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## Parliament or protest? : The parliamentary impact of the Greens (WA) in the Legislative Council : May 1993 to May 1999

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## **Parliament or protest?**

# **The Parliamentary Impact of The Greens (WA) in the Legislative Council: May 1993 to May 1999**

**Stewart Murdo Jackson, BSocSci**

**A thesis submitted in partial fulfilment of the  
requirements for the award of**

**Bachelor of Arts Honours (Politics and Government)**

**in the faculty of Community Services, Education and Social  
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## USE OF THESIS

The Use of Thesis statement is not included in this version of the thesis.

## **ABSTRACT**

From their beginnings as a protest party in the early 1970s to their election to the federal parliaments of countries around the world, the Greens have largely been seen as the political wing of a direct action movement. As a political organisation, however, Greens are now making a transition away from an exclusive focus on direct action to mainstream parliamentary activity.

The key benchmark in assessing the success or otherwise of the Greens remains the environment, and their capacity to effect changes to the benefit of the environment. This thesis, then, addresses the central question in the evolution of the Greens: To what extent is parliament an effective means by which the Greens can advance environmental causes. This is done via a case study examining the activities of the three Greens (WA) parliamentarians in the Legislative Council over two periods; during the period 1993-1997 when Jim Scott sat alone in the Council, and; during the period after the 1997 change in composition of the Council. Analysis of the second period will focus particularly on the establishment of the Standing Committee on Ecologically Sustainable Development and its reports.

The effectiveness of the Green parliamentarians during these two periods is examined in three ways, by assessing; the various methods that can be used by a parliamentarian to influence legislation and the policy process; whether there has been any positive changes to legislation or policy; and under what conditions those changes were able to be made.

In taking up their seats in May 1997, the three Green parliamentarians became part of the first Legislative Council to have a majority of non-conservative members. This is important, because being in the balance of power dramatically improved their ability to effect Government legislation. Prior to this, Jim Scott sat alone as the only Greens (WA) Legislative Councillor in a Coalition controlled Council between 1993 and 1997. During the debate on the Environmental Protection Act Amendment Bill 1993 he was not able to effect any changes or to initiate much debate on the legislation.

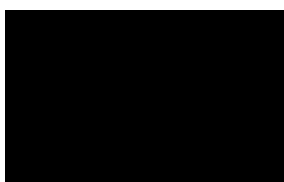
The ESD Committee process shows a different approach to parliament from 1993-97. The Committee was approached as a necessity by Christine Sharp, and followed on the work of the Wilderness Society's lobbying efforts at the time of the 1996 State election. Following Sharp's election, she worked with the various interested parties involved in the forest industry. During this time, Sharp found that there was some common ground on issues surrounding the sustainability of forestry in WA.

If Green parliamentarians find themselves in the balance of power, as from 1997 until the present, then the opportunities for change are increased. In this situation there is of course a requirement to work with the other parties that may also occupy the non-Government benches, such as the Democrats and Labor, to achieve their aims, but the possibility for change is concomitantly higher.

## DECLARATION

*I certify that this thesis does not, to the best of my knowledge and belief:*

- i. incorporate without acknowledgment any material previously submitted for a degree or diploma in any institution of higher education;*
- ii. contain any material previously published or written by another person except where due reference is made in the text; or*
- iii. contain any defamatory material.*



Stewart Murdo Jackson

20/10/99

Date

## ACKNOWLEDGMENTS

I began this thesis wanting to define what the role of a Green parliamentarian is. My thanks go to my supervisor Quentin Beresford for helping me to nurture and refine that goal. This thesis is only part of that exploration, but a part I hope will be a step on the way to a greater understanding of what it means for Greens to be in parliament.

My thanks must also go to Ian Miles, who over many months argued and discussed with me what it means to be involved in radical politics. As a spur to deeper thought, Ian has been a constant and enduring source of both inspiration and wisdom.

Karl Haynes, Kayt Davies, Brenda Roy and Liana Sinibaldi provided the support and commentary needed to remain focussed. Each helped in their own important and creative way.

Lastly, but by no means least, my thanks must go to the three Green State parliamentarians, Chrissie Sharp, Giz Watson and Jim Scott for their help and support. They have set the standard, and we must build the vision.



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## **Chapter 1**

### **Australia and International Green Parties - a context**

From their beginnings as a protest party in the early 1970s to their election to the federal parliaments of countries around the world, the Greens have largely been seen as the political wing of a direct action movement. As political organisations, however, the various parties are now making a transition away from an exclusive focus on direct action to mainstream parliamentary activity. This transition is, by the nature of the Greens previous anti-establishment activity, controversial. In moving clearly into the parliamentary arena, and on some occasions into Government, Greens have progressed from being a small protest party to a mainstream political organisation. In doing so, they have created a tension between these two aspects of the parties' persona; direct action versus parliament.

The Greens (WA), as much as any other Green party, sees itself as having many strands (and are indeed based on four basic pillars) (Greens (WA), 1990, p2). These four pillars, which highlight the extra-parliamentary background of many of their supporters, are; participatory democracy, ecological sustainability, social justice, and peace and disarmament. However, it is their advocacy for the environment that the party is largely recognised, and the success of Green parties is often measured by their success in addressing environmental issues (*Political Chronicle*, 1989; Porritt & Winner, 1988).

In grappling with electoral politics, however, Greens advance ideas not only about the environment, but also about social and economic issues. In this they challenge the status quo, and draw opprobrium for their troubles. In some states and nations, such as Tasmania (see Haward & Smith, 1990; Maddox, 1992), they have been dismissed as unreasonable and uninterested in stable government and questioned about why they are interested in issues outside the environment.

Yet the key benchmark in assessing the success or otherwise of the Greens remains the environment, and their capacity to effect changes to the benefit of the environment. This thesis, then, will address the central question in the evolution of the Greens: To what extent is parliament an effective means by which the Greens can advance environmental causes. This will be done via a case study examining the activities of the three Greens (WA) parliamentarians in the Legislative Council over two periods; during the period 1993-1997 when Jim Scott sat alone in the Council, and; during the period after the 1997 change in composition of the Council. Analysis of the second period will focus particularly on the establishment of the Standing Committee on Ecologically Sustainable Development and its reports.

The effectiveness of the Green parliamentarians during these two periods will be examined in three ways, by assessing; the various methods that can be used by a parliamentarian to influence legislation and the policy process; whether there has been any positive changes to legislation or policy; and under what conditions those changes were able to be made.

In discussing the entry of The Greens (WA) into electoral politics, and the impact of its parliamentarians, the broader context of social change post-1960 and the rise of post-materialism needs to be examined. As a consequence of post-materialist thinking, extra-parliamentary challenges to the status quo arose in the form of direct action protests, particularly over environment and peace issues. The protest movements themselves lead directly to the rise of green parties. Thus there is a need for some explanation of these developments.

The rise of new social movements through the 1960s was born of frustration with existing structures and materialistic culture. This spawned a number of oppositional social movements that gained increasing prominence through the 60s and 70s (Stewart & Ward, 1992, p 136). Obviously, a variety of protests had existed prior to the rise of these movements. Organisations such as Campaign for Nuclear Disarmament had been in existence since the early 50s and involved a broad range of people from communists to humanists such as Bertrand Russell (Vallentine, 1989, p56). Many groups had been active over long periods of time such as various communist and anarchist organisations, and the suffragette movement through the latter part of the 19th and early part of the 20th centuries.

In explaining the rise of new social movements, Inglehart's post-materialist thesis is usually cited. This argues that there is demonstrable relationship, in the context of world growth, between rising levels of affluence across the social spectrum, and improved opportunities vis a vis health, education and welfare for the bulk of the population but particularly the middle class (cited in Papadakis, 1989, p84; Dobson, 1995, p154; Donati, 1997, p148). The middle class itself had begun to change, with

the emergence post-1945 of a new class of professionals and administrators, well educated, and growing up in a period of affluence and stability. In this situation, the development of a post-materialist outlook became possible as individuals had their material needs met, and also had levels of education that provided a critical awareness (Eckersley, 1989; Papadakis, 1993, p153). In broad terms this meant increasing challenges to the social status quo, and broadening challenges to existing ideas. While the period from the 50s onward can be seen as a period of unbridled production and consumption, it was also a time of conspicuous poverty, and of a concomitant rejection of high value goods by sections of the western population (Eckersley, 1989, 215; Dobson, 1995, p134).

Arising from this also came growing awareness of the value of natural surroundings - the physical environment. While there had long been a certain eulogising of the wonders of nature, the general attitude to nature and natural products was that they were placed on earth for human consumption. But beginning in the early 60s and rising through the 70s was a growing awareness that unless the environment was treated with some regard, there would be ever increasing problems of air, soil and water pollution (Kelly, 1994; Meadows et al, 1972).

From diverse roots, these movements coalesced into groups (such as Campaign for Nuclear Disarmament, Friends of the Earth, and Greenpeace). These groups actively worked for their particular issues, often in confrontational ways, but just as often within the existing structures (Eckersley, 1992, p157). This in itself set up conflicts between those who wished to work within the system and those who saw the only way

forward as being radical change, such as groups like Earth First! (see McKibben, 1989, p179).

The next step for a number of these extra-parliamentary groups was to move in to the parliamentary arena, with initially campaigns to elect independents, and then the formation of new political parties. In this manner, the Tasmanian Greens, the German Green Party and the New Zealand Values Party all began as offshoots of protest campaigns on issues from nuclear disarmament to stopping the Franklin and Lake Pedder Dams. The world's first green party is often stated as being the United Tasmania Group in Tasmania, formed from the campaign group that fought to save Lake Pedder from flooding behind a large hydro-electric facility (Walker, 1989, 161). However, the world's first *national* green party is recorded as the New Zealand Values Party. The Values Party arose in New Zealand in May 1972, and had a strong theme of concern for the environment and post-materialist values, mixing Quakers, hippies and former leftists together (Rainbow, 1989, p176).

In the early and mid-70s the Values Party proved to be an effective challenge to the New Zealand Labour Party, polling 5.2% in the 1975 general election, and 9% in a by-election soon afterwards (Rainbow, 1989, p177). This strong electoral activity diminished when the more traditional left wing elements resigned from the party in 1979. This left the party very much in the social movement mould, rather than party political, with arguments centred around whether to contest elections at all. By the late 1980s the Party was polling less than 1% of the national vote, having lost much of its support to a revitalised Labour Party (Rainbow, 1989, p180).

However, the wider problem of how effective green political parties can be in advancing environmental causes has a rich international literature. In examining the wider aspect of the nature of Green Party involvement in other legislatures it is necessary to look to European parliaments, particularly the experience of the German Greens within the parliamentary sphere.

The German Greens, in a similar manner to The Greens (WA), began as an amalgam of groups mostly active around specific issues, and in particular peace and disarmament issues (Mewes, 1998, p32; Spretnak & Capra, 1986, p17; Lange, 1993). Its formation can be viewed as the creation of a new mass party based on the principles of social justice, peace and the environment (Spretnak & Capra, 1986).

It is important to note that the German Greens started as a disparate grouping of individuals and organisations that wished to seek a new way in German politics. Initially there was considerable concern about being involved in the political process at all, which was only slowly overcome (Porritt, 1984). This included distrust from groups that had successfully built counterculture projects through citizen donations, which would become a key part of the German Greens, and the failed intrusion of far left groupings, attempting to move the Greens to an overtly Marxist position. To begin with the German Greens acted more as an umbrella uniting these disparate groups, before evolving into a clearly separate political phenomena (Spretnak & Capra, 1986).

The change within the German Greens occurred over a period of time, culminating in a 1991 post-election-defeat congress which dispensed with a number of closely held



groups, before evolving into a clearly separate political phenomena (Spretnak & Capra, 1986).

The change within the German Greens occurred over a period of time, culminating in a 1991 post-election-defeat congress which dispensed with a number of closely held ideas about rotation of parliamentarians and the removal of the fundamentalists from the party leadership. This marked a shift from the previous position of acting as a voice for a collection of people and groups, to actually being a party involved in the political arena with its own ideology and program, encompassing ideas and values drawn from the disparate groups (Joppke & Markovits, 1994).

Clear signs of this shift are in the respectability and acceptance of the Greens by other parties in Germany, particularly the Social-democratic Party of Germany (SPD) and Christian Democratic Union (CDU), with the CDU allowing the election of a Green to the position of Deputy Speaker of the Bundestag (the German parliament), prior to the election success of 1998, when the SPD agreed to go into coalition with the Greens to form national government. Now acceptable as coalition partners, the Greens have developed a particular coherence as a political organisation (Bonnell, 1995).

In other European nations a similar story has been played out, with Italian and French Green parties starting out as collections of citizen, peace, environmentalist and anti-nuclear activists and groups coming together to form a coalition and finally forming parties. The inevitable debate about entry into parliamentary politics has occurred, leading, in the French case, to a split between three Green parties prior to their

An interesting sub theme played out in both Italy and France through the 1980s was the nature of green-left cooperation, particularly at an electoral level. This too led to conflict and splits. Following the 1989 European Elections, the Rainbow Alliance with the European Union parliament, which had included members of Green and Green-Alternative Lists from across Europe split under pressure from purist Greens such as Anton Waechter from France. The 1989 split also reflected resentment of the German Greens stance on ending the reprocessing of spent French nuclear fuels. Differences over association with the left did lead to a further split in the Italian Greens to create the purist Smiling Suns, and have undermined the development of electoral alliances within Britain (Mayer & Ely, 1998).

The key question is whether success at a parliamentary level undermines green ideals or whether green people and politics can handle the rapid professionalisation required for effective involvement in parliamentary politics. Petra Kelly (cited in Dobson, 1995, p130) warned: "If [the German Greens] end up becoming merely ecological Social Democrats, then the experiment is finished - it will become a waste." Dobson continued, "the demands of parliamentary politics can contribute to a wearing down of the green project and the consequent likelihood of the abandonment of the project as originally conceived."

Klotzsch, Koneman, Wischerman, and Zeuner, writing in 1987, also note the move by the German Greens towards becoming more like established political parties, and the requirements of power and tactical electoral considerations playing a greater role in internal debates than the desires of extra-parliamentary groups (1998, p120). This extends to adapting electoral strategies to voter concerns rather than presenting party

policy in a more educative role. Electoral considerations play a significant part in this shift (1998, p123).

In resigning from the German Greens, former Green intellectual Rudolf Bahro accused the party of identifying itself with industrial capitalism, not necessarily by intention, but rather by its inactivity on some issues, and by its apparent cooption to the idea that changes have to be “reasonable” and within the market system. He saw this as cooption of the parliamentarians and the dissolution of a powerful idea. Further, he argues that “a party is a counterproductive tool” and will lead to the cooption of any Green ideal by the state - that it will be subsumed into the existing structures and no longer challenge those structures (Bahro, 1986).

At a different level has been the activity of Green parties in North America. In both the United States and Canada, Greens have experienced success only at a local government level, failing to elect any representatives to either state or federal legislatures. This is in part due to the nature of the electoral systems (first-past-the-post in both nations), but also in part due to division within the green movement (Ely, 1998, p200). In the United States, this has seen the development of two distinct organisations, the Greens/Green Party USA (G/GPUSA) and the Association of State Green Parties (ASGP) (Association of State Green Parties, 1999a).

The ASGP is focussed on electoral success and has devoted itself to this end. As part of this it initiated and organised the 1996 “Ralph Nader for President” campaign which saw 700,000 Americans (almost 1%) vote for a Green Presidential candidate. Success was limited, however, to City Councils and Boards election until 1999, when

Audie Bock was elected to the California State Assembly (Association of State Green Parties, 1999b). The G/GPUSA has retained its original focus of attempting to initiate different processes and raise broader issues, and has remained aloof from state and national elections (the Greens/Green Party USA, 1999). In these two cases, electoral success at either state or federal level is still limited, and other intermediate goals, such as focussing on local elections and developing networks of groups, are substituted.

In the same way as the German Greens and the United Tasmania Group formed over peace and environmental issues, activists within the peace movement across Australia moved to run a national electoral campaign in 1984. This resulted in the election to the Federal Senate of Jo Vallentine, first as a Nuclear Disarmament Senator, then as an Independent. Although principally elected on a peace and nuclear disarmament platform, Vallentine was also seen as friendly towards the environment movement, as well as being involved in social justice issues (Vallentine, 1989).

From the success of Vallentine's 1984 election, and re-election in 1987, there grew an understanding and desire of the need to explore alternatives to challenge the current parties in the West Australian parliament (Lange, 1994). Although not initially a member of the emergent WA Green Party, Vallentine joined as part of the merger that formed The Greens (WA) in 1990 and successfully re-contested her seat in that year (Greens (WA), 1990a). This followed the development of Green parties in other states in Australia, and the success of Green parties internationally, particularly in West Germany.

Until Vallentine's election (and re-election), there had been little challenge to the prevailing pro-development activities of successive Western Australian governments. Successive governments had promoted WA as a resource base for Australia, and had deliberately fostered resource extraction industries such as mining and forestry. This was clearly opposed by people such as Vallentine, and this opposition was important to the development of a single Green party in WA as a focus against such policies (see also Papadakis, 1994).

At this stage, the Australian Democrats had been unsuccessful in WA State politics, although the party had elected Federal Senators from WA since 1983. They were, however, generally considered not to be challenging the system, an important factor for many Greens. The Democrats, as an amalgum of the New Liberal Movement, Australia Party and WA Centre Line Party, were still viewed as supporting the existing political status quo (Byrt & Crean, 1982, p 241; see also Warhurst, 1997, p58). The Democrats 1996 Federal Election campaign, and attendant slogan "Keeping the Bastards Honest", positioned the party firmly between Labor and Liberal as an "honest" broker, but offered no challenge to the existing parliamentary system (Warhurst, 1997, p18; Beresford, 1997, p64).

It was into this melting pot that The Greens (WA) came into existence, arising from the merger of four organisations, three of whom had contested the 1989 WA State election (Lange, 1994). The four organisations - the Alternative Coalition, Green Development, the WA Green Party, and the Jo Vallentine Peace Group - brought a variety of different ideas and activists together to form The Greens (WA) just prior to the 1990 Federal election, and were successful in re-electing Jo Vallentine to the

Senate, this time as a Greens (WA) Senator (Greens (WA), 1990b; Australian Electoral Commission, 1991, p. xx).

After the 1993 State election, a single Green, Jim Scott, sat in the Legislative Council during a period when the Coalition had a one seat majority within the Council. Legislation that had been passed by the Legislative Assembly was generally passed by the Council. Scott, in this instance, was not in a position to influence legislation through being in the balance of power and had to seek other mechanisms to have influence.

Following the election in 1996 which saw three Greens (Scott, Watson and Sharp) elected to the Legislative Council, the opportunity arose, with the support of the ALP and the Democrats, to establish a Legislative Council Standing Committee whose ambit would be Ecologically Sustainable Development (ESD). This opportunity arose due to the loss by the Liberal-National Party Coalition of their majority in the Legislative Council.

If the establishment of Green parties around the world has had one common theme it has been the necessity to establish within the mainstream electoral process the connection between environment and development. This connection is encapsulated in the term ecologically sustainable development. Ecologically sustainable development, or ESD, attempts to reconcile human development in an environmental context, such that the development is sustainable over an extended period of time (Dobson, 1995). Some industries are by their nature unsustainable (eg. mining) while

others have the potential to be sustainable (eg. forestry) although they may not be so at present (eg. old-growth forestry).

The theme of ecologically sustainable development is an important aspect of the activities of The Greens (WA) parliamentarians. The Greens (WA) 1998 Platform considers ESD to be the intersection of the environment, equity and social justice, defining development as “improvement in quality of life, not simply exponential growth” (The Greens (WA), 1998, p35).

The core problem is assessing how effective the Green parliamentarians have been in establishing this connection, and to what extent has this had an impact on the environment? As a radical party within the mainstream political environment, how well have the parliamentarians used the various avenues open to them within parliament to advance environmental issues, and under what conditions has this been possible? This is in part addressed through the establishment of an ESD Committee, but also through the activities of the parliamentarians within the Legislative Council.

## **Chapter 2**

### **The Greens and the Legislative Council**

The focus of The Greens (WA) on the Legislative Council is primarily due to the electoral system adopted by the Council since 1987, as this provides the best opportunity for a minor party to gain representation in the WA parliament. While Greens may contest lower house seats (where 50%+1 of the vote is required), a greater possibility of winning a seat exists in the Council where, due to the proportional nature of the system used, they require at most 16.67%. From this flows their potential to influence Government policy and legislation and to act as a positive agent for the environment.

This situation has arisen following changes to the Electoral Act in 1987 to introduce a form of proportional representation into the Council which, although heavily weighted toward rural electorates, allowed for multiple member (five or seven) electorates, based on six Regions covering WA (Phillips, 1991b, p234). This is in comparison with the Legislative Assembly where members are elected to single member electorates and therefore tend to come from one of the two major parties.

On the more homogenous composition of the Legislative Assembly, Christine Sharp, in an address to the Lawson Institute on the role of the Upper House, addressed this lack of divergence directly in saying: "For all the posturing of the Australian political theatre, there is actually a dearth of diversity. The two party system is actually a



monoculture.” (Sharp, 1997, p42). In her opinion, the role of The Greens (WA) within the Legislative Council was to work constructively with other parties to achieve common aims and goals (Sharp, 1997, p41).

The role of the Legislative Council, as described by Phillips, Black, Bott and Fischer (1998, p65) can be described as follows:

- be a House of review or ‘sober second thought’;
- initiate non-financial legislation;
- probe and check the administration of the laws, through a committee system;
- force Government to justify their policies;
- require Government to negotiate with interests outside their normal channel;
- maintain oversight of the government’s regulation-making power; and represent a different quantum of interests because of the different voting system. (see also, Black, 1984, p46).

In a similar vein, Loewenberg and Patterson, (1979, p121) state that the bicameral (two-house) system historically thought to provide “checks and balances, distrust of majority rule and a preference for slowing the output of legislation.” Jaensch (1991, p223) echoes this again, in calling the Senate a “house of review, where the actions of the lower house could be independently examined and judged” (see also Albinski, 1973, p316; Jaensch, 1984, p11).

In the case of the Senate, there was also the notion that it should act as the “States House” (Constitutional Centenary Foundation, 1993, p23). In looking to North America, the Council was eventually more closely modelled on the Canadian system

than the US, remaining closer to the Westminster system of responsible government (Phillips, Black, Bott & Fischer, 1998, 23).

With a proportional system of representation as opposed to preferential election from single member constituencies, the Legislative Council provides greater opportunities for minor parties and groups (Sharman, 1997, p53). This provides for a greater divergence of opinions on a variety of matters than is otherwise provided for by the Coalition and ALP (Phillips, Black, Bott & Fischer, 1998, p66). Thus, the first and last of the roles identified by Phillips, et al (1998) have special significance; review and representation of different interests.

The opportunities for minor parties occur particularly when they hold the balance of power between the Labor Party and the Coalition. This provides an opportunity for input and negotiation on Government policy and legislation, as legislation requires the approval of both Houses of Parliament. This had not been possible prior to 1997 as the Council had been continuously controlled by conservative members since its creation.

The first Council existed to support the Governor, and this continued from 1832 to 1890, when the Constitution Act was enacted and the two Houses came into being (de Garis, 1991a, p58). Under the initial stages of the Constitution Act the Legislative Assembly was elected; but the Council was appointed for six years or until the population reached 60,000 (de Garis, 1991b, p57). This finally changed in 1893, but the nature of the seats (predominantly rural) and the property qualification meant that

it would remain conservative in character, and continue to represent established (and establishment) interests (de Garis, 1991c, p69; Dans, 1984, p5).

Within Australian Upper Houses, a number of different models have been used. An example of these difference can be seen when comparing the WA Legislative Council and its NSW counterpart, both in composition and nature of membership (Joint Standing Committee, 1988; Lumb, 1972, p50). Until 1933 the NSW Legislative Council was appointed by the Governor, on the advice of the Government of the day. Following the reconstitution of the Council as an indirectly elected body (the electorate comprising both Houses sitting as a single electorate and electing proportionally), (Turner, 1969, p22; Gallop, 1984, p27; Parliament of NSW, 1997) control of the Council passed between conservative parties and Labor a number of times. This situation lasted until 1978, when the Council was again reconstituted, this time as a fully elected body, based on an optional proportional basis (Thompson, Painter, Wheelwright & Mutch, 1986, p7; Parliament of NSW, 1999a). One of the Council's key functions remained, however: "The examination and revision of Bills brought from the lower house" (Turner, 1969, p21), thus keeping the notion of the House of Review.

The partisan nature of the WA Legislative Council is exemplified when party membership of the Council is examined. At no stage in the Council's history has the Labor Party had a majority in the Council, although it has formed Government (with a majority in the Legislative Assembly) on a number of occasions (Byrt & Crean, 1982, p148; Gallop, 1986, p81; Dans, 1984, p10). The 1996 election of 17 Labor, Green and Democrat members represented the first time that the combined non-conservative

members actually held a majority (Black, 1991a, p533; Phillips, Black et al, 1998, p177).

The Legislative Council has also been the site of most conflict between Assembly and Council when the Labor Party has been in Government. From 1890-1983, a period of 93 years and 30 parliaments, of the 285 Bills originated in the Assembly, 200 were defeated in the Council during 12 Labor Party Governments, compared to only 85 during the 18 conservative Governments (Black, 1991a, p541). Indeed, in the first Court Coalition Government of 1974-77, no Bills were lost at all (Black 1984a, p47; see also Dans, 1984, p10).

The WA Legislative Council, then, has operated in one of two ways, dependent on whether the Labor Party or Liberal Party/Coalition, is in Government:

- 1) as a rubber stamp for Government legislation when the elected Government is similar in composition to the Legislative Council composition; or
- 2) as constituting a barrier when the elected Government differs in composition from the Legislative Council composition (Gore, 1975, p175).

The role of minor parties within an upper house can also be demonstrated in the activities of the Federal Senate. There are some parallels between the Council and the Senate, insofar as the Council changed its Standing Orders in 1906 to bring them into conformity with the Senate's, whereas previously they had followed the English House of Lords (de Garis, 1991c, p89). In the case of the Senate, an aspect of its

activity is the moving of motions that represent a symbolic challenge to the power of the executive (Young, 1997, p97). In this, the motions themselves stand no chance of being passed, but put forward alternatives to a government's own policy initiatives.

This is an important aspect of the role of minor parties in the Senate because the very act of questioning the government's policy agenda and bringing in a policy discourses into parliamentary debate makes a contribution to parliament's role as the location in which political debate takes place (Young, 1997, p104).

Non-Government control of the Council also raises the issue of multiple mandates within parliament. Governments of all hues have seen themselves as having a "mandate" to govern following an election, and that their policies are therefore somehow sanctified by the voting population. However, minor parties also have a mandate on this basis, as they have also been voted into a position on the same basis of having platform and policy. These competing mandates have their best expression in houses such as the Legislative Council or the Federal Senate (Warhurst, 1997, p170).

Young notes the differences that motivate minor parties when they are in a balance of power position. In particular, she notes that "while opposition parties in the Senate tend towards obstructionist behaviour, there is a broader array of activism when minor parties and independents hold the balance of power." (Young, 1997, p21). This implies that minor parties, not seeing themselves as 'governments in waiting' as opposition parties tend to, have other interests in amending or blocking legislation.

These other interests also imply that the minor party would take their ‘mandate’ more seriously than they would take a government’s notion of one. In that case they could argue to amend or block a bill, based upon what they believed their constituency (ie; those who voted for them) would want. Young, however, goes on to note; “They typically have little to gain by forcing an election. Instead, an election has the potential to compromise the balance of power they enjoy” (1997, p21). Their use of the power they hold must then be applied judiciously (see also Warhurst, 1997, p261).

While Young, in talking of forcing an election, is discussing the use of the Section 57 of the Australian Constitution to break a deadlock between the House of Representatives and the Senate (the double dissolution mechanism), Phillips, Black et al note that the WA Constitution has no such requirements, instead allowing for a Conference of Managers of three members selected by each House to meet and seek agreement (1998, p46: see also Okely, 1989, p61).

Failure of the Conference of Managers to come to unanimous agreement means the bill is lost. This could apply to any bill where the two Houses cannot reach agreement, providing, of course, that the Council cannot amend money bills. The lack of deadlock procedures other than the Conference of Managers therefore removes the possibility of a forced dissolution of both Houses such as can be forced by the Senate (see also *Royal Commission*, 1985; Lumb, 1972, p61).

This effectively means that minor parties, in concert and with the Opposition, can block legislation that the Government wants passed, without fear of being forced to an early election. Young’s point regarding forcing an early election no longer applies,

and this may allow the minor party to bargain more effectively with the Government for those policy initiatives it sees as important. In essence, they constitute a barrier irrespective of who is in Government.

In the 1993 State Election The Greens (WA) were successful in having Jim Scott elected to the Legislative Council in South Metropolitan Region (WAEC, 1993, p195; Phillips, Black et al, 1998, p189). In the 1996 State Election, Scott was re-elected and Giz Watson and Dr Christine Sharp were elected to North Metropolitan and South West Regions respectively (WAEC, 1997, p158; Phillips, Black et al, 1998, p190).

Following the 1993 State Election, the composition of the Legislative Council was such that the Liberal-National Party Coalition retained a one seat majority (Sharman, 1997, p52; Black & Phillips, 1993, p28). This majority allowed it to pass legislation through both houses of parliament without taking into account other parties represented within either house. Positions put in the Council by Jim Scott were largely ignored, except where highlighting obvious flaws in legislation (J. Scott, interview, March 15, 1999).

Following the 1996 State Election, the composition of the Council changed, with the Opposition and Minor Parties (Australian Labour Party, Greens (WA) and Australian Democrats) holding a majority of the seats. The Greens (WA) thus found themselves to be in the balance of power, with the Democrats (Phillips, Black et al, 1998, p66).

The situation of the Green parliamentarians is thus in two phases, the first when Jim Scott sat alone with the minority opposition, and the second when all three Greens sat in the balance of power from May 1997 onwards.

The manner in which Councillors operate is defined by the instruments available to them. These can be defined as committees, Question Time and the actual review function of the Council. There is also the ability of members to introduce their own legislation (“Private Members Bills”), but this requires the support of five members of the Council for it to be considered. Of these potential instruments, committees are perhaps the most important, and are certainly the most constant feature of modern legislatures. Certainly, committees developed to expedite the work of parliament (Blondel, 1973, p66). It is to committees of the Legislative Council that we shall first turn.

The first Committee of the Legislative Council was established to examine and report on the establishment of Standing Orders for the Council (Black, 1991b, p13). Its establishment occurred following the proclamation of the Western Australian Constitution on the 20th of October 1890. This inaugurated the modern period of government of Western Australia, with an elected Legislative Assembly and (then) nominated Legislative Council (Black, 1991b, p9). This Committee, the Standing Orders Select Committee, should then properly be considered the first Committee of the parliament of Western Australia.

Describing the operation of Legislative Committees, Phillips, Black, Bott and Fischer note, “the committees may consider proposed bills, scrutinise the operation of existing



legislation or delegated legislation and sometimes consider policy issues.” In this context the committees can be seen as have a fairly wide ranging ambit, as they can invite submissions, receive and send for papers and people, and take into consideration broader implications of the operation of any piece of legislation than parliament itself could reasonably be expected to cover when passing the legislation (Phillips, et al. 1998, p60).

Phillips, Black, Bott and Ficher (1998) also note that the nature of the electoral system for the election of the Legislative Council has also lead to an ‘invigoration’ of the Committee system, as membership of committees has broadened, and governments have been denied automatic or large majorities. This has moved committees, and the Council, away from simply being a rubber stamp on legislation already passed by the Legislative Assembly, so as to take on the task of review of legislation. Standing Committees are usually appointed for the life of a parliament, although they may be appointed for the current session.

Referring to the process of review within the Legislative Council, Christine Sharp and Helen Hodgson (Australian Democrat member for North Metropolitan Region) noted that committees have a greater ability than parliament in general for genuine scrutiny and review of legislation. This also draws upon the notion of the Council being a house of review, able to look again in a second, and possible new, light (Hodgson, 1997, p39; Sharp, 1997; p41).

Phillips makes the same points. In discussing the role of committees he stated: “In fact, with an expanded committee system, much of the partisan adversarial nature of

political party behaviour can be overcome with a broader focus on the State's interests." (Phillips, 1997, p22). This serves to highlight both the review aspect of the Council, and the increasing importance of the committee system as part of that process of review.

At the commencement of the 34th parliament, on May 22 1993, there were nine Legislative Council Committees, ranging from Constitutional Affairs and Statutes Revision Committee to the Library Committee. As the Council determines the composition and Chair of each committee, whichever party controls the Council, controls this process. This limits the opportunities for minor parties and independents when not in the balance of power.

The loss of Coalition control of the Council, following the election of the 35th parliament, allowed committees to be Chaired or dominated by parties other than the Government. This led directly to the establishment of the new Legislative Council Standing Committee on Ecologically Sustainable Development, which is neither Chaired nor dominated by Government parties. This also follows the trend of other Australian state parliaments to appoint environment or environment-based committees (Hansard, 1997, p4480).

During the first and second sessions of the 34th parliament, Jim Scott was not appointed to any committees, being appointed to the Joint Standing Committee on Delegated Legislation only during the course of the third session of that parliament (Hansard, 1994, p.x). Scott was initially excluded from committees because negotiations occurred between the Labor and Coalition parties, and did not require his

involvement. This was as a direct result of his not being in a balance of power situation (J. Scott, interview, March 15, 1999).

Scott's initial non-involvement with committees certainly diminished his effectiveness when presenting or suggesting changes to legislation. This non-involvement did, however, allow him to concentrate on constituency work, building up networks within his electorate, and more fully utilising Question Time in parliament (J. Scott, interview, March 15, 1999).

The purpose of Question Time, as stated by the *House of Representatives Practice* (cited in House of Representative Standing Committee on Procedures, 1992, p3), is as part of the critical function of government:

This includes criticism of the Executive Government, bringing to light perceived abuses, ventilating grievances, exposing and thereby preventing the Government from exercising, arbitrary power, and pressing the Government to take remedial or other action.

Question Time, limited to a set period on each day, allows questions to be asked, either with or without notice. Questions on Notice are questions presented in written form addressed to a Minister, and presented to the Clerk or Speaker (Okely, 1989, p29). Questions without Notice are questions asked in the set period for Questions on each sitting day. One constraint on this process is that if a question is asked of a Minister representing a Minister in the 'other place' (the Assembly), some notice, whether written or verbal, must be given (Okely, 1989, p25; Phillips, Black et al,

1998, p 54). This undoubtedly limits the effectiveness of Council Question Time as Assembly Ministers cannot be questioned directly (Hamer, 1994, p139).

Questions have become an increasingly important tool for parliamentarians to probe Government Ministers for information or answers, although there is no time limit in which a Minister must respond. The only constraint is that Questions are considered part of parliamentary proceedings and are recorded in Hansard. In the case of Questions on Notice, they also appear on the Notice Paper. Questions that are not answered on the day they are listed, are regarded as postponed and a list of unanswered questions is circulated to all members (Phillips, Black et al, 1998, p57: Okely, 1989, p29).

In summary, the Legislative Council has, for the bulk of its existence, been a conservative body, representing, through a malapportionment in favour of rural and propertied voters, a particular set of interests. Typically this has been the case for all state upper houses. As Townsley (cited in Gallop, 1984, p31) stated, concerning the Tasmanian Upper House,

though it no longer defends the conservative and even reactionary, interests, as it was wont to do during the first eighty years of its existence, it still acts, albeit unconsciously, in defence of vested interests.

Changes to the method of election, introduced in 1987, allowed for a degree of proportional representation, and it is this that has allowed The Greens (WA) to gain

seats in the Legislative Council. The Green have then used the instruments of the Council, Committee's, Question Time and the general function of the Council to review legislation and to makes changes according to their own policies. While necessarily limited by the small number of Green parliamentarians the above mechanisms have allowed for a further expansion of the role of the Council as a review of Government legislation, and increasingly Government policy.

## **Chapter 3**

### **The Greens in Parliament: Jim Scott in 1993-94**

Jim Scott was elected to the West Australian parliament in February 1993, as a Greens (WA) MLC for South Metropolitan Region. Because of the nature of the Legislative Council terms, he did not take up his seat in the Council until May 1993. Between May 1993 and May 1997, he was the sole Greens (WA) Legislative Councillor, in a conservatively dominated Council. During this period Scott was not able to be effective in changing legislation without the support of the Liberal/National Party Coalition. This was primarily because they had control of the Legislative Council, having won 18 seats to the combined Labor/Green/Independent 16 seats (Western Australian Electoral Commission, 1993, p38). This being the case, the bulk of work on environmental issues within state parliament was restricted to Questions (On Notice and Without Notice) and a number of speeches during debates. This at least ensured that issues would go onto the public record.

The principal use of Questions was to elicit information from Government Ministers. Answers become part of Hansard and thus are on the public record. Community groups can then use the information in media campaigns. This was particularly the case with the forest campaigns of 1994/95. During this period Scott asked a series of questions on forestry and forest related issues. Many of the response to these questions were then available to be used by the West Australian Forest Alliance to use in their campaign against logging of old growth forests.

Scott was active in a variety of environmental issues, including Wandalup piggery water contamination and concerns over air pollution from High Temperature Incinerators, in particular the Felspar Road incinerator in Welshpool, as well as many non-environmental issues. This included asking a range of questions in parliament, making speeches on issues and in support of Opposition motions, but also included a specific motion regarding ground water contamination.

One of the first and most significant environmental issues which tested the Greens in the Legislative Council was the passage of the Environmental Protection Act Amendment Act (1993). This changed the structure, operation and power of the Environmental Protection Agency (EPA).

Specifically, the Bill sought to amend the Act in seven ways:

1. separating the roles of Chair of the EPA and Chief Executive Officer (CEO) of the Department;
2. changing the appointment of the EPA from by the Minister to by the Governor;
3. requiring public expressions of interest for membership of the EPA;
4. clarifying the terms and conditions of EPA members;
5. changes to voting and public access to EPA meetings;
6. requirement that the EPA is satisfactorily resourced; and

7. changes to clarify the responsibilities of the CEO and lines of accountability (Hansard, 1993/94, p3851).

These seven points were presented by the Leader of the House, George Cash, at the Second Reading stage of the Bill's passage on September 15, 1993. Debate on the Bill resumed on December 8, 1993, passing its third reading the following day. Precipitating the changes to the Act, however, was the perception within the Government of the EPA Board and its chairman, Barry Carbon, of having a bias against development.

The significant changes to the Environmental Protection Act are evident on examination of its Annual Reports. During the period 1992 - 1995, two Annual Reports were produced, being 1992/93 and 1994/95. No report was produced for 1993/94, as this covered the changes to the Act and the subsequent change in Board and Chairman/CEO, with the 1994/95 report covering the period from January 1994 to June 1995.

The quality of the Annual Reports themselves probably expressed more clearly the change in the way EPA could be seen to be doing its job. The report for 1992/93 is outward looking and focuses on the changes over the previous 10 years, particularly since the changes arising from the enactment of Environmental Protection Act 1986. In focussing on changes within the way the community views the environment and how Government has responded, the report gives the impression that the EPA is acting in the interests of both the environment and the community. This is illustrated



in comments such as “Society had made the decision that it wanted development, and it wanted the environment protected.” (Environmental Protection Authority, 1993, p2; see also Carbon, 1992, p4).

Further, a sense of openness in decision making had been envisioned as the appropriate manner in which to reach conclusions that placed the environment, community and industry on an equal footing. This can be done through full disclosure:

The Authority introduced a system in which almost all of the information the Authority had was available to the public (information such as the identity of people making submissions is normally confidential). This has had a huge impact on the integrity of the system (Environmental Protection Authority, 1993, p2).

The report also goes on to describe a number of notable decisions, such as that taken at Mt Leseur, in which an open cut coal mine was rejected on environmental grounds: “It is my belief that in today’s society nobody would realistically believe you can have open-cut coal mining in an area as rare and unique as that.” (Environmental Protection Authority, 1993, p3).

The Annual Report of 1994/95 approaches the environment in a different manner. There is a tendency to treat the environment as a management problem and to discount previous experience:

[In relation to the previous 18 months] the EPA has been accumulating knowledge of state, regional and local issues through our consultation processes, awareness of the complexity of government responses to issues and a realisation of the difficulties involved in the delivery of consistent and sound advice on environmental issues (Environmental Protection Authority, 1995, p3).

The shift in the EPA's self-perceived role is exemplified in the statement: "The EPA will also endeavour to bring the views of responsible government agencies into the process." (Environmental Protection Authority, 1995, p4). While this and the previous passage are reasonable statements in themselves, a conclusion could be drawn that (a) the EPA did not have the requisite knowledge to do its job and (b) that Government agencies were an equal part of the assessing the environment. This would in fact mean that the views of Treasury on the economic value could potentially have an impact on the environmental assessment of an industrial project, irrespective of the value of the environmental assessment.

Further, by severing the link that existed between the EPA, as assessing authority, and the Department of Environmental Protection, as monitoring agency, removed an important feedback loop. The split also placed the resources with the Department and left the board open to political interference (Chambers, 1994, p3)

Perhaps the key to the intent of the legislation is in this last point. The Conservation Council, while having been critical of the EPA on a number of issues including the assessment of the Creery Wetlands and the management plan for the East Perth Gasworks ("EPA", 1992, p9), was even more critical of the government's handling of

the split in roles of Chairman and CEO. Rachel Siewert, Coordinator of the Conservation Council, stated: “The Minister would appear to be getting his advice primarily from the development lobby who argued for the split on the grounds that the EPA was too powerful” (“Anger”, 1993, p4).

The Conservation Council’s assessment arose from the Government’s disregard for the recommendations of the Harding Report. This report was commissioned by the Government following public submissions on the Ramsey Review into the operations of the Environmental Protection Act (the Independent Review Panel on the Environmental Protection Act). The Harding Report had recommended against splitting of the position (Environmental Protection Authority, 1993, p10). The Conservation Council also noted that a previous split of the positions in 1980 had been unsatisfactory (“Missing”, 1993, p5: “Anger”, 1994, p3). While being basically critical of the Government’s process, the Conservation Council singled out Jim Scott as the one MP applying pressure through “vigorous debate in the Upper House.” (“EPA”, 1994, p3).

Scott, in referring to the failure of the Government to implement the recommendations of the Harding Report, said:

[The Government] disregarded the recommendations of a special report looking at how the EPA should be amended; [the Government] did none of the things that they recommended whatsoever, even though it was a comprehensive report and dealt with improvements that should have been made (J. Scott, interview, March 15, 1999).

He went further in terms of what could have been done to change the Government's position on the Bill saying that he felt that nothing he or anyone else could have done would have changed the outcome of the Bill's passage through parliament.

Quite frankly, there was nothing you could do with that Bill. It wouldn't have mattered what you did. You could have burnt down parliament but it wouldn't have deviated the Liberal Party. If you had 2000 people beating on the doors of parliament it would have done nothing (J. Scott, interview, March 15, 1999).

This was particularly clear during the Committee stage of the Bill, prior to the Third Reading, when every non-Government amendment was decided in the negative. In one instance, members were denied the opportunity to speak. Clearly, the Government wished for as little debate as possible, and for the Bill to be passed rapidly, going so far as to argue that if members were unhappy with any of the Clauses of the Bill they should have raised them during the Second Reading. This begs the question of what the Government believed was the purpose of the third Reading, and why it should occur at all.

In terms of Scott's activities in the Council, he spoke against the Bill from 4.15am to 4.54am on December 8, as one of three non-Government members to speak against it. He also asked questions and made statements in relation to the Amendments on several occasions from September 15 until December 9. The substance of the questions and statements related to the EPA Board members themselves (particularly the remuneration of members), protection from litigation and the manner of their sacking.

These activities, of course, need to be taken in the context of the numbers within the Council, with the Coalition having control of the both Houses and being able to push through legislation at will:

I really didn't put a huge amount of emphasis on making changes to legislation because the government's position was always 'we've got the numbers - bad luck'. The only changes they ever made were if you were able to point out some silly mistake that they had made that was not a policy position but really just house-keeping stuff, so rarely you could get change through the legislation in the House (J. Scott, interview, March 15, 1999).

This did not stop him from putting an amendment to the Bill regarding the use of consensus to reach decisions on the EPA Board, the amendment not being agreed to. John Halden, Leader of the Opposition in the Council, pointed out during an Urgency Motion on the use of the guillotine (a motion to restrict speaking time), Government members had argued that members could make a few short speeches or just divide and vote, stating; "What an outrageous atrocity to the process of democracy." (Hansard, 1993/94, p8694). The Motion noted, in relation to the guillotine; "The gross abuse of the conventions of the Legislative Council and its perceived role as a House of Review." (p8689).

Scott's activities also need to be viewed against his own professed lack of knowledge and experience in parliamentary procedure. As he stated, he was "pretty inexperienced; I was the first Green in State Parliament; I was still learning the system

and I didn't really know very much at all." (J. Scott, interview, March 15, 1999). Coupled with the intransigence of the Government in the Council, this meant that Scott had no impact on the Bill during its passage.

So, in the first test of a Green in State Parliament, when faced with significant legislative change, Scott found himself to be less than effective. The Greens (WA) Platform under which Scott was elected specifically mentions the existing pro-development stance of Government: "Most environmental public planning is conflict-centred and the interests of economic growth and development are placed above conservation" (The Greens (WA), 1993).

In these crucial amendments to the Environmental Protection Act, Scott was unable to ameliorate the effects of the proposed legislation, even though the amendments compounded problems recognised within his own platform document. Although arguing for the implementation of an existing and relevant government report (the Harding Report), Scott was unable to make any changes to the Government proposals.

During the rest of the 1993/94 sitting period, Scott asked questions on the environment ranging across pollution (air, soil and water), Conservation and Land Management (CALM) logging regimes, dredging in Cockburn Sound, high temperature incinerators, radioactive testing of animals and car usage. The bulk of these questions were asked as Questions On Notice, although Scott also made a number of speeches at various stages.

Nine questions were asked specifically on forests and forestry practices. This includes questions on timber yields from CALM managed forests as well as management regimes. Seven of Scott's speeches referred significantly to forests or forestry practices. This included his speech during the EP Act Amendments Second Reading, in which he dwelt on the question of the environment costing jobs (Hansard, 1993/94, p9262).

Development of the Port Kennedy area also figured significantly in terms of questions. In all, Scott asked 10 questions, split evenly between On Notice and Without Notice. During this initial sitting of Parliament, Scott was still a novice, and it was only in subsequent years that he improved both the quality and quantity of questions.

The tally for the 1993/94 session of parliament can be seen in Table 1, in which Scott's activity in the Council, relating specifically to the environment, is delineated in terms of the type of activity as well as the key issues:

<b><i>Incidents:</i></b>		<i>77</i>
<b>Type</b>		
Q's on Notice		52
Q's W/out Notice		6
2nd Reading speech		5
Speeches during motions		3
Urgency Motion		1
Committee speech		4
Adjournment Debate speech		3
Address in Reply		2
3rd Reading speech		1

<b>Issues</b>		
Forests/CALM		16
Pollution		11
	Water	5
	Soil	3
	Air	3
Incinerators		10
National Parks		7
	Establishment	4
	Mining/Pollution	3
EPA		6
Port Kennedy/ Creery Wetlands		5
Seagrasses		5

**Table 1. Scott's speeches and questions on the environment 1993/94**



During this session of parliament Scott asked 58 questions specifically related to the environment. The answers to these questions were then used to check information received from government departments. The bulk of these questions related to forestry and timber cuts, but 10 related to high temperature incinerators, the answers to which were relayed to community activists concerned with the health implications of the wastes being burnt (J. Scott, interview, March 15, 1999).

Question Time may be less than effective, depending on the time taken for a reply and the quality of the answers received. During one adjournment debate, Scott directly referred to the poor quality of answers provided by Ministers and Ministers Representing Ministers (Hansard, 1993, p 6435). This is related in some cases to the lack of availability of the Assembly-based Ministers, but in most cases they were due to narrow interpretations of the questions, or a desire to provide as little information as possible.

Scott also pointed out that a number of the answers contained information that was factually incorrect or misleading. While a number of the questions asked lent themselves to yes-no answers, the examples used by Scott demonstrated an unwillingness on the part of Government Ministers to answer questions put to them.

While Scott was not a member of any Legislative Council committees during the first two sessions of this parliament, two of the four times that Scott made speeches while in Committee of the Whole concerned the Environmental Protection Act Amendments. Committee of the Whole is the process where the Council acts as a committee without breaking or appointing a separate group to consider legislation or

issues. During this process, the Council also discusses reports from committees or outstanding issues arising from committees. The speeches were concerned with the splitting of the EPA Chairman/CEO position and the sacking of the existing Board members. Both Scott and the Opposition believed this contravened the findings of the Harding Report on the Environmental Protection Act review in 1992, and that the changes were driven more by ideology than good reason (Hansard, 1993, 9522; 9531).

As a new and relatively new and inexperienced politician sitting on the Cross-Benches outside the majority Government, Scott recognised the minimal impact that he had upon the passage of the Environmental Protection Act Amendment Bill 1993. In recognising this, he also highlighted the problem of being in a minority position when faced with a Government intent on using its numbers to make changes irrespective of the merits of opposing or counter arguments.

At this early stage of his parliamentary career, Scott was not making good use of the media, whether print, radio or television, although he recognised the value of both radio and local community press compared to *The West Australian* and television reporting (J. Scott, interview, March 15, 1999). Because of the partisan nature of debates within the Council, the use of the various media outlets is important to place pressure on the Government if only to embarrass them.

His use of Question Time in relation to Environmental Protection Act Amendment Bill was also minimal, but was developing in relation to his overall performance within parliament, and can be seen to have covered many diverse areas. As the sole Greens (WA) representative with State parliament, he was “the Minister for life, the

universe and everything.” This meant that his time had to be divided across all portfolio areas (J. Scott, interview, March 15, 1999).

In the initial stages of being in parliament, Scott had little opportunity to participate on committees. Following the 1996 State election and the Coalitions loss of control of the Council, committees can be seen to have a greater impact on the parliamentary process. The use of the committees, and particularly the ESD Committee, to effect change is the theme to be next developed.

## **Chapter 4**

### **The Ecologically Sustainable Development Committee Process**

On Tuesday, June 10, 1997, Christine Sharp rose to give her inaugural speech to the Legislative Council. In this speech, she outlined her understanding of ecologically sustainable development, its necessity, and foreshadowed the moving by Jim Scott of the establishment of a Legislative Council Standing Committee on Ecologically Sustainable Development (ESD). The establishment of this committee is one of the most important developments in environmental politics in WA, and a critical achievement for Greens (WA) parliamentarians.

The establishment of a committee on sustainable development follows a trend both overseas and nationally to modify approaches to land use and resource extraction on an ecologically sustainable basis. The term ‘sustainable development’ has its origin in the World Conservation Strategy from 1980, in the definition of ‘conservation’. It is described as “the management of human use of the biosphere so that it may yield the greatest sustainable benefit to present generations while maintaining its potential to meet the needs and aspirations of future generations” (cited in Basiago, 1995, p110; see also Khan, 1995; Reid, 1995).

The Brundtland Commission report “Our Common Future” defined sustainable development as; “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.” (World

Commission on Environment and Development, 1990, p87). The concept most clearly at work here is that sustainable development (or the notion of sustainability) is a process criteria asked at the beginning of planning or landuse strategy.

While reports such as Brundtland's have been criticised for being overly focussed on economic growth and the inclusion of environmental assessment in economic systems as the mechanism for the achievement of sustainability (see Reid, 1995, p59; Salleh, p145; Beder, 1994, p8), they do provide a baseline statement of sustainable development. The 1991 International Union for the Conservation of Nature (IUCN) report "Caring for the Earth" went step one further in stating that development was only worthwhile if it met a set of criteria relating to the whole-of-being, including human and political rights, education, standard of living, and freedom from violence. This strategy also acknowledged the requirement that an integrated approach was required to environmental and development issues (Reid, 1995).

In 1989 Australia began its own ESD process, with the Prime Ministerial report "Our Country Our Future". This was followed by the establishment of a process involving nine Working Groups to look at ESD in relation to such areas as Fisheries, Forestry, Mining, Transport and Tourism. The Working Groups had as their measure of ESD four key outcomes:

- (1) improvement of individual and community well-being and welfare that does not impair the welfare of future generations;
- (2) the provision of equity within and between generations;
- (3) recognition of the global dimension; and

(4) the protection of biological diversity and the maintenance of ecological processes and systems (Ecologically Sustainable Development Working Groups, 1991, p.vi; see also Basagio, 1995).

Certainly up to this time, Australia, and particularly Western Australia, had a history of being driven by primary and resource extraction industries. Peter Jones, as a Minister in the Court Liberal Government, stated one of the then Government's three key development objectives as being, "the further development and production of raw materials." (1981, p103). The 1986 Report on Mining in National Parks also concluded that while mining and conservation were generally incompatible landuses, "in some instances minerals within national parks and nature reserves will be of such significance for it to be in the public interest to mine them." (*Committee on exploration*, 1986, p.viii). While this report was criticised by the environment movement as opening the way for mining in parks and reserves, it was also criticised by the mining industry as making it too hard, and the reports recommendations were never acted upon (*Conservation and mining*, 1990, p12).

This approach to conservation and landuse was reiterated as late as 1996 in a report prepared for the Department of Commerce & Trade. In reference to a model of declining growth for WA it stated: "Environmental, Aboriginal and land access issues [will] take their toll on exploration and development." (Australian Centre for Economic Performance, 1996, p3). Implicit within all other growth models used was the ability to mine and refine resources with minimum impediments, whereas other countries might hinder this with "a riskier investment environment requiring strict

pollution controls.” (p3). The clear implication of such modelling is that growth and development are incompatible with environmental protection.

It is in this context that the ESD Committee was established, with a set of criteria that explicitly acknowledged the links between development and the environment:

Any matter in Western Australia concerning or relating to the planning for or management, use or development of natural resources and the environment having particular regard to demographic, economic, ecological, technological and lifestyle enhancement factors and concerns (Hansard, 1997, p4478).

While this does not generally describe what sustainable development or ESD is, it does provide a framework from which the Committee can operate. The principles used by the Australian ESD Working Groups could then be considered by the committee in its assessments, and could also be regarded as a measure of success in assessing outcomes from the Committee’s inquiries.

When Scott moved the motion to establish the Committee, he stated clearly that he did not believe that the Committee should not be seen as ‘anti-development’. This was to pre-empt arguments that any restriction on development was a restriction on the economy. As Nahan states, in relation to the environment as an economic problem, “the environment problem is or should be primarily in the domain of economics.” (1986, p43). This particular argument runs along the lines that legislative processes which restrict access to the environment actually place public control over private activities, and must therefore be wrong.

Neither Scott nor Sharp regarded the Committee as being established to be ‘anti-development’. Rather, it was to bring the West Australian Legislative Council into line with other Upper Houses in Australia in having a Committee that examines the “nexus between planning, natural resource management and the environment.” (Hansard, 1997, p4480). This position therefore places the environment in the social domain: not opposed to development, but as a potential modifier. While this might, as Nahan believes, place restrictions on the economy, this is also in accordance with Green theories on the role of economics as subservient to social demands (Trainer, 1998 p16; see also Dobson, 1995).

The New South Wales (NSW) Legislative Council has a committee similar in focus to the ESD Committee in the Standing Committee on State Development. The Standing Committee’s functions cover the growth and development of NSW through,

issues concerning employment, resources and energy, primary industry, industrial and technological developments and environmental issues; future technological strategy; and regional development (Parliament of New South Wales, 1999b).

This committee was established in 1995 to inquire and report on options for policy development. Recent reports have covered employment, provision of regional air services, agriculture and fisheries. Current inquiries also include the use and management of pesticides. Due to its scope, the committee can delve into any area that may have a future impact on NSW. While this committee is not focussed



specifically on ESD it does cover the key aspects of it, by seeking policy directions for development and environmental issues on a long term basis.

One of the key issues the WA ESD Committee will report on is salinity and the WA Salinity Action Plan. Salinity, as a critical environmental issue, has grown in importance for all states in Australia, but particularly for Western Australia, although soil salinisation has had a measurable environmental impact since the 1950s. The whole issue of salinity is, however, very important when taken in the context of ESD, given that it directly relates to changed landuse, and the environmental degradation resulting from that. The role of the Committee in examining, on an annual basis, the extent to which improvements have been made to soil and water quality is critical, as it represents one of the very few mechanisms for accountability of both Government and industry in combatting what is acknowledged as WA's worst environmental problem.

The problems with salinity highlight the extent of ecologically unsustainable development in agriculture, with the 1997 State of the Environment Report placing the value of land lost to salinity at almost \$1.5 billion, at an annual cost of \$64 million (Department of Environmental Protection, 1997, p28; *Western Australian Salinity Action Plan*, 1996, p3). In response to this, the WA Government in 1996 produced the WA Salinity Action Plan, which the State of the Environment Report recommended be implemented, along with measures to re-establish the hydrological balance.

From the 1970s onwards, a variety of reports have looked at soil and water catchment salinisation, with a view to ameliorating the existing effects of the salinisation, and preventing further loss of soil and water quality. The 1974 salt survey put the amount of land lost to salt at 167294 hectares 1.17% of the total cleared land in WA. This was increasing at over 4000 hectares annually in 1979. Water quality was also considered to have seriously deteriorated, with up to 50% of the usable surface water affected by salt (*Clearing and stream salinity*, 1979).

At the time (1979), three strategies were identified for the management and amelioration of salt affected lands. Prevention was obviously the most widely canvassed idea, with the clearance of native vegetation as a key issue. The loss of native vegetation was directly linked to water quality, yet the development mentality of Western Australia was also acknowledged, in that “complete prevention would have led to curtailment of the agricultural industry on which the region’s development was largely based.” (*Clearing and stream salinity*, 1979). This aside, restrictions were urged on further alienation of forested Crown land, and controls on further clearing on already alienated land were advocated.

Restoration and adaption were the other two management strategies recommended. Reafforestation was the preferred option for restoration, although it is acknowledged that this is not without cost or problems, with estimates of the amount of land needing to be replanted to restore the land to its pre-colonisation state ranging between 10 and 40%. Adaption on the other hand, called for better reservoir management and the diversion of saline headwaters to ameliorate salinisation within water catchments.

These strategies were reiterated in 1989 (*Vegetation strategies*, 1989), with reafforestation as the preferred option in ameliorating the effects of salinisation. At this time it was also noted there was clear evidence of a decrease in the outflow of saline water from beneath plantations. The various afforestation strategies included strip and landscape planting on farm lands, as well as dense and wide space plantation plantings. Agricultural strategies included increasing the usage of pasture and crop plantings of salt resistant crop varieties such as lupins. Management strategies relied more on integrated catchment and headwater management.

The 1984 salt survey indicated that 254,690 hectares of all agricultural land was now affected (about 1.6%) and the average rate of land loss was now 6000 hectares per annum (compared to 4000 in 1979). Australia-wide there were almost 550,000 hectares affected by salinisation, indicating the magnitude of the problem (*Vegetation strategies*, 1989, p1).

By the time of the release of the State of the Environment Report in 1992, the amount of salt affected land in WA had risen to 443,090 hectares, or about 2.77% of all agricultural land. Waterlogging had also been identified as a significant problem that is attendant with the same rising levels of groundwater which cause salinisation. A positive outcome by 1992 was a dramatic decrease in land clearing from a record high of over 100,000 hectares in 1988/89 to a low of less than 7,500 by 1991/92, although the impact of the extensive clearing may not be felt for a number of years (see also Williamson, 1990, p4). A wide range of possible responses had also been identified as potentially having a positive impact on salinisation (*State of the Environment*, 1992, p89).

The scale of the problem can only be fully appreciated when it is realised that the level of funding required to begin combating salinity is in the order of \$3 billion, although this can be spread over 30 years (*Western Australian Salinity Action Plan*, 1996, pvii; Draft Salinity Action, 1999). Salinity as an environmental issue is, therefore, one of the most significant problems WA faces at this time.

The debate with in the Legislative Council on salinity worked to define what was possible for the Committee to achieve. In the end, the Council agreed the best use of the resources of the Committee was to report on the implementation of the Salinity Action Plan, rather than examine salinity itself. As Sharp noted during the debate:

We discussed that proposal yesterday in committee and felt it was a very realistic proposal in terms of making sure our workload did not get bogged down to the whole science of salinity, but very much looked at the government and community processes for seeking to improve it, rather than at the problem itself (Hansard, 1998, p1794).

Forestry, as another form of ecologically unsustainable development, has received a great deal of attention over the past 10 years, with battles over woodchip licences, the logging of old-growth forests and Governmental attempts to broker a solution acceptable to all stakeholders. The Regional Forest Agreement (RFA) was intended as such a brokered response, but has largely failed to come up to the expectations of the conservation movement, one of the key stakeholders within the forest debate. Indeed the process has been labelled a 'sham' and a 'sellout', and brought warnings

that the signing of the agreement on May 4, 1999 would only bring renewed protests (Schultz, 1999, p3).

As an instrument of Government policy, the RFA has far reaching implications, setting Government policy with respect to forests for 20 years. The Committee, through its inquiry and report, highlighted the need for the Government to undertake adequate consultation and negotiation before arriving at such policy positions. Failure to do so has jeopardised the support of major stakeholders of public resources, namely both the conservation movement and the general public.

The key debate within the Regional Forest Agreement, and indeed within the forest debate over the past decade, has been over the logging of old-growth forests. While a range of definitions exist for what actually constitutes an old growth forest, it has been acknowledged as the prime area of conservation, as opposed to regrowth and plantation forests (Resource Assessment Commission, 1991, p5). In particular, the level of cutting of forest timber for export woodchipping has been questioned by both conservation groups and the media, and high levels of public support exist for an end to logging in old-growth forests for export woodchipping (Schultz, 1999, p3).

The logging of old-growth forests aside, considerable debate has also existed around the sustainable management of forest timber resources. The National Forest Policy Statement, which provides the basis for the RFA, makes a number of statements about sustainable forestry, and bases its “Vision” on the notion of “sustainable forest industries” and of forests that are “managed in an ecologically sustainable manner” (1992, p3). The Department of Conservation and Land Management (CALM), as the

manager of West Australian forests has, at various times, been accused of not managing WA forests sustainably (Landmark EPA report, 1999, p3; see also CALM rejects, 1998) In submissions to the ESD Committee, CALM admitted that timber yields would have to fall some 60% from 490,000 cubic metres to 300,000 cubic metres to reach maximum sustainable yields (*Management*, 1998, p80).

The second report of the ESD Committee concerned itself with only one part of the inquiry into the management of State forests, dealing with the RFA process, with the intent of reporting on the other aspects in future. As such, there are a total of seven areas in the terms of reference to report on:

- (a) the sustainability of current logging practices;
- (b) timber royalties;
- (c) the *Wood Chipping Industry Agreement Act 1969*;
- (d) the Regional Forest Agreement process;
- (e) protection of high conservation value forests;
- (f) substitution by plantation resources; and
- (g) employment opportunities and long term forest-related industry planning (*Management*, 98, p1).

Upon tabling the report, Sharp moved immediately within the Council for its endorsement. This was principally because the timeline for signing of the RFA could make any debate in the Council at a later date irrelevant, the RFA having been signed.

I am aware that I proposed something unusual to the Chamber but I expected the Chamber's indulgence because we all understand that it is the only mechanism available to the Chamber to debate whether it endorses the reform package contained in the committee's report...we do not want to make the committee process an irrelevance (Hansard, 1998, p3805).

The key point of her argument, and the argument of the ESD Committee report itself, was that the whole RFA process required considerable work. Without going into the actuality of the RFA process, or its shortcomings, the committee recommended that the RFA process required overhauling. Sharp explicitly states that this is because of the need for a process that works for both the conservation movement and the timber industry (Hansard, 1998, p4315).

A key recommendation of the Committee's report, Recommendation 6, concerns resource security. Resource security has been seen as one of the key goals of the RFA, and it is the desired outcome for the timber industry. It reads:

That the Government support the proposed RFA outcome of improving the timber industry's resource security by implementing a 20 year Forest Management Plan, to promote better forest management, long term industry planning and investment and workforce security in timber-related industry (*Management*, 1998, p47).

The Committee acknowledges that the current practice of using 10 year management plans is not good for a resource based industry, although it said that it was not necessarily unusual in resource extraction industries. Nor is it unusual when the

industry is reliant upon resources that are publicly owned (*Management*, 1998, p43). However, the Committee goes on to say that the impact of the RFA is that it effectively removes the Commonwealth from the industry equation. This eliminates the Commonwealth's ability to impose limits to the amount of woodchips that can be exported through a licensing system (*Management*, 1998, p41). In this instance greater resource security is provided. The recommendation, then, is aimed at providing that security through a properly consulted and reviewable Forest Management Plan.

The effect of The Greens (WA) parliamentarians in this process is really focussed on Christine Sharp. The ESD Committee, through its reports, has highlighted areas of significant concern. Sharp, as Chair of the Committee, has worked to achieve this outcome. This has impacted on Government policy, and potentially accelerated the signing of the RFA. This in turn has entrenched opposition to the RFA as it stands.

The parliamentary debates surrounding the ESD Committee have been quite long but have covered significant ground. In respect of the referral to the ESD Committee of salinity in WA, the debate improved the work of the Committee by more sharply focussing its attention to actual progress of action on salinity, rather than on salinity per se. This focuses the work of the Committee not onto scientific exploration but onto the workings of Government and Government agencies, and scrutinises the impact of Government policy.

The establishment of the Committee itself has been important, in that parliament now has a committee which has as part of its mandate a requirement to assess the impact of



development on the environment. In a resource and development based state such as WA this would seem critical, but such has been the drive for development in the state that this has not occurred before. In this respect, the establishment of the Committee brings WA into line with other states in Australia, as well as internationally, in looking at the sustainability of development from an environmental perspective.

## **Chapter 5**

### **Committee Outcomes**

The vote to establish the ESD Committee occurred on June 26, 1997. The Committee has therefore been in existence for just 2 years. In the first 18 months, to 1999, it had reported on two matters and had a third referred to it. Any evaluation of the work of the Committee must therefore be of a preliminary nature.

Outcomes in terms of the Committee are not, however, derived solely from the number of reports published, or the number of investigations carried out, but potentially in the manner of the investigations and the impact that this potentially has upon both the committee system and the working of parliament itself. Sharp's activities in getting the Council to endorse the ESD Committee's report while the Council was in Committee clearly challenged custom and practice within the Council, but achieved the desired result in also challenging Government policy on forest management (see Hansard, 1998, p4796).

It is also acknowledged by both Sharp and Scott that parliament is an adversarial place, with outcomes tending to be determined by the numbers as opposed to the strength of argument. There are exceptions to this, but they tend to be the exceptions that prove the rule. The so-called "Abortion debate" is one such debate which generated a great deal of media reportage and saw all the parties involved in the

parliament searching for a solution (Black & Phillips, 1999). That one was reached is potentially a healthy sign for parliament.

In terms of the ESD Committee, outcomes to this point in time have been limited. The first report examined the proposed powers of the Chief Executive Officer (CEO) of the Department of Environmental Protection. Amendments to the Environmental Protection Act were to establish a waste management company to have responsibility for handling waste at three sites in WA with the CEO as that company (*EPA Amendment Bill*, 1998, p1). The recommendations of the committee suggested that this was a suitable outcome at this stage, given the very pressing need for some regulatory protection for these sites, but also identified that this was an unwise practice for any future sites. This was accepted by the Government and the appropriate amendments to the bill amending the Environmental Protection Act were passed without further ado.

One outcome from the ESD Committee process at this stage has been the endorsement of the 2nd Report by the Council in Committee of the Whole (Hansard, 1998, p4796). While this does not bind the Council or the Minister, it does demonstrate to the Government, and in particular the Minister, the depth of feeling around the issue. This has been borne out in the public reaction to the signing and conditions of the RFA, as well as tensions within the Coalition.

The National Party, although part of the Government, also endorsed the report. While the Government was still free to sign the RFA, it was doing so ignoring the outcomes of the report, ignoring the expression of support for the report from the Council, and

crucially, it was doing so when one of the members of the Coalition apparently did not support the its position with respect to the RFA process (Grove, 1999). The debates on the RFA process have highlighted the differences between the National and Liberal Parties on forest policy, and appear to have increased pressure on the Labor Party with respect to its own policies on logging (Burns, 1999, p7). This then moves the Committee from the realm of parliamentary impact through the amendment of legislation, to political impact, in affecting Government and Opposition parties policies.

The potential impact of the Committee's reports are, of course, mitigated by the ability of the Government to obfuscate and delay any reporting with which it does not agree. This was very much the case when Sharp initially moved to have the RFA report 'endorsed'. It is also the case with the Minister's refusal to report back to the Council on the Committee's report before the RFA had been signed, although there is some scope to readdress the RFA process when the Minister does finally report to the Council. While this will have no actual effect upon the RFA process itself, it will again place the Council in opposition to the Government on the RFA issue (see also Hansard, 1998, p8198).

With the RFA being signed, the recent bill to protect high conservation value old-growth forest areas has taken on a greater significance, proposing to protect a greater area of old-growth forest than that proposed under the RFA (Hansard, 1999 p7435; Sharp, 1999). The bill was proposed to Sharp by the West Australian Forest Alliance (WAFA) as one way of highlighting the problems of the RFA (Sharp, interview, March 17, 1999). The bill, having passed through the Council successfully, failed

when it entered the Legislative Assembly, but has allowed further access to the media for the conservation movement, and a further chance to highlight the perceived problems of the RFA. While WAFA could have taken their draft bill to the Australian Democrats, it chose Sharp and the Greens because of their closer affiliation with forests and the conservation movement.

Apart from the workload imposed by the Committee on itself in examining the RFA and forestry in WA, is the issue of salinity. The report on salinity is shaping up to be every bit as important as the debate on forests. The Committee, however, is not required or expected to investigate and report on salinity itself, but on the application and implementation of the State's Salinity Action Plan (SAP), and the work of the State Salinity Council (SSC). However, as salinity has become the principal destroyer of farming land in WA, and is expected to remain so for the conceivable future, the work of the SSC and SAP will be keenly watched in seeing if there has been any appreciable change in either the rate of salination of farmland or any reversal in the trend.

Reporting on salinity will occur on an annual basis for the life of the Committee. As long as the Committee is in existence (at this stage until the end of this session of parliament, but conceivably indefinitely), this reporting will continue. Again, the outcomes from this reporting will not come from the committee, but from the action of parliament in responding to the reports. This is a key point. The Committee in itself will not have dramatic effects, but the consequences of and responses to its reports may have. Should the SAP and SSC be shown to be failing, but potential

points of improvement be highlighted, the Government has the opportunity to act upon this. This also applies to the Committee's work on forestry.

Sharp outlined exactly this, during her initial moving of the Committee's report on the RFA process. Sharp described a round-table process that occurred prior to her entering parliament. This process brought together all stakeholders in a open environment:

It was remarkable to watch people from the conservation movement and people from Bunnings stand in front of a whiteboard for an hour and a half and redesign the timber industry in a way which both sides thought was satisfactory and which met major stakeholders needs (Hansard, 1998, p2145).

While this description of a round-table discussion seems to indicate a positive outcome, Sharp goes on to describe how the process ultimately bogged down, when CALM representatives indicated that the RFA process could not be changed in any way. If the hope, however, for the round-table discussion was to get people together to discuss the issues associated with forest management in WA, then it succeeded (see also Mercer, 1995, p68).

The round-table ultimately failed because of constraints placed upon both industry and conservationists by the Government in the form of a rigid RFA process. This same constraint exists on the ESD Committee. Even if all members of the Committee sign off on a report, the Government may still ignore the report and continue as it wishes. This is also how Jim Scott felt during the debate on the Environmental Protection Act

Amendments in 1993, about which he believed nothing would have altered the Government from its course (Scott, interview, March 15, 1999).

Both reports produced by the ESD Committee have caused considerable debate within the Council, and have fed debate outside parliament. In relation to reporting to the Council, one particular issues arose with respect to the processes used to discuss reports and the manner in which they are dealt with. This concerned the method of endorsement of reports, and arose from a question asked of the Chairman of Committees: “If this report were noted, what process could be taken to endorse the recommendations in the report.” The reply confirmed that what was occurring was not the usual practice of the Council in endorsing reports: “The usual procedure is to move a substantive subsequent motion.” (Hansard, 1998, p2851). The members did, however, resolve to endorse the Committee’s report.

This is important because the motion to endorse the Committee’s report was being discussed while the Council was sitting in Committee of the Whole. Proceedings at this point are conducted by the Chairman of Committees and not the President. The effect of this was that the Committee of the Whole endorsed the report but not the Legislative Council. For the Council to endorse the report of the Committee, a further motion would need to be moved (see Okely, 1989, p68). Further, if parliament is prorogued, everything on the notice paper is considered to have lapsed and this process would need to be restarted in the next session of parliament. This potentially means an item can be dropped by the Council and not be discussed again.

Sharp only became aware of this when looking over the Council Notice Paper after the debate and seeing that the report listed (Sharp, personal communication, April 10, 1999). It is apparent from her speeches that Sharp was not aware of this procedure during the debate, referring to the Council endorsing the report (Hansard, 1998, p2851). This is primarily due to Sharp's lack of parliamentary experience, and had repercussions in terms of the time taken to endorse the report.

The actual debate on endorsement ran from October 15 to December 3, 1998. The impact upon the Minister at this stage has been little other than to cause embarrassment, although it has, however, laid the foundations for further statements from Christine Sharp on this. It also lead to the introduction into the Council of a bill to protect high conservation value old-growth forest areas, ahead of the RFA being signed (Hansard, 1999 p7435; Sharp, 1999).

So, while much time was used gaining endorsement of the report by the Committee of the Whole, it was not endorsed by the Council. Yet one of the reasons for doing this section of the ESD Committee work on forest management was to deal with the RFA process prior to the RFA being signed and to place the results before the Council. Given that the RFA has now been signed the report could in some senses be deemed to have failed to achieve the required outcome. Equally, however, by producing the report and having the debate, media attention was attracted and community awareness of the RFA was raised (Parliamentary report, 1998, p5).

The question of custom and practice in the processes of the Council is important where matters are not covered by Standing Orders. As the debate around endorsing



the Committee's report showed, not following the usual practice allowed the Council to express an opinion on a particular Government policy. This was then able to be followed up in the media stating the various parties' opposition to the Government's position.

One of the key limits to the work of the Committee is that The Greens (WA), being a solely Council based party, have no scope to introduce debates into the Assembly. While this could conceivably occur through the auspices of either the ALP or an Independent, it occurs only rarely. Debate is therefore limited to the Council, and means that neither the Environment Minister nor Premier face direct questioning on the committees report or its findings. As most scrutiny of Parliament by the media has up to this time tended to focus on the Assembly, most of the debates in the Council have not been reported as widely by the mainstream media (in this instance The West Australian, Sunday Times, and the commercial TV channels 7, 9 and 10) as they would have been had the debate occurred within the Assembly. The impact of a minor party is therefore necessarily limited at this time if it cannot put forward ideas in the form of motions and bills into both houses.

This is different from, say, the Senate, where major policy debates occur (and are reported in the media) in the Senate on a range of issues. It is precisely because the Senate is not controlled by the Government that this can occur. The same does not seem to apply to the Council, ultimately due to the relative novelty of a non-conservatively controlled Council, and the lack of success by either the Democrats or the Greens in winning significant amounts of the media's time.

However, Green parliamentarians such as Sharp will always be limited within the Committee by the necessity of convincing Labor and Coalition parliamentarians of the correctness of a Green position. This process of negotiation inevitably waters down proposals and recommendations. Further, reports have to go back to the Council, and the recommendations may still not be accepted by either the Government or other parties. Thus recommendations may have the support of a majority of Committee members, but still fail to win a majority of members in the Council.

Further, the Committee itself is only in existence as long as the Council agrees to it. While the Committee is recognised as a Standing Committee, it is not a permanent Committee of the Council. Should the composition of the Council change such that the Coalition were able to regain control, the Committee may simply not be reappointed in the next parliament.

## **Chapter 6**

### **Conclusions**

This thesis set out with the intention of exploring the impact The Greens (WA) have had upon environmental policy in Western Australia. As Greens (WA) parliamentarians did not enter the Legislative Council until 1993, the period examined has been limited to after May 1993. In measuring the impacts Green parliamentarians have had upon environmental legislation in the Western Australian parliament, we need to return to the three criteria set down at the beginning of this thesis before moving onto examine them in detail. Those criteria were: (1) what is a reasonable measure of effectiveness for Green parliamentarians; (2) whether they have been effective in the Western Australian parliament since gaining election to the Legislative Council in 1993; and, (3) under what conditions can Green parliamentarians be most effective.

The first criteria may be simply stated as being to provide overall positive changes to the legislation. This may be in the form of significant changes to, or rejection of, the legislation, acceptance of legislation with provisions, or other such amendments to policy that generally improve the condition of the legislation over and above what might have been expected from the unamended legislation. This does not mean that the general condition of the environment would improve, and indeed it may be manifestly worse off, but that these effects, adverse or positive, are shifted in a positive direction, based on the expected outcome of the legislation.

The second criteria concerns itself primarily with the instruments at a parliamentarian's disposal once elected. These parliamentary mechanisms determine what courses are available to amend or alter legislation or policy. This needs to be considered in conjunction with the situation in the Legislative Council with regards to control of the Council. Between 1993 and 1997, the Coalition controlled the Council, but from 1997, the control has rested with the Labor Party, Australian Democrats and The Greens (WA).

The third criteria relates to the method of election to the Legislative Council. The ability of any Green party to effect legislation is linked directly to this. The method of election determines the situation the parliamentarians find themselves (minority or balance of power), as well as effecting how they may use the instruments once within parliament. In this sense it is linked closely with the previous criteria. The method of election to the Legislative Council was, until 1987, similar to the Legislative Assembly. This was based on single member electorates, which naturally favoured the established major parties. After the changes to the Electoral Act in 1987, and the introduction of multi-member electorates, it became theoretically easier to elect a member of a minor party or an independent to the Legislative Council. In 1993, The Greens (WA) were successful in electing Jim Scott as Member for South Metropolitan, and then followed this in 1996 (taking their seats in 1997) with Giz Watson and Christine Sharp. This method of multi-member electorates is, however, still biased in favour of rural interests, and continues a history of malapportionment in the Legislative Council that dates back to last century. This malapportionment

maintained, until the 1996 State General Election, a bias toward conservative parties in the Council.

Nonetheless, in taking up their seats in May 1997, the three Green parliamentarians became part of the first Legislative Council to have a majority of non-conservative members. This is important, because being in the balance of power dramatically improved their ability to effect Government legislation. Prior to this, Jim Scott sat alone as the only Greens (WA) Legislative Councillor in a Coalition controlled Council between 1993 and 1997. During the debate on the Environmental Protection Act Amendment Bill 1993 he was not able to effect any changes or to initiate much debate on the legislation.

At the same time, Scott, new to parliament, was very inexperienced in the use of the various instruments of both parliament and the media. This inexperience meant that he did not use either the instruments or the media to their fullest or best advantage. Scott also entered parliament on a Green Policy Platform that had not envisioned the kind of changes to the Environmental Protection Act sought by the new Court Coalition Government. Without adequate policy direction, Scott was left in somewhat of a policy vacuum. This forced a reliance on advice from the conservation movement in general as opposed to policy direction from the party.

With respect to the Environmental Protection Act Amendment Bill 1993, Scott made some attempt to raise issues with the Government during Question Time, working from direction from groups such as the Conservation Council which had clear views on the legislation. This relationship assisted Scott in overcoming policy deficiencies,

while providing the conservation movement access to a sympathetic parliamentarian. However, Scott's impact on the Environmental Protection Act Amendment Bill 1993 was negligible. The Government was determined to push the bill through with as little consultation as possible, and Scott was largely ignored by them.

Scott encountered a Coalition Government with a firm legislative agenda resistant to change. As the Coalition had control of the Council and were not prepared accede to any demands for change, Scott could make few changes to legislation. In this respect Scott had little impact upon environmental legislation in the four years that he was the sole Greens (WA) parliamentarian. The Environmental Protection Act Amendments are a case in point, but they also indicate a need to rely on other mechanisms and activities to change the course of a Government, based on extra-parliamentary activity.

In May 1997, Scott was joined by Watson and Sharp. At this time, the composition of the Council changed such that the Coalition lost control of the Council to the combined Labor/Democrat/Green numbers. This situation, unique in the Council's history, has meant the Greens have been able to have a more significant impact on legislation than at any other time.

The ESD Committee demonstrates that this is the case, with the Government's agenda for forestry in WA clearly challenged by the findings of the reports and the subsequent debate in Parliament. The recommendations concerning the Department of Environmental Protection (which resulted from Report 1 into changes to the Environmental Protection Act) also showed the limitations of this, yet still provided a positive outcome in terms of future accountability of that organisations Chief

Executive Officer. It also showed the Committee, made up as it is of a member of each of the five parties in the Council, does have to reach some sort of agreement, and can't be driven by one party or group alone.

The ESD Committee process shows a different approach to parliament from 1993-97, and has different outcomes as a result. The Committee was approached as a necessity by Christine Sharp, and followed on the work of the Wilderness Society's lobbying efforts at the time of the 1996 State election. Following Sharp's election, but prior to taking up her seat, she also worked with the various interested parties involved in the forest industry. During this time, Sharp found that there was some common ground on issues surrounding the sustainability of forestry in WA. This preliminary work then informed her approach to the ESD Committee.

Due to the imminent signing of the RFA, the ESD Committee examined the RFA process as a matter of urgency, ahead of a more general report on sustainable forestry, and in delivering its Report on this matter challenged the prevailing wisdom within the Legislative Council regarding the treatment of committee reports. This is important as it means that the Council may signal approval or disapproval of a report's outcomes without necessarily debating the report in Council. While further debate may be needed within the Council itself, the relevant Minister is given an opportunity to respond to recommendations prior to reporting to the Council, and non-Government parties are able to express their disapproval ahead of a Council vote.

Taking all this together, then, the impact of Green parliamentarians in the Legislative Council is dependent on the situation they find themselves. If, as in the case with Jim

Scott between 1993 and 1997, they are not in the balance of power, then their ability to impact environmental legislation is limited. Impacts that they have will be largely confined to what changes they can extract from the Government of the day, and will be largely dependent on the political will of the Government as to whether it is prepared to listen or whether it wishes to simply pass the legislation without amendment.

If, however, they find themselves in the balance of power, as from 1997 until the present, then the opportunities for change are increased. In this situation there is of course a requirement to work with the other parties that may also occupy the non-Government benches, such as the Democrats and Labor, to achieve their aims, but the possibility for change is concomitantly higher. This situation is not, however, simple. There is still the need for compromise and agreement, and the other parties also have the opportunity of broking a deal with the Government for their own changes, or may simply agree with them on the main impact of the legislation.

When the other non-Government parties vote with the Government the Green balance of power is illusory. The Greens are then placed in the situation of being in the minority and being outvoted. This places a limitation on how radical Greens can reasonably be with policy prescriptions. If they are too radical they will lose the support of the Democrats and Labor, and find themselves in a permanent minority, rather than balance of power. Yet if they are too accommodating of the Government they run the risk of alienating their support base. This situation might also arise should the Labor Party be in Government, where there exists the opportunity for even closer cooperation with the Coalition. This thesis has not examined constituency or



mandate, nor extra-parliamentary activity, yet all three have some bearing on what can and cannot be done within the parliamentary framework, and have some bearing on the expected outcomes upon entering parliament.

There are positive outcomes based solely on parliamentary work. They may be changes to legislation or changes to policy, from either Government or Opposition parties, but they will tend to apply more particularly to the Government of the day. What must be said is that without the balance of power this ability is significantly reduced. Non-balance of power situations require very different approaches inside and primarily outside parliament.

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