

Tasmanian Politics in 2006: Hanging the Small Parliament

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In prognosticating about the political year ahead for Tasmania, it was impossible to go much further than the fact that a general election must be held this year. Of course, each election produces its own uncertainties but the 2006 election seems likely to raise an unusually new set. These are casting a long shadow over the horizon.

Although the circumstances will be new, the public's attention will be focused on a well-established motif. This year we are going to hear a great deal about the dangers or joys of a "hung parliament". Most of what is said will be just as wrong or biased today as for the past decades; depending more on prejudice than fact.

However, my address today is not to argue the merits or otherwise of a non-majority Parliament. Rather, it is to show how disastrously the reduction in the size of the Parliament in 1998 has exacerbated the consequences of a non-majority result. Given that this is a genuine possibility at the election soon to be held, it may be a very important factor in forecasting the political year ahead.

The "Hung Parliament"

To start, the phrase "hung parliament" has nothing to do with the powers of the parliament to express the will of the people or to elect a Government. Instead, it is all about the power of political parties and their control of government. It is used more as an epithet to conjure up a negative image of the parliament rather than a political reality.

The term entered the political lexicography only recently. The first recorded usage appears to have been in an *Economist* reference to the non-majority result of the February 1974 British general elections. Clearly the *Economist* did not like the prospect of the first minority Government in the UK since 1929.

The phrase was derived, as a disparaging analogy, from that of the "hung jury". The analogy appealed, it seems, as it suggested a parliament unable to reach a decision. However, this analogy is entirely without foundation.

A Westminster parliament cannot be "hung" whatever some voters might wish to do with some of its politicians. Since 1688, the Westminster parliament has been supreme politically – that is, in control of its own affairs.

The historical record on "hung Parliaments" at the State level is mixed. Five elections out of 15 over the past 50 years have produced non-majority results and they have occupied about 17 years of this half-century.

The business community has favoured majority Government but the reasons for this appear to lie more with a preference for dealing with an opaque executive than a

transparent Parliament. Certainly it is not based on the issue of instability or a lack of resolute decision-making.

It was the minority Field Government that is credited with putting the State on an even economic keel after the financial extravagances of the majority Gray Government in the 1980s. Similarly it was the majority Groom Government that passed the 40% pay rise for politicians. Yet it was the coalition Bethune Government that reformed the legal code and the minority Rundle Government that amended the State's archaic homosexuality laws.

This is not to argue that minority Governments are preferable to majority Governments. Instead, it is to show that minority Governments have scarcely been unmitigated disasters while majority Governments have perpetrated many of the public complaints against government. Indeed, most of what one side or the other of politics has not liked about public policy over the past 50 years has been done by the majority Governments that have dominated this era!

What are the odds of a non-majority Parliament in 2006?

The first step in unraveling the linkages between the 1998 reduction in the size of the Parliament and the consequences of a non-majority election result is to consider the likelihood of the latter at the next State election.

There is always an element of uncertainty about predicting any electoral outcome but even more so in Tasmania with its unique Hare-Clark system of proportional representation. The primary systemic reason for this is the very large margin of error in deciding the fifth seat in every electorate. This year, there is an additional special circumstance. The polls have been erratic but generally against the Government for some time.

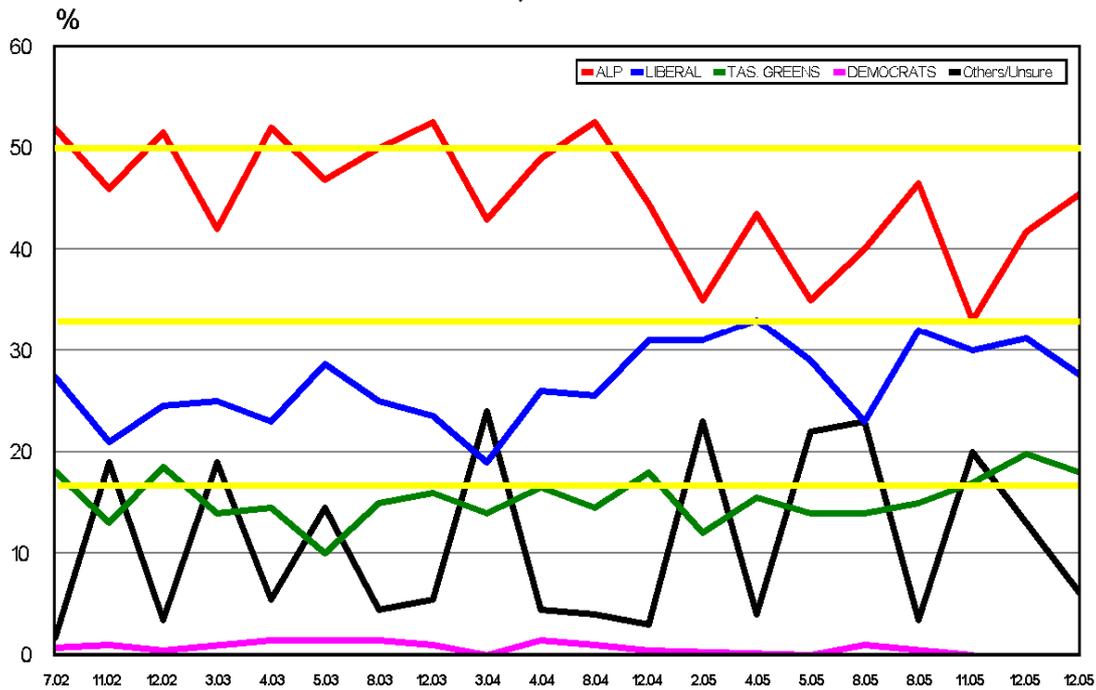
The final seat in any one of Tasmania's five State constituencies is typically a "bun fight" and so very difficult to predict. The eventual outcome will be determined by such vagaries as:

1. the evenness or unevenness of the vote amongst those still in the count by the later stages of the distribution of preferences; and
2. the reduction in the quota for this seat depending on the amount of the vote that has gone to exhaust.

Note that, with a majority of only two, any loss of seats increases the odds for minority government. [Significantly, the proportionality of the Hare-Clark system has not changed the size of the maximum likely majority despite the reduction in the size of the Parliament in 1998. This has remained at five just as it was before 1998.]

Thus, the Hare-Clark system tends to produce close results regardless of the size of the Parliament. And, a graph of poll results since the last election (and especially over the last year) has shown that this year's results will be much closer than the two previous elections. There are several grounds for this closer result but the primary one is that the ALP appears vulnerable to some loss of seats.

PARTY PREFERENCE State-wide, 2002 - 2006



TPRS 2006

Assuming the opinion polls have some basic validity, the polls over the last year or so indicate at a State level (which is the only statistically reliable level) the ALP is likely to be reduced to no more than 12 seats [although one seat more or less is not impossible!]; the Liberals could win up to 10; and the Greens will retain at least 3 and may win up to 5. You will notice the “fudge factors” in this assessment and these will only become more significant ambiguities once an electoral campaign commences.

Nonetheless, the trend line of eroded ALP support and the strength of support for the Greens combined with the low level of the Liberals figures make the odds of a non-majority result the highest they have been for a decade.

So, if there is to be a “hung parliament” for the first time since the size of the Parliament was slashed in 1998, how are the consequences of minority Government changed by the reduced size of the House of Assembly?

The Ministry in a Small Parliament

The effects of the smaller Parliament on the ministry can be made more dramatically by considering the ratio of ministers to the minimum number of members to form a majority Government. As a notional point of reference, since the advent of the party system, it has long been recognised as desirable that the backbench should be larger than the frontbench in the Westminster Parliament. Basically four Australian States meet this standard. But, since the 1998 change, Tasmania, which was just off the norm before 1998, has moved well off the mark.

State	ratio	percentage
Queensland	18:45	40%
NSW	21:47	45%
Victoria	20:44	45%
WA	14:29	48%
Tasmania pre-1998	9:18	50%
SA	14:24	58%
Tasmania post-1998	9:13	69%

As an aside, it is worth noting also that it would take every one of the current ALP membership of the House of Assembly to match the size of ministry that Western Australia and South Australia feel they need to meet their executive responsibilities.¹ Thus, as the complexities of government increase there is no real flexibility for the size of the Tasmanian ministry to increase.

Taking this analysis further, we have the added consideration of a probable maximum size of a majority Government. When we look at the pre-1998 Parliament in contrast with the post-1998 Parliament, we can see how much closer Tasmania was to Westminster norms before the size of the Parliament was reduced.

Post -1998	minimum	percentage	maximum	percentage
	9:13	69%	9:15	60%
Pre-1998	minimum	percentage	maximum	percentage
	9:18	50%	9:20	45%

The differences at the minima are especially noteworthy. Under the old parliament, a ministry of nine (the current number although the pre-1998 number was actually 10) would constitute only half (50%) the minimum MHAs needed to form a majority Government. Today the same ministry would constitute nearly 70% of the minimum number. Even with a maximum number, the percentage in the post-1998 Parliament is an excessive 60%. Thus, the number of ministers that must be recruited from the available pool of talent was made inexcusably and unacceptably low by 1998 reduction in the size of the Tasmanian Parliament.

Indeed, rather amusingly if tragically, a Senate report saw the situation between the executive and the parliament in Tasmania as a problem similar to that of the army in the fictional land of OZ which “had four generals, four colonels, four majors, four captains and only one private.”

What are the consequences for the Crown?

The Crown (that is, the Governor of Tasmania) has three basic options when an election returns a parliament without a majority party. [While we speak of these as

¹ The current legislation permits nine ministers or eight plus a Cabinet Secretary. The figure used in this paper is standardised on nine, as that is this is the number of individuals used in forming a ministry regardless of their official status.

options for the Crown, it must be acknowledged the existing Government would have a significant influence in these choices by the way it seeks to present advice to the Crown after an election.]

The three outcomes are:

1. A minority Government could be formed;
2. A majority coalition Government could be formed;
3. New elections could be called.

Taking these in reverse order of likelihood, the least probable result would be the calling of fresh elections. Despite claims from the ill-informed that such a course would be desirable, it is so thoroughly anti-democratic that no vice-regal representative apparently has even contemplated it for over a century. Certainly nothing would do more to advance the republican cause in Tasmania than for the Crown to tell the voters that they had voted contrary to the wishes of the Crown!

No, the precedent is well established that the Parliament must have an opportunity to turn the non-majority result into an effective Government. Thus, there are literally two choices available to the parliament – to work with a minority Government or find a way to create a majority coalition to govern.

There is an interesting contrast in national practice here between Canada and Australia. Canada, we have seen recently, exchanged one minority Government for another. It appears that it is customary to appoint a minority Government rather than a coalition Government. As Australians are aware, the reverse is true in Canberra. Coalitions to form a majority Government are the norm rather than minority Governments.

The State level is rather different since, especially in recent decades, minority Governments have been as common if not more common than coalition Governments. Tasmania has had three minority Governments and only one coalition Government in the last forty years.

A majority coalition Government presents few problems for the Crown – scarcely any more than in commissioning a single party majority Government. Perhaps the only real issue is how long to allow for a coalition to be formed. The same cannot be said of commissioning a minority Government.

Context is a critical circumstance. The Governor must be advised by a member of the Parliament under the Westminster form of responsible government. This sets a constraint on the Governor that has become the subject of public disingenuousness by the two major parties and swallowed repeatedly by a gullible media.

The Government that loses its majority does not lose its commissions immediately. These remain until a new set of advisers can be found willing to accept them. Thus, only a non-governing party can sign pledges or make affirmations to the effect that the party will not govern in minority. The governing party is stuck with a constitutional obligation that it cannot deny.

The Liberal Government of Ray Groom found this out in 1996 when it lost its majority. Face saving way of dealing with the need to retain its commissions while honouring an unwise pre-election pledge not to govern in minority was found by changing leaders.

This does not mean that the Crown does nothing after a government loses its parliamentary majority. The Crown has two basic concerns when looking at commissioning a minority Government. It must have supply, basically the finances to pay for the public service, for a reasonable period so that a second election could be fought in a few months if necessary without endangering the orderly administration of the State.

The second is one that could be critical in the forthcoming Tasmanian election. This is that the Government be able to govern effectively. The reduction in the size of the Parliament could make meeting this requirement very difficult.

Indeed, it is possible that the declarations against minority Government by the two major parties could prove to be a very dangerous game of constitutional “chicken”. If the election produces one type of unexpected result, the Crown could be forced to play a much more active role than ever before in Tasmania in manufacturing a Government.

What are the consequences for the Opposition(s)?

We do not usually think of the consequences of a “hung parliament” for the opposition despite the role played in several elections by the opposition parties declaring an unwillingness to accept Government in minority. Until 1998, there was never any realistic possibility that a major party would have too few numbers to form an effective administration.

This is no longer the case. Consider the following scenario. The Greens maintain their current numbers but the present Government’s number drop to a single digit figure while the Liberals fall just short of a majority. To make the scene easier to visualise, let me put some numbers to this hypothetical post election result.

Suppose the result were extreme - something like ALP 8, the Liberals 12 and the Greens 5 seats. Such a result would pose a great conundrum for the Crown. The ALP would be unable to staff a full ministry of 9 and so it would be very difficult for the Governor to resist advice that the ALP was unable to form an effective administration.

Equally, it would be difficult to resist an assertion that the Liberals had won the election despite not securing a majority and that they alone had the capacity to staff a full Government. A refusal to break their pre-election pledge would provoke a constitutional crisis for which they, rather than the ALP, most likely would be held responsible.

This is a remote but not inconceivable possibility. It only involves reversing the parties and re-configuring their 2002 election results slightly. Although very unlikely,

this scenario does demonstrate both the irresponsibility of the major parties pledges against governing in minority as well as the inability of the post-1998 Tasmanian Parliament to support an effective Government under all conditions.

While on the risks from partisan posturing, there is a possible complication in the event of a non-majority electoral result. Previously, the Greens have sat neutrally on the cross benches. Since Jim Bacon's provocative declaration that there were two oppositions in Tasmania, the Greens have declared themselves an oppositional force even going to the point of mirroring the Official Opposition Liberal's tactics.

There is, in fact, no reason in parliamentary convention or practice why they could not again move back to the cross benches to support a minority Government of any partisan stripe. However, the claim to being an alternative Government may lend some credibility to any post-election ALP resistance to relying on the Greens for support if they were to form a minority Government. Such reluctance will have been intensified also by the Greens' recent assertion that they could prefer to be part of a coalition to sitting on the cross benches.

The Political Year Ahead

The political year ahead will be dominated by the issue of the election at least until this is held. Subsequent events will depend on how the chips of the election fall. One of the serious possibilities will have to be considered is that of a non-majority result. Indeed, it is one that that has already absorbed a great of public attention albeit with vastly more heat than light.

Nonetheless, the issue is not so much that any prospective minority Government will be better or worse than an alternative majority Government. My point today is that the two contenders for majority Government have been actively sowing seeds of doubt over political stability.

They have made exaggerated efforts to convince the public that neither of the two major parties would form a minority Government. Moreover, they have implied that there would be a complete lack of virtue in any party that did. Both claims are partisan furbies.

The constitutional way forward from a non-majority result has been well proven by the elections of 1989 and 1996. Nevertheless, the partisan rhetoric and posturing do pose real threats because of the reduction in the size of the Parliament since 1998.

The Liberal and Labor parties planted some real seeds for executive instability in 1998 when these two parties joined together to form the largest parliamentary majority in Tasmanian political history to slash the size of the legislature – not to reform the Parliament but to change electoral outcomes.

The reduction in the size of the Parliament in 1998 has changed the consequences of a non-majority result that are different from earlier periods. These could be significant consequences not just matters of degree.

As I have demonstrated above, any resultant minority Government will be enormously restricted in framing a full ministry. In some circumstances, attempting to staff a ministry entirely from the House of Assembly could absorb virtually all a party's membership (as, arguably it does already!)

Depending on the precise distribution of seats in a non-majority result, these two components could produce Tasmania's worst genuine constitutional crisis since 1924.

Yet none of this is necessary. Even with a non-majority outcome in 2006, it is possible to manage an effective State administration. The constitutional pathways are clear and unambiguous. And, the self-inflicted restraints of the smaller Parliament can be handled if parties responsible for this accept the responsibilities of their 1998 decision.

The resources of the Legislative Council can be tapped to expand the pool of talent available to form a ministry. Less rigid partisan control of the parliamentary agenda can be tolerated. And, the business community might even acknowledge that duopoly is not the only form of stable competition!

These are big "asks" perhaps and they may not prove necessary this election but, if the election does produce a non-majority result, neither the people nor the Parliament should be told to "go hang" in consequence!