass the verdict of the Australian people. I rest my case, therefore, upon the fact that the views of the Australian people were clearly expressed and (dare I say it) intelligently expressed by the referendum vote cast on Saturday, 3 September 1988. To the proposal with the title "Constitution Alteration (Fair Elections) 1988" the YES vote was 3,538,817 and the NO vote was 5,874,558.

So far as I am concerned that was that, and remains so until the Australian people reverse their verdict.

Yours sincerely

A handwritten signature in cursive script that reads "Malcolm Mackerras".

Malcolm Mackerras

Western Australian Disproportionalities: General Election 10 February 2001

Table 1: Legislative Assembly

Party	% vote	Seats	% seats	Over-representation
Labor	37.2	32	56.1	+18.9
Liberal	31.2	16	28.1	-3.1
National	3.3	5	8.8	+5.5
One Nation	9.6	-	-	-9.6
Greens	7.3	-	-	-7.3
Democrats	2.6	-	-	-2.6
Others	8.8	4	7.0	-1.8

Table 2: Legislative Council

Party	% vote	Seats	% seats	Over-representation
Labor	37.9	13	38.2	+0.3
Liberal	34.0	12	35.3	+1.3
National	2.4	1	2.9	+0.5
One Nation	9.9	3	8.8	-1.1
Greens	8.0	5	14.8	+6.8
Democrats	3.7	-	-	-3.7
Others	4.1	-	-	-4.1

Table 3: Queensland Disproportionalities: General Election 17 February 2001

Party	% vote	Seats	% seats	Over-representation
Labor	48.9	66	74.2	+25.3
National	14.1	12	13.5	-0.6
Liberal	14.3	3	3.4	-10.9
ONP	8.7	3	3.4	-5.3
Others	14.0	5	5.5	-8.5

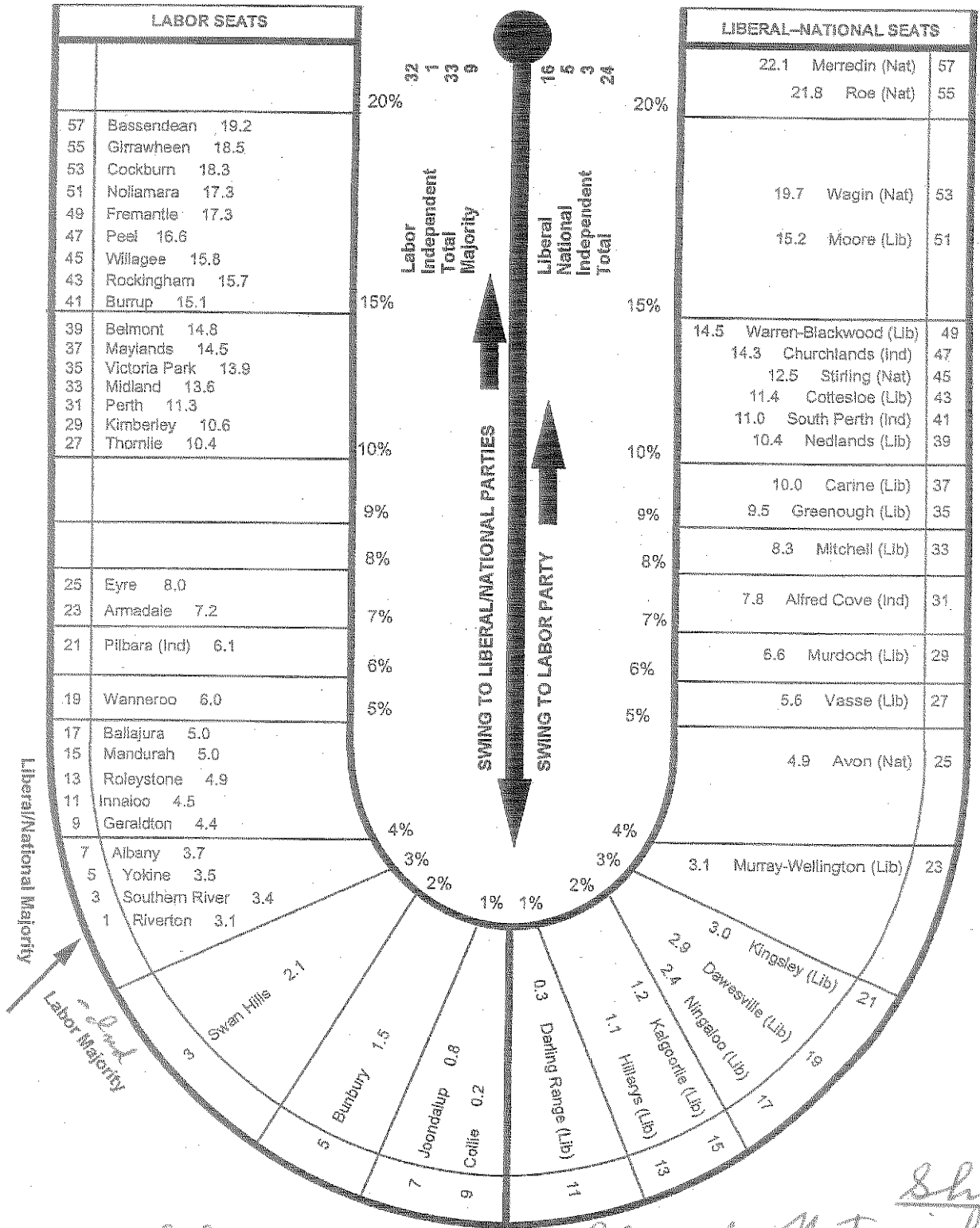
Table 4: Labor's Over-representation in Australian Lower Houses

State	% votes	% seats	Over-representation
Beattie (Qld)	48.9	74.2	25.3
Bracks (Vic)	47.9	70.4	22.5
Gallop (WA)	37.2	56.1	18.9
Carr (NSW)	42.7	59.1	16.4
Rann (SA)	36.3	48.9	12.6
Martin (NT)	40.6	52.0	11.4
Stanhope (ACT)	41.7	47.1	5.4
Federal Labor	37.8	42.7	4.9
Bacon (Tas)	51.9	56.0	4.1

This is the actual result of the election held on the old boundaries on 10 February 2001. Below are shown the percentage shares of the two-party preferred vote.

WESTERN AUSTRALIAN ELECTORAL PENDULUM

two-party preferred vote.



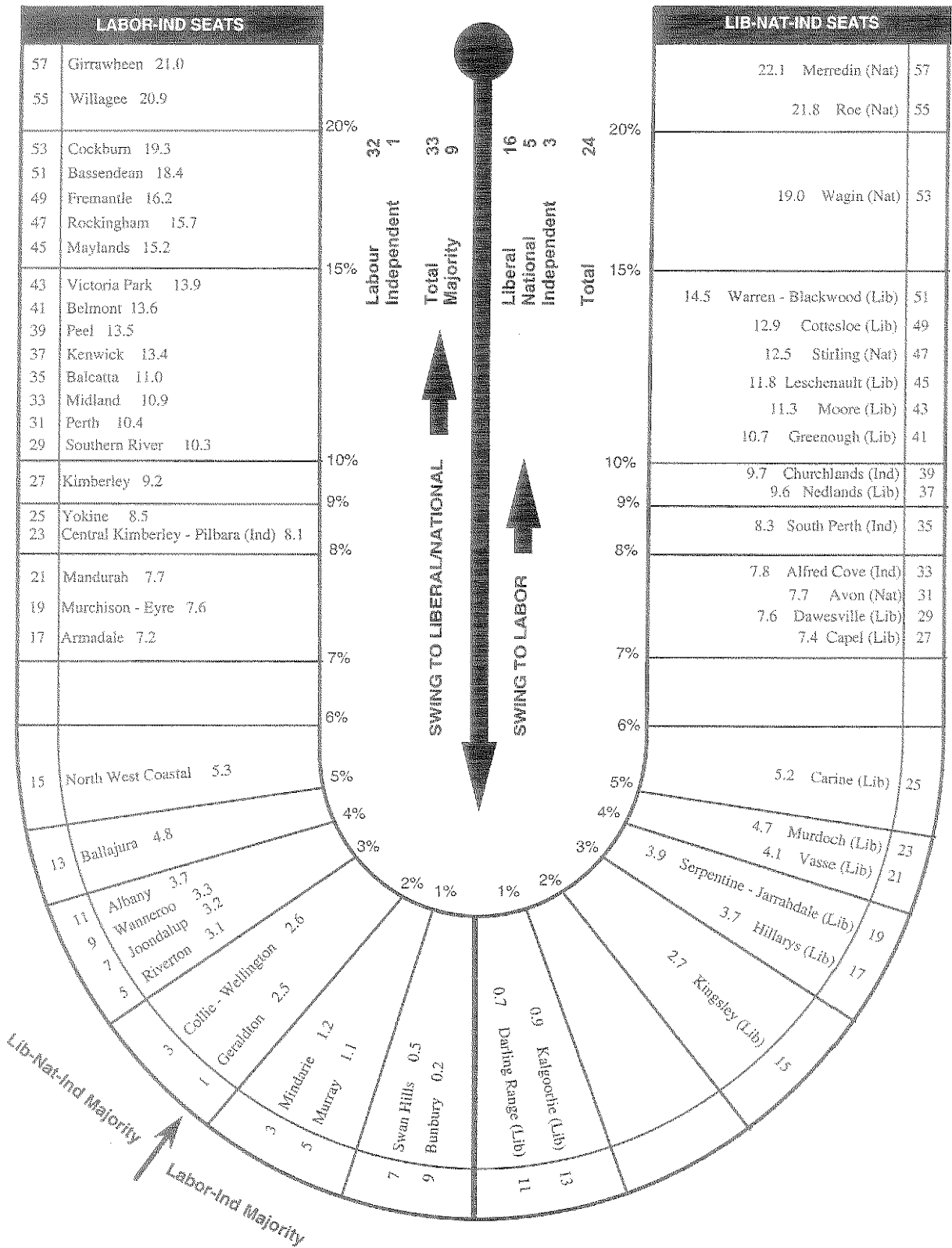
Labor Share

Liberal-National Share

52.7%

47.3%

WESTERN AUSTRALIAN ELECTORAL PENDULUM

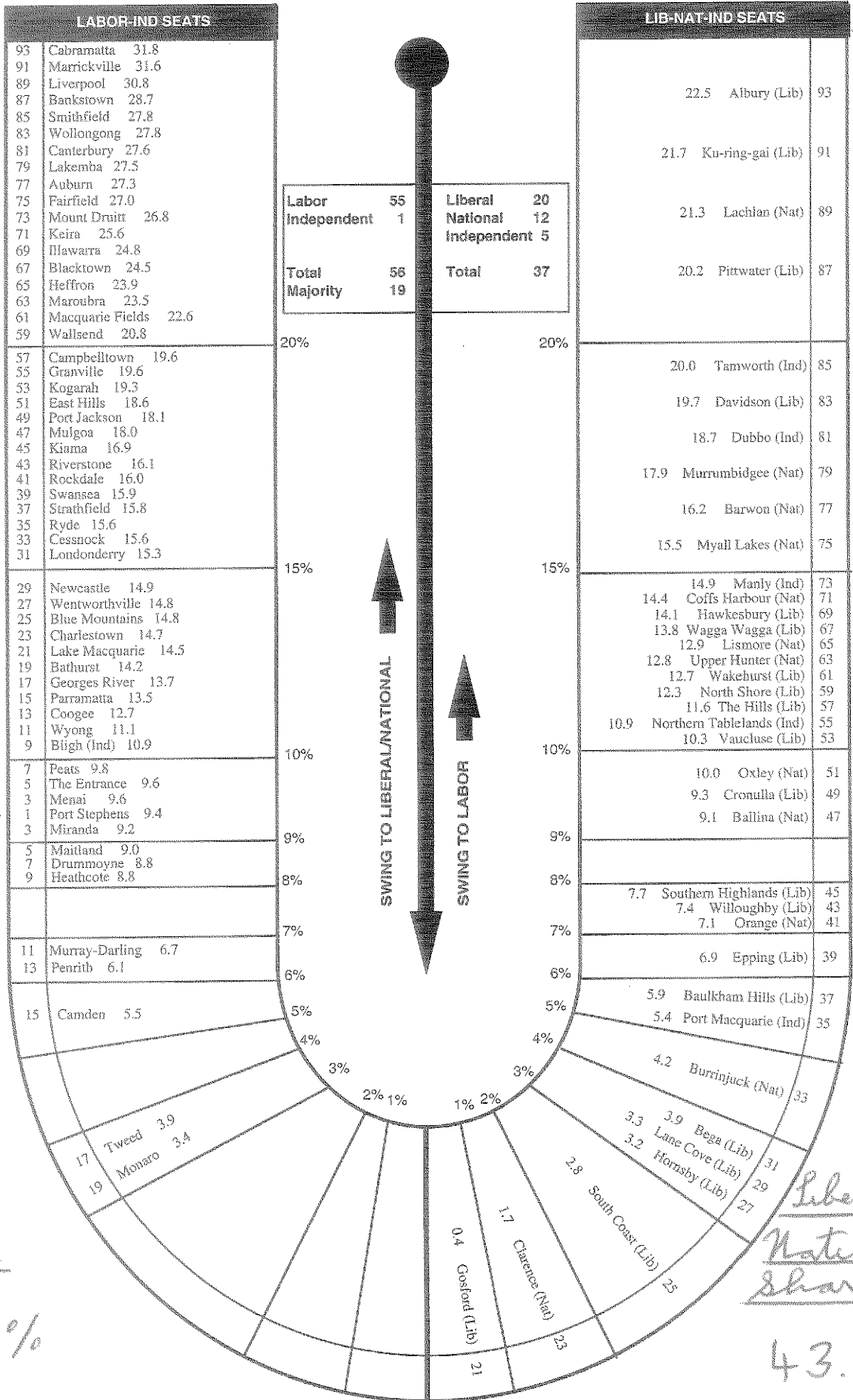


This pendulum is the 2001 result transposed to the new boundaries. The vote shares remain the same.

Labor Share

Liberal - National Share

NEW SOUTH WALES ELECTORAL PENDULUM



Labor Share

56.2%

Liberal-National Share

43.8%