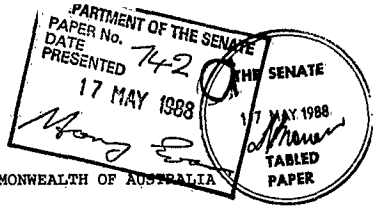

PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

ONE VOTE, ONE VALUE

INQUIRY INTO THE CONSTITUTION ALTERATION
(DEMOCRATIC ELECTIONS) BILL 1987

REPORT NO. 1 of the
JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

April 1988

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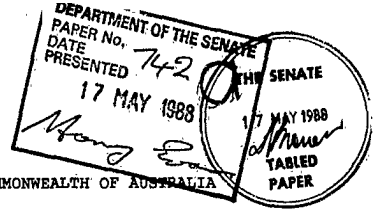

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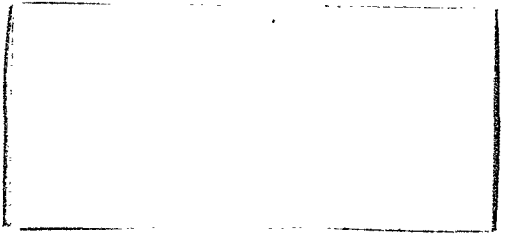

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PREFACE

This Report presents the findings of an Inquiry by the Joint Standing Committee on Electoral Matters into the Constitution Alteration (Democratic Elections) Bill 1987 which was introduced into the Senate by the Deputy Leader of the Australian Democrats, Senator Michael Macklin, on 23 September 1987. In his Second Reading Speech on the Bill Senator Macklin indicated that the Bill's purpose was to enshrine in the Constitution the principle of one vote, one value thereby requiring the equality of electorates in the legislatures of the Commonwealth, the States and the self-governing Territories.

In conducting the Inquiry the Committee followed on the work of its predecessor, the Joint Select Committee on Electoral Reform of the 34th Parliament, which was given the task of inquiring into the Constitution Alteration (Democratic Elections) Bill 1985. The Joint Select Committee held public hearings in Brisbane and Perth but was prevented from concluding its work by the dissolution of the 34th Parliament on 5 June 1987.

The Joint Standing Committee on Electoral Matters was appointed on 21 October 1987 and on 28 October 1987 the Senate referred the Constitution Alteration (Democratic Elections) Bill 1987 to the Committee for inquiry and report. The Resolution of Appointment of the Committee provided it with the power to consider and make use of the evidence and records of the Joint Select Committee. The Joint Standing Committee held one public hearing in Brisbane on 10 November 1987.

The Committee has found there to be a clear historical trend in Australia towards fairer electoral boundaries which seek to give all electors an equal say in determining who shall form their government. However, the Committee has also found a need for further reform. In particular, the Committee has found that the Western Australian Legislative Council, the Western Australian Legislative Assembly, the Tasmanian Legislative Council and the Queensland Legislative Assembly have unacceptably malapportioned electorates.

In examining the Constitution Alteration (Democratic Elections) Bill 1987 the Committee has concluded that the Federal Government has a clear responsibility to act to overcome what the Committee views as an infringement of the individual rights of Australian electors to have an equal say in choosing their governments. Regrettably, the Committee is unable to accept the Constitution Alteration (Democratic Elections) Bill 1987 as a means of implementing one vote, one value because of a number of inherent defects contained within it.

The Committee has noted the work of the Constitutional Commission in this area and while the Government's response to the Commission's final report is not available at the time of

drafting the Committee's Report, the Committee is confident that its findings will be useful in the ensuing debate.

The Committee is grateful to the Electoral Commissioner, his staff and the Attorney-General's Department for the valuable assistance provided throughout the Inquiry. The Committee acknowledges the assistance of the Parliamentary Library and the Legislative Research Service and also extends its appreciation to its Secretariat for the support given to the Inquiry.

For and on behalf of the Committee

Michael J Lee, MP
Chairman

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1.1 This is the first report of the Joint Standing Committee on Electoral Matters (hereafter referred to as 'the Committee') and it presents the findings and recommendations of the Committee's Inquiry into the Constitution Alteration (Democratic Elections) Bill 1987 (hereafter referred to as 'the 1987 Bill').

1.2 The 1987 Bill was proposed by Senator Michael Macklin and provides for a referendum to be held to amend the Constitution so as to entrench fairer electoral boundaries and thereby achieve the principle of one vote, one value.

Chapter 1

1.3 This chapter provides an overview of the Report and lists the main conclusions and recommendations the Committee has made in its Inquiry.

Chapter 2

1.4 Chapter 2 provides details of the Committee's Inquiry and notes that the 1987 Bill is the successor of various Constitution alteration bills introduced into the Federal Parliament.

Chapter 3

1.5 Chapter 3 traces Australia's history of electoral reform and notes areas still in need of reform. Chapter 3 also examines in detail the techniques for measuring malapportionment (electorates having different numbers of voters) and gerrymanders (electorate boundaries drawn to advantage one political party).

1.6 In Chapter 3 the Committee notes that the 1987 Bill seeks to eliminate malapportionment by seeking to introduce one vote, one value. In its current form the 1987 Bill does not prevent gerrymanders.

1.7 The Committee concludes that:

> **using the three accepted measures of malapportionment (that is, the David-Eisenberg Index, the Dauer-Kelsay Index and the Gini Index), the electorates for the Western Australian Legislative Council, the Western Australian Legislative Assembly, the Tasmanian Legislative Council and the Queensland Legislative Assembly have unacceptably malapportioned electorates. (paragraph 3.147)**

1.8 The Committee notes that the voting system used for the Senate also exhibits malapportionment as Tasmania with some 300,000 voters and New South Wales with some 3.5 million voters both elect twelve Senators. The Committee notes that the equality in the representation of the States in the Senate was one of the historical compromises made to achieve Federation.

1.9 The Committee notes that the ratio of the number of voters in the largest electorate to the smallest (the David-Eisenberg Index) is:

Western Australia - Legislative Council	11.03
Western Australia - Legislative Assembly	7.91
Tasmania - Legislative Council	3.45
Queensland - Legislative Assembly	2.91

1.10 The Committee finds that there is a clear historical trend towards fairer electoral boundaries which seek to give all electors an equal say in determining who shall form the State or Federal Government.

1.11 The New South Wales, Victorian, South Australian and Tasmanian Parliaments and the House of Representatives now provide that electoral boundaries should be drawn so that electorates have enrolments which vary from the State average by less than 10 percent. In the Northern Territory the maximum tolerance is 20 percent.

1.12 The Committee concludes that:

> **as a general principle redistributions should aim to have electoral enrolments which are within 10 percent of the average enrolment. (paragraph 3.152)**

1.13 The Committee notes that in the past malapportionment in State electorates of the order of magnitude currently existing in Queensland, Tasmania and Western Australia resulted in governments exercising power after receiving less than a majority

of the vote. The Committee believes equity in voting power is a necessary first step in achieving a fair electoral system.

1.14 The Committee concludes that:

> **the Federal Government has a clear responsibility to act to overcome this infringement of the individual rights of Australian electors to have an equal say in choosing their governments and that the Federal Government therefore has a responsibility to introduce one vote, one value. (paragraph 3.154)**

1.15 However, the Committee is unable to accept the 1987 Bill as a model for implementing one vote, one value because of a number of inherent defects which the Committee believes exist.

Chapter 4

1.16 Chapter 4 provides an overview of the 1987 Bill and the steps involved in such a bill altering the Constitution. Chapter 4 also provides a detailed examination of the 1987 Bill and looks at the issues of:

- electorates being 'as nearly as practicable, the same';
- the timing of one vote, one value;
- elections at large;
- casual vacancies;
- franchise provisions; and
- the original jurisdiction of the High Court.

1.17 The Committee notes that Senator Macklin's original proposal (the Constitution Alteration (Democratic Elections) Bill 1985), which was examined by the Committee's predecessor, the Joint Select Committee on Electoral Reform, required electorates to have enrolments which were 'as nearly as practicable' the same. A number of witnesses pointed out that the Supreme Court in the United States had ruled that electorates having a tolerance of only 0.43 percent be struck down.

1.18 Senator Macklin's 1987 Bill responds to these criticisms. However, the Committee notes the 1987 Bill still requires electorate enrolments to be 'as nearly as practicable' the same but has an added provision specifying an upper limit on the tolerance of 10 percent. It is a matter of serious concern to the Committee that no lower limit has been specified in the 1987 Bill and that the Bill retains the 'as nearly as practicable' requirement.

1.19 The Committee notes the continuing difficulty presented by the words 'as nearly as practicable' in the 1987 Bill. The Committee concludes that:

> Clauses 3, 7 and 8 of the 1987 Bill, in their current form, would introduce an unacceptable element of uncertainty into the electoral process. (paragraph 4.47)

1.20 The Committee recommends that:

> the proposal to introduce an 'as nearly as practicable' test be rejected; and
>
> the 'as nearly as practicable' test be replaced with a maximum tolerance of 10 percent to be explicitly spelt out in the Constitution. (paragraph 4.48)

1.21 The Committee notes that unlike the United States, where electorate size is determined by census population statistics which only vary once in ten years, Australia's electorate enrolments are constantly varying. However, the Committee concludes that:

> the 1987 Bill is unclear as to when the test of equality would be made by the High Court and as a result introduces unnecessary uncertainty. (paragraph 4.58)

1.22 The Committee recommends that:

> the test of electoral equality at the Federal and State level be made at the time of a redistribution, subject to population growth being taken into consideration and there being a guarantee of regular (that is, every 7 years) redistributions. (paragraph 4.59)

1.23 The Committee is concerned that under the 1987 Bill, in the run-up to a Federal or State election, legal action could result in the High Court ordering an election at large without warning. The Committee notes that minor parties would benefit from the use of proportional representation for elections to lower houses as the quota for a 100 member assembly would be less than one percent. Also, it is unlikely that any major party would secure a majority in a lower house. Therefore, this sanction will act as a powerful incentive to comply.

1.24 The Committee concludes that:

> it would be a backward step to introduce a voting system which would lead to the election of minority governments dependent on minor parties holding the balance of power in a lower house. (paragraph 4.68)

1.25 In addition, the Committee shares the concern of the Electoral Commission that an election at large would be difficult to conduct and therefore concludes that:

> an election at large should only be used as a last resort. (paragraph 4.69)

1.26 Moreover, the Committee is of the view that an election at large should only be used after a government has ignored a clear warning that an election at large will follow unless it legislates to implement the principle of one vote, one value.

1.27 The Committee notes that the 1987 Bill may lead to difficulties in the filling of casual vacancies and concludes that:

> the 1987 Bill is deficient in its lack of a provision for the filling of casual vacancies. (paragraph 4.76)

1.28 The Committee recommends that:

> any proposal to alter the Constitution be drafted so that the existing procedures for filling casual vacancies may continue. (paragraph 4.77)

1.29 The Committee concludes that:

> the provision of the 1987 Bill which allows the maximum variation in electoral enrolment to be reduced to less than 10 percent by a State or Federal Parliament is unworkable. (paragraph 4.102)

1.30 The Committee notes Senator Macklin's proposed amendments for a mechanism for the drawing of electoral boundaries which would prevent the practice of gerrymandering. However, the Committee agrees with the comments made by the Attorney-General's Department regarding the uncertainty of Senator Macklin's proposed amendments and concludes that:

> the wording of Senator Macklin's proposed amendments to the 1987 Bill which aim to prevent the practice of gerrymandering are lacking in certainty. (paragraph 4.108)

1.31 The Committee therefore recommends that:

> the wording of Senator Macklin's proposed amendments to the 1987 Bill be rejected. (paragraph 4.109)

1.32 The Committee has examined the proposal of the Australian Electoral Commission to include in the Constitution detailed requirements similar to relevant sections of the Commonwealth Electoral Act 1918 which ensure fair redistributions are carried out. While the Committee believes the Electoral Commission's proposal has merit it concludes that:

> **the proposal of the Australian Electoral Commission to include in the Constitution requirements similar to the sections of the Commonwealth Electoral Act 1918 which ensure fair redistributions are carried out, is open to the criticism that the Constitution should only contain principles of electoral equality and not be cluttered with detail. (paragraph 5.6)**

1.33 The Committee notes that electoral reforms with regard to one vote, one value have already occurred in South Australia, Victoria and New South Wales and that in Western Australia there has been an attempt to reform. However, the Committee concludes that:

> **in time individual States may achieve electoral reform but there is no guarantee reform will occur. (paragraph 5.20)**

1.34 The Committee believes the Constitution provides a valid means of instituting change in States' electoral laws and notes that the Constitution was drawn up to consider the rights of not only the federated States but also the wishes of the Australian people. Hence, if there is support for change from a majority of Australians and a majority of States then change will occur.

1.35 The Committee concludes that:

> **the final question in achieving one vote, one value is one of State Governments' rights versus individuals' rights and that the latter is of paramount importance. (paragraph 5.22)**

1.36 The Committee strongly recommends that:

> **the views of Australian voters on one vote, one value be tested by way of a referendum. (paragraph 5.23)**

1.37 The Committee notes the suggestions that electoral reform should be pursued via Commonwealth legislation. The Committee recognises that the legislative approach could achieve electoral equality but that the fate of the legislation would be decided ultimately by the High Court.

CHAPTER 2

INTRODUCTION

- **The Committee's Inquiry**
- **Origins of the Constitution Alteration (Democratic Elections) Bill 1987**

The Committee's Inquiry

2.1 This first report of the Joint Standing Committee on Electoral Matters (hereafter referred to as 'the Committee') presents the findings and recommendations of the Committee's Inquiry into the Constitution Alteration (Democratic Elections) Bill 1987 (hereafter referred to as 'the 1987 Bill').[1] The Bill was introduced into the Senate by the Deputy Leader of the Australian Democrats, Senator Michael Macklin, on 3 September 1987 and on 28 October 1987 the Senate referred the Bill to the Committee for inquiry and report.

2.2 The Committee's Inquiry into the 1987 Bill followed on the work of the Committee's predecessor, the Joint Select Committee on Electoral Reform (hereafter referred to as 'the Electoral Reform Committee'), which prior to the 5 June 1987 dissolution of the Federal Parliament had been inquiring into the Constitution Alteration (Democratic Elections) Bill 1985 (hereafter referred to as 'the 1985 Bill'). The 1987 Bill is a modified version of the 1985 Bill and, as Table 2.1 shows, other very similar bills introduced into the Parliament since 1973.

2.3 By virtue of its Resolution of Appointment[2] the Committee was given the power to consider and make use of the evidence and records of the Electoral Reform Committee as it was appointed during previous Parliaments. Hence, this report incorporates evidence provided to the Electoral Reform Committee during its Inquiry into the 1985 Bill.

2.4 The Electoral Reform Committee received 56 submissions on the 1985 Bill and held public hearings in Brisbane and Perth on 21 April 1986 and 13 May 1986 respectively.[3]

---

1. See Appendix A: Comparison of the text of the Constitution Alteration (Democratic Elections) Bill 1985 and the Constitution Alteration (Democratic Elections) Bill 1987.
2. Australia, House of Representatives, Votes and Proceedings, 24 September 1987, p. 87.
3. See Appendix B: Conduct of the Inquiry - Joint Select Committee on Electoral Reform.

Table 2.1 Constitution Alteration (Democratic Elections) Bills 1973, 1984, 1985 and 1987

Bill	Introduced by	Session	Dealt with by H. of R. or Senate	Comments
Constitution Alteration (Democratic Elections) Bill 1974 [1973]	Whitlam Government	1973-74	H. of R. and Senate	Second reading negatived in Senate.
Constitution Alteration (Democratic Elections) Bill 1974	Whitlam Government	1974	H. of R. and Senate	Second reading negatived in Senate. H. of R. requested Governor-General to submit to a referendum vide Section 128 of Constitution. Rejected at referendum.
Constitution Alteration (Democratic Elections) Bill 1984	Senator Macklin	1983-4	Senate	Lapsed at second stage.
Constitution Alteration (Democratic Elections) Bill 1985	Senator Macklin	1985-86-87	Senate	At second reading stage, on 6 December 1985, referred to Joint Select Committee on Electoral Reform for inquiry and report. Parliament dissolved 5 June 1987. No report presented by Committee.
Constitution Alteration (Democratic Elections) Bill 1987	Senator Macklin	1987-88	Senate	At second reading, 28 October 1987, referred to Joint Standing Committee on Electoral Matters for inquiry and report.

Note: H. of R. stands for House of Representatives

Sources: 1. Department of the House of Representatives (compiler), Bills not passed into law and bills which originally lapsed but subsequently passed, Sessions 1901-02 to 1983-84, AGPS Canberra, 1985, p.18.

2. Journals of the Senate.

2.5 Following the referral of the 1987 Bill to the Joint Standing Committee on Electoral Matters submissions were sought from all State Premiers, the Chief Minister of the Northern Territory and all major political parties. Sixteen submissions were received by the Committee and a public hearing was held in Brisbane on 10 November 1987.[4]

Origins of the Constitution Alteration (Democratic Elections) 1987 Bill

2.6 On 23 September 1987 Senator Michael Macklin introduced five bills into the Senate each with the aim of amending the Constitution of Australia. One of these bills was the 1987 Bill.

2.7 In his second reading speech on these bills Senator Macklin stated that Australia had 'a proud history of achievement on matters of electoral equality and reform.'[5] He noted for example that between 1856 and 1877 the Australian colonies had introduced secret ballots, some 20 years before they were introduced by most other western countries, that voting for all adult men in Australia was granted in the mid-1850s and that voting for women in Australia was granted 'at about the turn of the century, 25 years ahead of their sisters in Britain.'[6]

2.8 Despite such achievements, Senator Macklin noted that some changes were slow in coming. He cited Aboriginal people obtaining the right to vote. Senator Macklin stated:

> ... there is still an urgent need for further reform on matters of electoral equality to facilitate the operation of good and effective government in Australia ...
>
> The existence of electoral systems which do not give people the same valued vote when electing their political representatives is disgraceful and must be rectified.[7]

2.9 Senator Macklin's view was that alteration of the Constitution was the appropriate way to attend to such problems. He explained that the 1987 Bill was a revised version of a Bill he had first introduced into the Parliament in 1984, the Constitution Alteration (Democratic Elections) Bill 1984 (hereafter referred to as 'the 1984 Bill'). Furthermore, the 1987 Bill was substantially similar to a bill introduced into the Parliament on 8 November 1973 by the then Prime Minister, the Rt Hon. E G Whitlam.

---

4. See Appendix C: Conduct of the Inquiry - Joint Standing Committee on Electoral Matters.
5. Senate, **Hansard**, 23 September 1987, p. 527.
6. ibid. p. 528.
7. ibid.

2.10 Mr Whitlam's Bill, the Constitution Alteration (Democratic Elections) Bill 1974 (hereafter referred to as 'the Whitlam Bill'), sought to alter the Constitution so as to establish electorates within each State in which the number of people would be, as nearly as practicable, the same.[8] The Whitlam Bill was passed by the Parliament and subsequently put to a referendum. However, the referendum was not supported by the Federal Opposition and was only approved by 47.23 percent of all voters. It was approved by a majority of voters in only one State, New South Wales.

2.11 Like the Whitlam Bill, the 1984 Bill had the aim of writing into the Constitution the principle of equality of electoral divisions for all Parliaments of Australia, that is the idea that each person should have one vote and that their vote should be equal in value to every other vote. However, Senator Macklin noted that the Whitlam Bill would have made electorates equal in the sense that they had an equal number of people in them and not an equal number of voters. Senator Macklin believed this would not give votes equal value.[9]

2.12 In his second reading speech on the 1984 Bill Senator Macklin stated:

> ... I have amended Mr Whitlam's original Bill so that the numbers ascertained in respect of Divisions shall be, as nearly as practicable, the same in respect of the numbers of electors rather than the numbers of people in each electorate. This concept I believe should now have the support of the vast majority of senators and members in this Parliament. Although it is a principle which appears to have the almost complete support of Federal parliamentarians, and indeed the people of Australia, it is a principle which is obviously not supported by all parliamentarians at the State level.
>
> I believe that the time has come for the people of the States to have their say on whether or not their current situations should be allowed to continue. Unfortunately no State Parliament requires a vote of electors in order to change its own Constitution in this regard. Indeed, not even the Federal Constitution requires that change. But I believe it is time that we enshrined the principle in the Federal Constitution so that future governments are not persuaded to change the principle now established for purely political gain.[10]

2.13 The 1984 Bill was not passed by the Parliament. However, the discussion which ensued led to it being revised and re-introduced into the Parliament as the 1985 Bill.[11]

2.14 One major difference between the 1985 Bill and its predecessors was that it contained a proposal to add a new section 106A to the Constitution. This section provided that where the electoral distribution of a State or Territory, at the time of a State or Territory general election, did not comply with the principle of one vote, one value the State or Territory would be deemed to be one electorate for the purposes of the general election. In such an election, a State or Territory legislature would not be composed of members representing separate electorates. Rather, the members would be elected using the proportional representation voting system, that is the same method of voting used to choose senators in the Federal Parliament.

2.15 This provision for treating States or Territories as one electorate is commonly referred to as a provision for 'elections at large'. Its inclusion in the 1985 Bill was intended to serve as an incentive to States and Territories to ensure that their electoral boundaries were fairly drawn.

2.16 The Senate referred the 1985 Bill to the Electoral Reform Committee for inquiry and report on 6 December 1985. Unfortunately this Committee was unable to report on its Inquiry before the dissolution of the 34th Parliament on 5 June 1987.

2.17 As already noted, the 1987 Bill was introduced into the Senate on 23 September 1987. It contains further refinements of the 1985 Bill but is essentially a revised version of the 1984 Bill and is substantially similar to the Whitlam Bill.

---

8. House of Representatives, **Hansard**, 8 November 1973, p. 3055.
9. Senate, **Hansard**, 2 April 1984, p. 1030.
10. Senate, **Hansard**, 2 April 1984, p. 1030.
11. See Appendix A: Comparison of the texts of the Constitution Alteration (Democratic Elections) Bill 1985 and the Constitution Alteration (Democratic Elections) Bill 1987.

CHAPTER 3

ONE VOTE, ONE VALUE

- **Malapportionment and Gerrymandering**
- **Measures of Malapportionment**
- **The History of One Vote, One Value**
- **One Vote, One Value in Australia**
- **The Current Situation**

3.1 In examining the Constitution Alteration (Democratic Elections) Bill 1987 (hereafter referred to as `the 1987 Bill') the Committee noted that Australia had a long history of electoral reform. This chapter presents some of that history and provides information on current areas which are still thought by many to be in need of reform. Additionally, this chapter provides explanations of some of those terms and concepts which are fundamental to an understanding of the problems the 1987 Bill seeks to overcome.

Malapportionment and Gerrymandering

3.2 The terms `malapportionment' and `gerrymandering' are often confused and wrongly interchanged in discussions on electoral boundaries.

3.3 The term `malapportionment' is used to describe an electoral distribution which incorporates bias towards one class of voter. Malapportionment is most commonly achieved by zoning electorates such that the number of voters required to elect a member of parliament varies between electorates in different zones. In an electoral system which has voters equally distributed between electorates, votes are of equal value but in an electoral system which displays malapportionment the number of voters in each electorate varies according to the zone in which the electorate is located. As a result votes vary in value. A simple zoning system might have a metropolitan zone and rural zone, however, there is no limit to the number of zones that may be used. If the metropolitan zone had electorates each with 20,000 voters and the rural zone had electorates each with 10,000 voters then rural votes would have twice the value of metropolitan votes.

3.4 Commenting on the practice of zoning in 1971 the political scientist James Kelly noted:

> The basic democratic principle of one man, one vote, one value is replaced by an opposed principle of discriminatory vote-values and very considerable advantages, or disadvantages, to political parties can result from operation of the system. It is well known that supporters of political parties are often concentrated in particular regions. If a party has large numbers of its supporters in a zone with a small quota and

> they are more numerous and better distributed than its opponent's supporters, considerable gains must result. The small quota produces proportionately more seats to be won and those that are won can be gained with smaller total votes than required in ones with large quotas.[1]

3.5 While malapportionment may be removed by creating electorates with equal numbers of voters, electoral boundaries may still be drawn so as to advantage a party or person. A gerrymander may be achieved with entirely equal electorates, that is with equal numbers of voters in each electorate.

3.6 A gerrymander is achieved by those responsible for the redistribution taking account of voting patterns and then drawing electoral boundaries so as to maximise the number of seats won by a particular party. The term 'gerrymander' is derived from the name of Governor Elbridge Gerry of Massachusetts who signed a bill in 1811 which created new electoral districts to favour the Republican Party. One of the new districts was in the shape of a salamander and as a result the term 'gerrymander' was coined to refer to the drawing of electoral boundaries which ensured bias towards one party or person. Figure 3.1 illustrates the effect of a gerrymander where the general voting patterns of an area are known and there is no zoning system in operation.

Figure 3.1 Diagrammatic representation of a gerrymander

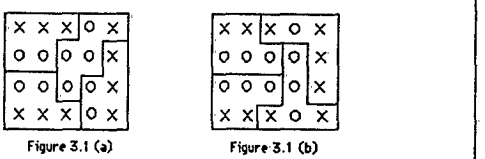

Figure 3.1 (a) Figure 3.1 (b)

'x' and 'o' represent the concentrations of voters of two major parties. Even though the number of voters are equally divided between the two parties Figure 3.1 (a) shows that boundaries can be drawn to give 3 seats to the 'x' group while Figure 3.1 (b) shows that this result can be completely reversed to give the 'o' group 3 seats.

Source: Solomon, D, Australia's Government and Parliament, 4th Ed., Thomas Nelson, Melbourne, 1978, p. 90.

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1. Kelly, J., Vote Weightage and Quota Gerrymanders in Queensland, (1931-1971), Australian Quarterly, Vol. 43, No. 21 (1971), p. 42. See Evidence (Electoral Reform Committee), p. 920.

3.7 The main provision of the 1987 Bill is to enshrine in the Australian Constitution the principle of one vote, one value and so impose an obligation on all governments in Australia to observe the principle. In doing this the Bill seeks to outlaw the practice of malapportionment by providing that the number of voters in electorates should be the same for each electorate.

3.8 In Australia malapportionment has occurred at both the Federal and State levels. However, since the enactment of the Commonwealth Electoral Bill (No. 2) 1973 in August 1974 the permissible variation from the enrolment quota in electorates has been limited to 10 percent. This reform was taken further by the Commonwealth Electoral Legislation Amendment Act 1983 which provided that redistributions would be conducted:

- at least once every 7 years; and
- whenever more than one-third of the divisions of a State depart from the enrolment quota by more than 10 percent.

3.9 Furthermore, redistributions were meant to ensure electorates achieved equality at the midpoint of the 7 year redistribution cycle, that is 3 years and 6 months after the redistribution. This was to be achieved by taking into consideration the anticipated growth and decline of electorates.

3.10 Aside from these attempts to achieve electoral equality it is sometimes argued that malapportionment exists at the federal level for both the House of Representatives and the Senate.

3.11 In accordance with Section 24 of the Constitution the House of Representatives is composed of approximately twice the number of senators with the numbers of members chosen from States being in proportion to the populations of the States. However, no State has fewer than 5 members. Because of this requirement the smallest State, Tasmania, is seen to have greater representation in the House of Representatives than its total population warrants.

3.12 In the case of the Senate, the Constitution provides that each State should be equally represented. Initially each State had 6 senators. While this figure has increased and there are now senators for the Northern Territory and the Australian Capital Territory it is clear that senators represent widely varying numbers of electors. For example, a senator from Tasmania represents approximately 300,000 voters while a senator from New South Wales represents approximately 3.5 million voters.[2] These figures are balanced by the fact that the Senate was created as a house of review and a house in which the views of the States would be represented.

---

2. Newman, G and Kopras, A, Federal Elections 1987, (Current Issues Paper No. 6 1987-88), Legislative Research Service, Department of the Parliamentary Library, December 1987, pp. 56, 58.

3.13 Despite the original intentions of the authors of the Constitution the Senate has been a parties house rather than a house of review or a house for the States. Given this situation it is interesting to note that in the 1987 Federal Election for the House of Representatives the Australian Labor Party and the Liberal/National Parties each won approximately 46 percent of the first preference votes with the Australian Democrats winning 6 percent. The percentage of seats won was Australian Labor Party 58 percent and Liberal/National Parties 42 percent. In the Senate the Australian Labor Party won 43 percent of the first preference votes, the Liberal/National Parties 42 percent and the Australian Democrats 8.5 percent. The percentage of seats won in the Senate was Australian Labor Party 42 percent, the Liberal/National Parties 44 percent and the Australian Democrats 9 percent.

3.14 All Australian mainland States have used zoning at some time to favour rural areas with the result that rural voters have had votes of greater value than those voters in urban areas. Malapportionment in State electoral systems has been based on principles which usually included:

- as the rural areas produce the real wealth of the State or the nation they should have more say in government;
- the problems of communication in the sparsely settled areas demand smaller-enrolment electorates;
- a numerical domination by the metropolis would overwhelm rural interests; and
- representation of interests rather than people is essential.[3]

3.15 In some States, for example Queensland and New South Wales, zoning has been used to favour provincial cities.

3.16 As noted malapportionment can be so devised to give an advantage to some voters over others through a system of zoning but the eradication of malapportionment does not preclude the possibilities of electoral manipulation. It is still possible, even under a system that requires equal apportionment, to draw boundaries between electoral divisions in such a way as to discriminate in favour of certain classes of voters. This is a gerrymander. A classic gerrymander endeavours to lock up one's opponents' voters into safe seats while spreading one's own voters so as to win as many marginal seats as possible.

3.17 In a submission to the Electoral Reform Committee the Australian Electoral Commission stated that while malapportionment was a fairly simple concept and could be measured, gerrymandering was known to be inequitable but was

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3. Jaensch, D, 'The "Bjelke-mander" ', in Patience, A (Ed.), **The Bjelke-Petersen Premiership 1968-1983: Issues in Public Policy**, Longman Chesire, Melbourne, 1985, p. 246.

difficult to measure if not impossible to prove that it existed.[4]

3.18 The Commission noted that because there may be no satisfactory basis for proving electoral boundaries were gerrymandered an approach had been adopted of looking for bias in sets of boundaries. However, this approach had not been entirely successful.

3.19 The Commission stated:

> ... in comparison with the other electoral complaint, malapportionment, the conceptualisation and analysis of gerrymandering remains in a primitive and unsatisfactory state. Considerable effort has gone into the measurement of bias in electoral outcomes, the relationship between votes and seats in particular, but the measures used have all required acceptance of certain assumptions which lack theoretical underpinning or admit to empirical variations which can affect their occurrence in certain instances. Even if the measurement of bias in respect of a particular set of boundaries (and so of the redistribution that produced them) were to be accepted as a matter of convention, it is far from clear what has caused this bias, and identification of causes is necessary if recurrence of the bias is to be prevented.[5]

3.20 The Commission concluded that if it was not possible to determine if a particular electoral boundary was gerrymandered then a more helpful approach may be to examine the process by which the boundaries were determined. Such an examination would consider four aspects:[6]

- the composition of the redistribution body;
- the criteria under which the redistribution is conducted;
- possible reviews (changes) to the redistribution body's decisions; and
- procedures used by the redistribution body.

3.21 The Joint Standing Committee on Electoral Matters (hereafter referred to as 'the Committee') noted that the 1987 Bill was aimed at eradicating the practice of malapportionment and that the Bill may lead to the creation of equally apportioned electorates. While the Bill, as it was referred to the Committee, was not aimed at eradicating gerrymandering, the Committee noted amendments proposed by Senator Macklin which were aimed at

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4. **Evidence** (Electoral Reform Committee), pp. 899-933.
5. ibid., p. 931.
6. ibid., pp. 932-3.

minimising the possibility of gerrymandering. In particular, Senator Macklin indicated to the Committee that the problem of gerrymandering could be minimised by ensuring that the process of determining electoral boundaries was undertaken by an independent redistribution commission. However, he stated that he wished to enshrine in the Constitution a procedure for determining boundaries rather than an institution.[7] Senator Macklin's proposed amendment stated:

> The process of determining the boundaries of electoral divisions ... shall be based on fair and non-partisan proceedings and criteria designed to ensure equal suffrage, and free expression of the will of the electors.[8]

Measures of Malapportionment

3.22 The Committee's Inquiry necessitated that the Committee assess the equality of Australia's electoral systems. Three measures were referred to in evidence. They were:

- the David-Eisenberg Index;
- the Dauer-Kelsay Index; and
- the Gini Index.

3.23 The David-Eisenberg Index is calculated as the ratio of the largest electorate (in terms of enrolment size) to the smallest. Therefore, the greater the variation between the largest and smallest electorate, the higher would be the Index measure.[9] Table 3.1 illustrates the calculation of the David-Eisenberg Index while Figure 3.2 provides measures of the David-Eisenberg Index for all Australian States, the House of Representatives and the Senate.

Table 3.1 Illustration of the David-Eisenberg Index

State	Smallest Electorate (a)	Largest Electorate (b)	David-Eisenberg Index (b)÷(a)
South Australia[1]	17,025	21,998	1.29
Western Australia[2]	3,702	29,268	7.91

Note: 1. Data from 1985 election
2. Data from 1986 election
Source: Statistics Group, Legislative Research Service, Parliamentary Library.

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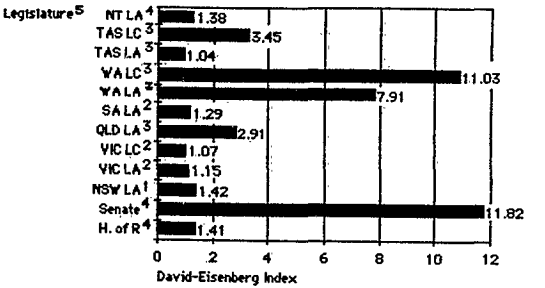
7. **Evidence**, p. 93.
8. ibid., pp. 96-7.
9. Hughes, C A, **A handbook of Australian Politics and Government**, Canberra, ANU Press, 1977, Appendix 1, p. 127.

Figure 3.2 The David-Eisenberg Index for Australian Legislatures



Note: 1. Data based on 1984 election
2. Data based on 1985 elections
3. Data based on 1986 elections
4. Data based on 1987 election
5. LA = Legislative Assembly, LC = Legislative Council

Source: Australian Electoral Commission

3.24 The Dauer-Kelsay Index 'is the smallest percentage of the total enrolment contained in the electorates required to produce a majority in the legislature. It is calculated by listing electorates in ascending size of enrolment, then going up the list until a majority of electorates has been taken and calculating the enrolment totalled to that point as a percentage of the enrolment for the whole legislature.'[10] The Dauer-Kelsay Index can be illustrated by reference to Figure 3.4 which refers to Western Australia in 1927. A majority of the 50 electorates was 26 and the 26 smallest electorates contained 22.97 percent of the State's enrolment. Hence, the Dauer-Kelsay Index for Western Australia in 1927 was 22.97 percent. Figure 3.3 shows measures of the Dauer-Kelsay Index for all Australian States, the House of Representatives and the Senate.

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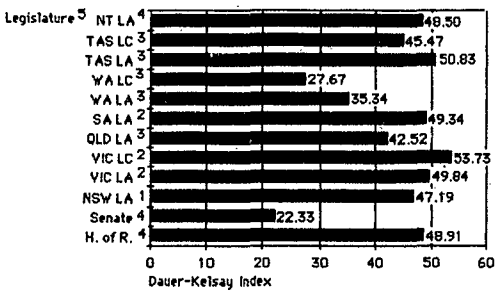
10. ibid.

Figure 3.3 The Dauer-Kelsay Index for Australian Legislatures



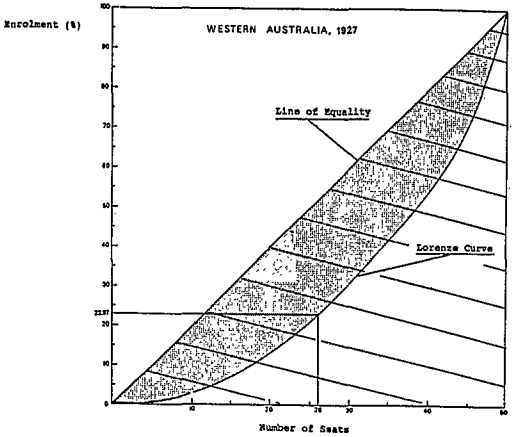
Note: 1. Data based on 1984 election
2. Data based on 1985 elections
3. Data based on 1986 elections
4. Data based on 1987 election
5. LA = Legislative Assembly, LC = Legislative Council

Source: Australian Electoral Commission

3.25 The Gini Index is a general measure of inequality and is best explained by reference to Figure 3.4 where the axes of the diagram are the number of seats for Western Australia in 1927 and the percentage of enrolments.

3.26 Figure 3.4 shows that if Western Australian voters were equally apportioned amongst seats in 1927, 20 percent of voters would have been located in 10 seats, 40 percent in 20 seats and so on. Such a distribution is shown by the 45 degree diagonal line, the 'line of equality'. However, voters were not equally apportioned and the plotting of the enrolments and seats (beginning with the smallest and moving to the largest) produces a curve, the 'Lorenz Curve'. The curve meets the line of equality at the top right of the diagram because 100 percent of the enrolments must be contained in 100 percent of the seats.

Figure 3.4 The Gini Index



Source: Hughes, C. A., Handbook of Australian Politics and Government, 1965-1974, Canberra, ANU Press, 1977, Appendix 1, p. 129.

3.27 The Gini Index is calculated as the ratio of the shaded area between the line of equality and the Lorenz Curve to the hatched triangular area to the right of the line of equality. The scale of the Gini Index ranges from zero (000) for an equal electoral distribution to unity (1.000) for a malapportioned distribution where the distribution is so extreme that all electors are located in only one of the electoral districts. Figure 3.5 shows Gini Index measures for Australian State legislatures, the House of Representatives and the Senate.

3.28 While the Committee made use of the David-Eisenberg Index and the Dauer-Kelsay Index the Gini Index was more commonly referred to in submissions. The Committee also noted comments by Colin Hughes that the Gini Index was regarded as a better measure of equality:

> The curve and the [shaded] area between the curve and the line of equality are better measures of deviation from equality across the whole range of electorates than either ... [the David-Eisenberg Index or the Dauer-Kelsay Index] because the location of each electorate in relation to the line of equality is measured.[11]

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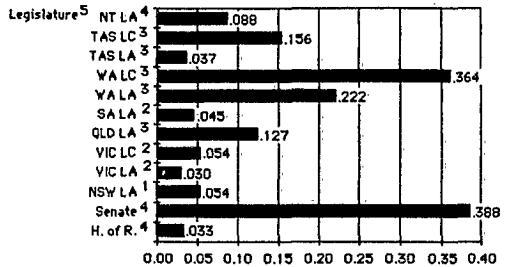
11. ibid., p. 129.

Figure 3.5 The Gini Index for Australian Legislatures



Note: 1. Data based on 1984 election
2. Data based on 1985 elections
3. Data based on 1986 elections
4. Data based on 1987 election
5. LA = Legislative Assembly, LC = Legislative Council

Source: Australian Electoral Commission

The History of One Vote, One Value

3.29 In examining the 1987 Bill the Committee believed it pertinent to consider the evolution of the theory of democratic political representation and in particular, the principle of one vote, one value. The Committee was assisted in this regard by a paper prepared by the Australian Electoral Commission titled 'The historical basis of the principle of "One vote, one value" '.[12]

3.30 The Committee noted that the establishment of Australia's political institutions was based on several centuries evolution of political institutions in the United Kingdom. This evolution saw the development of parliamentary institutions from a council of magnates and clerics which advised the King in the middle ages to a representative House of Commons, which by the 17th century had won a right of veto over the policy of the monarch and by the beginning of the 19th century had become the de facto governing chamber.

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12. Evidence (Electoral Reform Committee), pp. 14-46.

3.31 In the course of this evolution notions of representation were refined. Parliament originally was called so that the monarch could obtain an endorsement for taxation measures from the principal interests represented in the Kingdom. Representation then reflected the various states of the realm - the great magnates, the church and the people or commons of the realm. In this 'pluralistic' system of representation each individual belonged to a larger grouping according to his function, occupation or class and each of these groupings had legitimate, though limited, rights and privileges within society.

3.32 These arrangements were attacked by the ideologues of the French Revolution who believed the old system should be replaced with one based on interest or community of interest, which they saw as being based on territory, population and contribution (that is, tax).

3.33 The English politician and writer Edmund Burke castigated the approach of the French revolutionaries comparing them unfavourably with early legislators:

> As the first sort of legislators attended to the different kinds of citizens, and combined them in one commonwealth, the others, the metaphysical and alchemistical legislators, have taken the direct contrary course. They have attempted to confound all sorts of citizens, as well as they could, into one homogeneous mass; and then they divided this their amalgama into a number of incoherent republics.[13]

3.34 The notion that interests rather than individuals should be represented in Parliament persisted throughout the 18th century. However, the system of representation underwent much change during the 19th century. The change was triggered initially by the fact that the electoral system had ceased to be representative in terms of the values declared by its apologists. For instance the emergent manufacturing interest was inadequately represented if at all. The rapidly growing manufacturing centres of Manchester, Birmingham, Leeds and Glasgow did not return a single member. A distribution was required even to ensure adequate representation within the accepted system.

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13. ibid., p. 17.

3.35 The liberal reformers, such as Bentham, who were critical of the existing system envisaged a system of representation based on the assertion that:

> ... no adequate security for good government can have a place, but by means of and in proportion to a community of interest between governors and governed.[14]

3.36 They proposed universal male suffrage, the secret ballot, annual elections and the division of the United Kingdom into electoral districts, as nearly as possible, equal in population.[15]

3.37 The concept of representation underwent an overhaul during the 19th century beginning with the Representation of the People Act 1832 otherwise known as the 'Reform Act of 1832'. The Act redistributed constituencies and extended the right to vote. In redistributing constituencies the Act met the criticisms that the country's main interests were unfairly represented and in dealing with the franchise it moved decisively towards individualism. The Reform Act abolished the existing system of local franchises, which varied between constituencies, and replaced it with a uniform national franchise. Later Reform Acts of 1867 and 1884 went much further in liberalising the franchise.

3.38 In commenting on the Act of 1884 the historian F W Maitland stated:

> In short the tendency of the act of 1884 was to split up England into electoral districts, some known as divisions of counties, some known as boroughs or divisions of boroughs, which shall, roughly speaking, have equal populations. This principle was not rigorously carried out, some respect was had to already existing arrangements, but still a large step was made towards a parcelling out of England into equal electoral districts.
>
> The ancient idea of the representation of communities, of organized bodies of men, bodies which, whether called boroughs or counties, constantly act as wholes, and have common rights and duties, has thus given way to that of a representation of numbers, of unorganized masses of men, or of men who are organized just for the one purpose of choosing members.[16]

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14. ibid., p. 21.
15. ibid.
16. Maitland, F W, The Constitutional History of England: A course of lectures delivered by F.W. Maitland, Cambridge, Cambridge Press, 1955, p. 363.

3.39 The reform movement brought about a recognition that the laws which apply to the electoral process can ensure that the electoral system itself is even-handed and has built into it checks and balances which prevent its capture by one or other party. The concept of one vote, one value has been seen as an important element in this process.

One Vote, One Value in Australia

3.40 The Australian colonies received their political institutions from the Parliament of Great Britain and due to the very different conditions prevailing in the Australian colonies at the end of the 19th century they very quickly took on an impetus of their own. Nowhere was this more noticeable than in the electoral laws. Reforms which in some cases were not implemented in the United Kingdom until well into the 20th century were accepted very early in the Australian colonies.

3.41 Various colonial parliaments pioneered reforms such as the secret ballot (1856: Victoria and South Australia), adult male franchise (1856: South Australia) and female suffrage (1894: South Australia). However, their spread was by no means uniform among the colonies. Property qualifications, plural voting[17] and other discriminatory franchises continued in some States for the purpose of elections to upper houses until the 1970s. For the first election for the House of Representatives in 1901 State laws for the qualifications of electors in the more numerous house of each State parliament applied. Adult suffrage existed in South Australia, male suffrage in New South Wales, while Queensland, Western Australia and Tasmania still retained plural voting with property qualifications. Table 3.2 summarises these and other reforms in representational arrangements for lower houses of parliament in Australia.

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17. Plural voting refers to the 'First past the post' system of voting. The candidate elected is the one who receives the most votes. This may be less than an absolute majority of 50 percent plus 1.

Table 3.2 INNOVATION IN REPRESENTATIONAL ARRANGEMENTS FOR LOWER HOUSES OF PARLIAMENT IN AUSTRALIA

Parliament	Manhood Suffrage	Adult Suffrage[1]	Abolition of Plural Voting	Secret Ballot	Compulsory Registration of Voters	First Election with Compulsory Voting
New South Wales	1858	1902	1894	1858	1921	1930
Victoria	1857	1909	1899	1856	1923	1927
Queensland	1859	1905	1905	1859	1914	1915
South Australia	1856	1894	Never existed	1856	-	1944
Western Australia	1907	1907[2]	1907	1877[3]	1919	1939
Tasmania	1900	1903	1901	1858	1930	1931
Commonwealth	1901	1902[4]	Never existed	1901	1911	1925

1. Adult suffrage equates to votes for women. Note that some States did not enfranchise indigent inmates of State charitable institutions at dates given in first two columns. For example, such people in Queensland did not all attain State franchise until 1915.

2. Western Australia gave some women the vote in 1899 on the same restricted franchise then applying to men.

3. The Ballot Act 1877 for the elective element of the old Legislative Council did not operate until 1879.

4. The Constitution provided that at the (initial) Federal Election of 1901 the franchise was to be that in operation at the time for the Lower House in each State: this meant that in 1901 women generally in South Australia and some women in Western Australia had a vote for the first Commonwealth Parliament which in turn legislated for complete adult suffrage for subsequent Federal Elections.

Source: Crisp, L.F., Australian National Government, Longman Cheshire, St Kilda, 5th Edition, 1984, p. 137.

3.42 The establishment of the Commonwealth gave an impetus to further reforms in some of the States because the electoral provisions in the Constitution represented a liberal consensus that went beyond the point achieved in some of the States at Federation.

3.43 Section 24 of the Constitution provided that the House of Representatives be composed of members 'directly chosen by the people of the Commonwealth' and, after a provision limiting the size of the House to, as nearly as practicable, twice the number of senators, provided that the seats in the House be allocated among the federating States 'in proportion to the respective numbers of their people'. Section 24 also provided that at least 5 Members would be chosen from each original State.

3.44 The Commonwealth Electoral Act 1902 provided for a first past the post voting system and a division of electorates for the House of Representatives with a maximum variation of 20 percent from the average quota. Since Federation electoral legislation has required that the permitted degree of variation in the size of electoral divisions for the Commonwealth Parliament not exceed 20 percent above or below the average quota within any State. The allocation of seats in the House of Representatives between the States was and always has been allocated on the basis of raw population figures according to a formula contained in Section 24 of the Constitution. The allocation of seats within a State has from early in the history of the Federation been allocated on the basis of registered electors. This was facilitated by the requirement, present since 1911, for compulsory registration of voters. In comparison with the States these Constitutional provisions have, on the whole, ensured that for Commonwealth elections there has been a measure of equal apportionment since Federation.

3.45 Once franchise reforms had been achieved together with other demands such as the payment of members, the focus of electoral reform shifted to other areas such as electoral map drawing.

3.46 A legacy of the British parliamentary system was the single member electorate or constituency and the notion of representation of a distinct community located in a given geographic area. This included the notion that the member represented the interests of the area as well as the people living in it. In this system the drawing of electoral maps and boundaries was a matter of critical importance.

3.47 In a paper on the history of one vote, one value prepared for the Electoral Reform Committee the Australian Electoral Commission noted:

> Electoral boundaries for the colonial parliaments had to be drawn on a virtually blank map, and then changed as population spread and grew. The numbers of elected

members increased steadily through the 19th century, and so boundary drawing was a fairly regular activity, certainly by comparison with British experience.[18]

3.48 In 1893 New South Wales broke with tradition and surrendered its power to draw electoral boundaries to a commission of three public servants who were appointed by the State Governor. The commissioners had four criteria to guide their decisions, viz.:[19]

- community or diversity of interests;
- lines of communication;
- existing boundaries; and
- physical features.

3.49 The Electoral Commission noted in its paper:

> In 1902 the Commonwealth Parliament gave ... [its] boundary drawing power to a single commissioner for each State, then in 1909 adopted the three member commission as well. Queensland followed suit in 1910, Western Australia in 1922, Victoria in 1926, and finally South Australia in 1929. Tasmania in 1906 provided that the electoral districts for its House of Assembly should be the federal electoral divisions drawn for the House of Representatives by federal commissioners, but kept its Legislative Council district boundaries within its own control.[20]

3.50 With reference to the powers given to these distribution commissions the Electoral Commission noted:

> Australian Parliaments have sought to limit the discretion of redistribution bodies in two contradictory ways, by forcing them towards equality of enrolment numbers by fixing permissible maximum variations from the average or quota, and away from equality by defining electoral zones with different quotas in each ...[21]

3.51 Table 3.3 shows those States which introduced zoning, the government at the time of introduction and the year of introduction.

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18. Evidence (Electoral Reform Committee), p. 22.
19. ibid., p. 23.
20. ibid., p. 22.
21. ibid., p. 24.

Table 3.3 Introduction of Zoning by State Governments in Australia

Year of Introduction	State	Government
1922	Western Australia	Mitchell National Coalition
1926	Victoria	Allan-Peacock Country-National Coalition
1927	New South Wales	Lang Labor
1929	South Australia	Butler Liberal-Country Coalition
1949	Queensland	Hanlon Labor

Source: Australian Electoral Commission. See Evidence (Electoral Reform Committee), pp. 24-5.

3.52 The Electoral Commission noted:

> Frequently the introduction of zoning as a statutory provision was justified as regularising or improving a system of weightage which had already been applied either by the drawing of boundaries by the legislature or in the activities of redistribution commissioners ...
>
> Arguments advanced in favour of zoning were usually put in 'practical forms', or with reference to an unexplained idea of fairness.[22]

3.53 Zoning arrangements invariably distinguished the metropolitan/capital city area from the rest of the State, which might then be divided into provincial city and town on the one hand and rural on the other or, less commonly, by geography and economic activity into relatively closely settled agricultural and sparsely settled mining and pastoral areas.

3.54 Zoning is now no longer in use in Victoria, South Australia or New South Wales. The history of the abolition of zoning in these States is presented below together with Commonwealth electoral reforms.

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22. ibid., p. 25.

Victoria

3.55 From 1903 Victoria was divided into city, urban, country and special districts for the purpose of electing members to the State's Legislative Assembly. From 1926 to 1953 Victoria was divided into three zones for electoral purposes - metropolitans, provincial cities and country. In 1926 the Country-National Government divided the 65 lower house seats into 26 city, 3 provincial and 36 country seats. The quotas for each zone were 22,000 electors for city seats, 15,000 for provincial seats and 10,000 for rural seats. The weighting, which included a rural vote equivalent in value to two city votes lasted until 1953. In 1953 the Cain (Senior) Labor Government legislated for a redistribution of the State's electorates. The redistribution was based on existing Federal electorates, each of which was divided into two to give two State Legislative Assembly electorates.

3.56 In 1965 the Bolte Liberal Government partially revived electoral zoning by creating three zones:

- the Port Phillip District (mainly Melbourne) with 44 seats and a quota of 25,000 electors per seat;
- 8 provincial seats with a quota of 22,250; and
- 21 rural seats containing an average enrolment of 18,200 votes.

3.57 The Cain (Junior) Labor Government, elected in 1982, was committed to a package of electoral reforms which included the establishment of an independent electoral commission to re-draw electoral boundaries according to one vote, one value with no more than 5 percent variation between electoral enrolments.

3.58 In attempting to implement its electoral proposals the Government was confronted with a Legislative Council in which it was in the minority and which soon emerged as an obstacle to its reform proposals. However, the Government was then pre-empted in its goal of electoral reform by the Liberal/National Coalition in the Legislative Council which introduced a Reform Bill which was in general acceptable to the Government except for its provision of a 10 percent tolerance in the variation of electorate enrolment.

3.59 The resulting legislation[23] removed the control of electoral boundaries from the political sphere by establishing an independent electoral commission which comprised:

the Chief Judge of the County Court (or his nominee);

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23. The legislation included the Electoral Commission Act 1982, the Electoral Commission Amendments Act 1983 and the Constitution (Electoral Provinces and Districts) Act 1983.

- the Surveyor-General; and
- the Chief Electoral Officer.

3.60 The legislation also abolished zoning and required the Electoral Commissioner to establish electorates of approximately equal enrolment. Assembly and Council electorates were required to vary in enrolment by no more than 10 percent from the average enrolment. To prevent population change from undoing the approximate equality between seats, the legislation required the Commission to meet no more than 2 years after general elections to consider the need for redistributions. Redistributions would occur automatically rather than on the initiative of the government.

3.61 The redistribution that eventuated from this legislation resulted in new electoral boundaries perceived as less favourable to the Government than to the Opposition.[24]

South Australia

3.62 Perhaps the best recorded instance of rural over-representation in the electoral politics of State governments is the case of the so-called 'Playmander' in South Australia. The term 'Playmander' originated from the long-serving conservative Premier of South Australia Sir Thomas Playford who oversaw an electoral system that exhibited gross malapportionment. The degree of the malapportionment was such that commentators referred to the electoral system as a Playmander. Sir Thomas Playford did not create a gerrymander as the term Playmander suggests but failed to change a pre-existing zonal system which then enabled him to stay in power continuously from 1936 to 1965.

3.63 Despite the zonal system, demographic changes led to an Australian Labor Party (ALP) victory in 1965. This was the first absolute majority the ALP had been able to obtain since 1933. In 1968 the Liberal Country League (LCL) won by a narrow majority which was dependent on the support of the independent Speaker. The LCL won 19 of the 39 seats with 43.8 percent of the vote whereas the ALP won 19 seats with 52 percent of the vote. With the support of the Opposition, the LCL Premier, Mr Steele Hall, introduced a Constitution Amendment Bill to provide for 45 seats in the Legislative Assembly. Twenty-five of these seats came from the metropolitan area.

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24. Ward, I, 'Electoral Reform', in Hay, P R, (Ed.), Essays in Victorian Politics, Institute Press, Warrnambool, 1985, p. 23.

3.64 The resulting Electoral Act 1969 provided for a House of Assembly of 47 members of whom 28 were elected from an expanded metropolitan area. The Act established an electoral commission to draw up the new electoral boundaries. The commission consisted of:

- a judge;
- the State Returning Officer; and
- the Surveyor-General.

3.65 The redistribution which followed weakened the malapportionment and, on the basis of average enrolments in 1968 and the actual quotas in 1969, replaced a bias of almost 4:1 in 1968 which favoured the extra-metropolitan area with one of 1.5:1 in 1969.

3.66 In 1973 the Dunstan Labor Government enacted the Reform Act 1973 which provided for full adult suffrage and a single Statewide election based on proportional representation for elections for the Legislative Council. The Act ended some 40 years of using the property franchise and malapportionment which had enabled the LCL to maintain a majority in the Council. It is suggested that the LCL may have agreed to the change because 'the malapportionment had been eroded by the dormitory suburbs ... and the LCL hegemony was threatened in the long term'.[25]

3.67 While the Act introduced the principle of one vote, one value for the Legislative Council electoral system it also included a provision for a 'list' system of proportional representation with voters selecting party lists rather than individual candidates. The list system was then unique in Australian politics.

3.68 In 1975 the Dunstan Labor Government enacted the Reform Act 1975 to ensure that the single member electorates of the House of Assembly were distributed on the basis of one vote, one value with a maximum variation of 10 percent. The Act provided for a permanent Electoral Commission consisting of:

- a senior judge;
- the Electoral Commissioner; and
- the Surveyor-General.

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25. Parkin, A and Jaensch, D, 'South Australia', in Calligan, B, (Ed.), Australian State Politics, Longman Cheshire, Melbourne, 1986, p. 107.

3.69 The Commission was charged with conducting periodic redistributions which it determined in accordance with the provisions of the Constitution and without any intervention by Parliament.

New South Wales

3.70 The Wran Labor Government in New South Wales was also committed to electoral reform and legislated in 1981 to remove a long standing system of zoning. The zoning system was first introduced by the Lang Labor Government in 1927 and then maintained by succeeding coalition and Labor governments. Under the New South Wales zoning system the State was divided into three areas, viz.:

- the Sydney area (43 seats);
- the Newcastle area (5 seats); and
- the Country area (42 seats).

3.71 The reforms introduced by the Wran Government included the reconstitution of the New South Wales Legislative Council with members being elected using a system of proportional representation, the introduction of public funding of campaigns, an electoral redistribution based on one vote, one value which would allow a maximum tolerance of 10 percent above or below the quota of voters for each electorate and the introduction of optional preferential voting for the Legislative Assembly.

Northern Territory

3.72 Up until 1863 the Northern Territory was part of New South Wales. In 1863 it was annexed by Royal Letters Patent to the Province of South Australia. In 1911 the Northern Territory was transferred to the Commonwealth and from then until 30 June 1978 the Commonwealth administered the Territory under the provisions of the Northern Territory (Administration) Act 1910.

3.73 Under the Act, the Governor-General appointed an Administrator to administer the Territory on behalf of the Commonwealth. In 1947, a Legislative Council was created with six elected members, seven government appointed members and the Administrator as its President. In 1974 the Act was amended to provide for a Legislative Assembly of 19 elected members. The Assembly was able to pass laws which were then presented to the Administrator for assent.

3.74 In 1977 the Commonwealth Government began transferring executive powers to the Northern Territory by amending the Northern Territory (Administration) Act 1910. On 1 July 1978 the Northern Territory (Self-Government) Act 1978 was given assent thereby giving the Territory independence. By 1983 the Territory had State-like functions, with the exception of authority over uranium mining and some aspects of Aboriginal affairs.

3.75 The Northern Territory (Self-Government) Act 1978 established 19 single member electorates and allowed a 20 percent tolerance in electorate size. In 1979 the Everingham Country-Liberal Government enacted the Electoral Act 1974 which provided for full preferential voting, voluntary voting for Aborigines and a 20 percent tolerance in electorate size. The Labor Party opposed these provisions seeking compulsory voting, optional preferences and a 10 percent tolerance.

3.76 In 1983 the Government increased the size of the Legislative Assembly to 25 seats and as a result there was a redistribution. Because of the Territory's relatively small population each of the 25 electorates only had an average enrolment of 2,487.[26] At the last election in the Northern Territory held in 1987 the average enrolment had increased to 2,987.

3.77 Redistributions in the Northern Territory are conducted when directed by the Chief Minister of the Territory. Three Distribution Commissioners are appointed by the Executive Council and include:

- the Chief Electoral Officer of the Northern Territory;
- the Northern Territory Surveyor-General; and
- one other person (who acts as Chairman).

3.78 In conducting redistributions the Commissioners are required to give due consideration to:

(i) community of interests within the proposed division, including economic, social and regional interests;

(ii) means of communication and travel within the proposed division, with special reference to disabilities arising out of remoteness or distance;

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26. Gerritsen, R, and Jaensch, D, 'The Northern Territory', in Galligan, B, (Ed.), **Australian State Politics**, Longman Cheshire, Melbourne, 1986, p. 141.

(iii) the trend of population changes within the Territory;

(iv) the density of population in the proposed division;

(v) the area of the proposed division;

(vi) the physical features of a proposed division;

(vii) the existing boundaries of existing divisions and matters referred to in paragraphs (i) to (vi) inclusive in respect of the existing divisions; and

(viii) suggestions and comments lodged with it ...[27]

Tasmania

3.79 Zoning has not occurred in Tasmania and unlike the mainland States the Tasmanian Legislative Assembly is elected using a proportional representation method known as the Hare-Clark system. Under the Hare-Clark system the 35 members of the Tasmanian Legislative Assembly are elected for a term of four years from five 7-member electorates. The electorates are the same five divisions used for House of Representatives elections. To be elected a candidate must secure a quota of votes which is defined as the total first preference votes divided by eight, plus one vote.[28]

3.80 The forerunner to the Hare-Clark system, the Hare system, was first introduced into Tasmania in 1896 and was designed to give representations to small sections of public opinion rather than parties. The Tasmanian Electoral Act 1907 provided that the system would use the existing five House of Representatives electorates in Tasmania for the purposes of State elections. This practice continues today.

3.81 The Hare-Clark system was first used for State elections in 1909. The system has been favoured by various electoral law reformers but has also been the subject of criticism because of its complexity and because it has generated a deadlocked Assembly. This occurred particularly during the 1950s.

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27. Northern Territory, Electoral Act 1980
28. **Tasmanian Yearbook, No. 20, 1986, Hobart, Australia Bureau of Statistics, Tasmanian Office, 1986, p. 58.**

3.82 However, in 1958 the Government amended the Tasmanian Constitution to increase the size of the Assembly from 30 to 35. This helped reduce the likelihood of deadlocks by providing for electorates of seven instead of six members.

3.83 Commenting on the Hare-Clark system, the political scientist Wilfred Townsley noted:

> Despite better facilities for travel, members object more and more to the size and variety of their electorates. They complain too of the decline in the status and power of the member. What, it is asked deprecatingly, is the prestige of the member for Bass when he has to share even the name with six others? Nevertheless, if there are few members who are not critical of some aspect of the system, there are still fewer who are ready to make the leap into the uncertainty of a return to single electorates. The general public raises few complaints, and the local press has usually supported the Hare-Clark system strongly; and the system has one great asset: it provides no blue ribbon seats for complacent or tired party members. In 1956 and 1969, for example, two Labor ministers were ousted by younger Labor Party candidates.[29]

3.84 In contrast with the Legislative Assembly, the Legislative Council is elected from 19 single member electorates. Each member of the Council holds office for six years and Council elections are held every year to elect three members. Every sixth year four members are elected. These elections are generally low key and pass almost unnoticed outside the three or four single member electorates in which the elections are being held.[30]

3.85 The 19 Legislative Council electorates have changed little since their creation. They are smaller than the Assembly electorates but are also uneven in size. As at 1 March 1988 the smallest Council electorate contained 5,429 voters and the largest 18,878 voters.[31]

3.86 There are no formal processes to review electoral boundaries in Tasmania and electorate sizes are not subject to standards for review purposes. For the Legislative Assembly, legislation to amend electorates is introduced following a

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29. Townsley, W A, The Government of Tasmania, University Queensland Press, St Lucia, QLD, 1976, pp. 27-8.
30. ibid., p. 37.
31. Tasmanian Electoral Department

redistribution for the five House of Representative electorates. Problems arising with Legislative Council electorates are usually referred by the Council to a select committee for consideration. The most recent redistributions have occurred in 1965 and 1981.[32,33]

The Commonwealth

3.87 One of the first pieces of legislation passed by the Commonwealth Parliament after Federation was the Commonwealth Electoral Act 1902. The Act set out the process for electoral redistribution for the House of Representatives and required that the Government appoint Distribution Commissioners for each State. In carrying out a redistribution the Commissioners were to consider:

- community or diversity of interest;
- means of communication;
- physical features; and
- the existing boundaries of divisions and sub divisions.

3.88 Divisions were not to vary by more than 20 percent above or below the quota established for each State.

3.89 While the Act required that Commissioners conduct the redistribution, it gave Parliament the power to accept, amend or reject their proposals. The Act did not require that redistributions be held regularly. Rather it provided that redistributions would be held:

> (a) Whenever an alteration is made in the number of members of the House of Representatives to be elected for the State; and
>
> (b) Whenever in one-fourth [25%] of the Divisions of the State the number of electors differs from a quota ... to a greater extent than one-fifth [20%] more or one-fifth [20%] less; and
>
> (c) At such time as the Governor-General thinks fit.[34]

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32. ibid.
33. NSW Legislative Council Office (Compiler), Conspectus of the Electoral Legislation of the Commonwealth, States of Australia, The Australian Capital and Northern Territories, Legislative Council Office, Parliament House, Sydney, 5th Ed., 1980, p. 45.
34. Whitlam, Gough, The Whitlam Government 1972-1975, Viking, Ringwood, VIC, 1985, p. 655.

3.90 The condition of allowing an electorate to differ from the quota for a State by plus or minus 20 percent meant that one electorate could have about 50 percent more voters than another and still be within the 20 percent tolerance. For example if the quota for a State was 50,000 voters, electorates could vary in size from 40,000 to 60,000 voters.

3.91 This situation remained unchanged for many years. In 1958 a Joint Committee on Constitutional Review (appointed in May 1956) recommended that there be a:

> ... constitutional guarantee of a maximum variation of 10 percent above or below the State quota and a maximum lapse of 10 years between distributions, with the right to have a distribution whenever the one-tenth variation was exceeded in one-fourth of the divisions in a State.[35]

In November 1960 the Government introduced the Commonwealth Electoral Bill 1960 into the Parliament but the Bill ignored the recommendations of the Constitutional Committee.

3.92 On 13 March 1973 the Whitlam Labor Government introduced the Commonwealth Electoral Bill (No. 2) 1973 into the Parliament. The Bill sought to reduce the permissible variation of the enrolment quota in electorates from 20 percent to 10 percent by amending the Commonwealth Electoral Act 1918-1973. The Bill was rejected twice by the Senate and became one of the six bills which justified the 1974 double dissolution. The Whitlam Labor Government was re-elected at the May 1974 election and soon re-introduced the Bill. It was eventually passed at a joint sitting of the Parliament on 6 August 1974.

3.93 Redistribution proposals were presented to Parliament by the Distribution Commissioners in April and May 1975 but were not accepted by the Opposition majority in the Senate. The Government subsequently re-introduced the proposals in the form of bills. However, these bills were twice rejected by the Senate and later qualified as part of the 21 bills used to justify the 1975 double dissolution.

3.94 With the subsequent election of the Fraser Liberal-Coalition Government some had anticipated that the Electoral Act would be amended to restore the 20 percent variation. However, the 10 percent variation was retained. Nevertheless, the Government did amend the Electoral Act 'so that no division of over 5000 square kilometres would have more voters than any division of under 5000 square kilometres'.[36]

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35. ibid., p. 660.
36. Lucy, R, **The Australian Form of Government**, Macmillan, South Melbourne, 1985, p. 106.

3.95 The next major reform directed to bring about one vote, one value was undertaken by the Commonwealth in 1983. A Joint Select Committee on Electoral Reform was appointed and reported to both Houses in September 1983. Recommendations of this Committee were accepted by the Government and resulted in amendments to the Commonwealth Electoral Act 1918. The amendments ranged widely and included:

- the public funding of election campaigns;
- the introduction of ticket voting for Senate elections;
- numerous amendments to electoral procedures; and
- changes to the Federal redistribution process.

3.96 The amendments to the Electoral Act recognised that stability in the electoral cycle could be achieved building on a 10 percent allowable tolerance. A seven year cycle for redistributions was established with a direction to the Commissioners that in allocating electors to seats they should aim at achieving equality mid-way (3 years 6 months on) in the redistribution cycle. Therefore, where a population increase was expected in an area the seat would commence up to 10 percent below the quota with the aim of it reaching the norm at the mid-point and where a population decline was anticipated the seat would commence up to 10 percent above the quota with the aim of reaching equality at the mid-point.

3.97 The legislation also established the Australian Electoral Commission and ensured a system for redistributing seats that was free of overt political control. The legislation also required the Electoral Commission to hold public hearings, to seek public comment on its electoral boundary proposals and to provide public explanations of its decisions.

The Current Situation

3.98 While there has been a trend towards one vote, one value in Australia two States have continued to use electoral systems based on deliberate zonal arrangements. These States are Queensland and Western Australia. The effect of zoning in these States can be clearly seen by examining Figure 3.5 and Tables 3.4 and 3.5.

Table 3.4 Electoral Enrolments for State and Territory Lower Houses of Parliament

Parliament	Date (a)	Lowest Enrolment	Highest Enrolment	Average Enrolment
New South Wales	1986	28,138	32,589	31,139
Victoria	1985	27,859	32,137	30,017
Queensland	1986	7,918	21,608	17,590
South Australia	1985	17,025	21,998	19,266
Western Australia	1986	3,702	29,268	15,495
Northern Territory	1987	2,477	3,388	2,987
Tasmania (b)				

Note: (a) Date of last election, except for NSW where date of redistribution.
(b) Data is not presented for Tasmania because Tasmania has multi-member electorates each returning 5 members to the Tasmanian Legislative Assembly.

Source: Statistics Group, Department of the Parliamentary Library.

Table 3.5 Electoral Enrolments for State Upper Houses of Parliament

Parliament	Date (a)	Lowest Enrolment	Highest Enrolment	Average Enrolment
Victoria	1985	115,070	123,537	120,067
Western Australia (b)	1986	8,815	97,243	51,955
Tasmania (c)	1986	5,352	18,261	14,222

Note: (a) Date of last election.
(b) Two members for each electorate. Average based on single member.
(c) Zoning is not used in Tasmania, however, redistributions are conducted at the discretion of the Legislative Council.

Source: Statistics Group, Department of the Parliamentary Library.

Western Australia

3.99 The electoral history of Western Australia reveals a long prevalence of rural weighting which has had the support at various times of the Australian Labor Party and the various conservative coalition parties.

3.100 Western Australia introduced zoning in 1922 and was the first State to do so. Commissioners were appointed to draw electoral boundaries but only within areas defined by the Parliament.

3.101 The Electoral Districts Act 1947 established the current structure of representation in Western Australia.

3.102 In a submission to the Electoral Reform Committee the Western Australian Government stated:

> This Act and the gerrymander and malapportionment that it prescribes have been labelled as corrupt and the reasons are obvious. The Liberal Party Government in 1981 prescribed in schedules to the Act, the boundaries of three electoral areas;
>
> North West Murchison-Eyre,
> Agricultural Mining and Pastoral,
> Metropolitan,
>
> drew the boundaries of the four Assembly districts and two Council provinces within the North West Murchison-Eyre area and prescribed the numbers of members to be elected from all the areas to both Houses. By the Act the Electoral Commissioners are restricted to drawing only the internal boundaries in the Agricultural, Mining and Pastoral area and in the Metropolitan area ...
>
> Malapportionment is established by the Act. No quota is applied to the four districts in the North West Murchison-Eyre area where boundaries have been drawn without regard to population. Enrolments within that area now range from 3,702 to 17,918.[37] Metropolitan electors are seriously under-represented in Parliament. Even within the electoral areas established by the Act, the numbers of

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37. More recent figures are 4,092 to 17,540. See Hawkes, G, 'A long rocky road towards electoral reform', Paper delivered to the Australasian Study of Parliament Group Ninth Annual Conference, Wellington, New Zealand, 1987, p. 6.

districts and provinces allocated to each area are such that the Electoral Commissioners were forced to place more districts in some provinces than they do in others.[38]

3.103 The following figures indicate the extent of the malapportionment.[39]

Western Australia: Enrolments and Seats

Area	Enrolments %	Assembly Seats % (No.)	Council Seats % (No.)
Metropolitan	68.0	52.6 (30)	41.0 (14)
Rural	32.0	47.4 (27)	59.0 (20)
Total	100.0	100.0 (57)	100.0 (34)

Western Australia: Average Enrolments

Area	Assembly Districts (No.)	Council Provinces (No.)
Metropolitan	20,568	88,148
Rural	10,613	28,656
State	15,853	53,153

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38. **Evidence** (Electoral Reform Committee), p. 331.
39. Hawkes, G., op. cit., pp. 6, 32.

3.104 At a public hearing of the Electoral Reform Committee held on 13 May 1986, the Western Australian Deputy Premier and Minister for Electoral Reform, Mr Mal Bryce, stated:

> Our laws, our electoral laws, have become a serious embarrassment to the State and that is a statement of fact ...[40]

3.105 Mr Bryce indicated to the Committee that the Western Australian Government was firmly committed to electoral reform and ridding the State of its system of rural weighting. On this matter he stated:

> There is absolutely no justification in 1986, in the era of the satellite, computerisation, information technology run rampant and in a situation where more than 90 per cent, probably 95 per cent, of all households are connected by telephone, to argue that anything like those sorts of weightings can be justified.[41]

3.106 At the time of the Inquiry by the Electoral Reform Committee, the Western Australian Government stated that it supported the principles of the 1985 Bill but believed the State Parliament was the most appropriate place to amend the State's electoral laws and requested adequate time to enact electoral reforms.

3.107 On 27 November 1987 the Premier of Western Australia, Mr Brian Burke, forwarded a submission to the Committee on the Constitution Alteration (Democratic Elections) Bill 1987.[42]

3.108 Mr Burke noted that the Parliament of Western Australia had recently passed fundamental reforms of the State electoral system.

3.109 In July 1986 the Government introduced the Acts Amendment (Electoral Reform) Bill 1986. The Bill proposed:[43]

- the establishment of an independent electoral commission to be fully responsible for the administration of electoral law;
- that members of both Houses of Parliament would be elected for a term based on four years;

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40. **Evidence** (Electoral Reform Committee), p. 957.
41. ibid., p. 961.
42. **Evidence**, pp. S39-S106.
43. ibid., pp. S39-S40.

- a redistribution of electoral boundaries to commence one year after any second Assembly election with redistributions ranging from 15 percent below to 15 percent above the State average district enrolment;

- the abolition of electoral boundaries previously labelled as gerrymandered; and

- that Members of the Legislative Council be elected from six multi-member regions: three metropolitan and three country.

3.110 The National Party which had the balance of power in the Legislative Council was adamant that there should be no reduction in the representation of country voters and by early 1987 it became clear that the Bill would not succeed unless it incorporated considerable vote weighting. The Government consequently prepared amendments to the Bill which conceded additional vote weighting of approximately 1.7:1 between the average enrolments of metropolitan and country Legislative Assembly districts.

3.111 Mr Burke noted:

> In the final analysis, the Government was faced with a very difficult choice.
>
> The choice faced by the Government was to either see the bill fail or to accept amendments proposed by the National Party. The effect of the National Party amendments was to impose an imbalance of 1.88:1 between the enrolments of metropolitan and country Assembly districts and to grant equal representation in the Legislative Council between the 73% of electors in the metropolitan area and the 27% of electors in the non-metropolitan area ...
>
> The Government chose to vote for the National Party amendments rather than see the Bill fail. This meant that in order to achieve the significant structural reforms the Government was forced to pay a heavy price in the continuation of vote weighting. The Government regards the new legislation as an initial step which has laid solid structural foundations and which will make it possible to continue the renovation of the State's electoral system in the near future.[44]

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44. ibid., p. S41.

3.112 The Bill which finally passed was basically the same as the original in its structure. What changed was the vote weighting. The ratio between metropolitan and country average enrolments in Legislative Assembly districts was to be approximately 1.88:1 and the ratio between metropolitan and country average enrolments per member in the Legislative Council at least 2.77:1.

3.113 With regard to the new system Mr Burke stated:

> It does not bring me any pleasure to note that the general picture of enrolment imbalances in Western Australia's system remains the worst in Australia. That we are happy to call it reform might give some measure of the injustice inherent in the previous system.[45]

3.114 Mr Burke concluded:

> Now that an improved structure has been adopted it is clear that the case for reform is different. The next step is to remove from the system the unacceptable malapportionment which remains.
>
> It is not easy, however, to see how further reform may occur in the near future ...
>
> It has been demonstrated that the present Western Australian Parliament is prepared to go no further towards the removal of malapportionment and that unless another major party accepts the fairness of equal enrolments per member, future Parliaments may also make little progress.
>
> In these circumstances, the Western Australian Government thanks the Commonwealth Government for the additional time in which every effort has been made at the State level to, `put our own Houses in order'.[46]

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45. ibid., p. S42.
46. ibid., p. S43.

Queensland

3.115 Before 1910 Queensland was divided into electorates by the government of the day. However, the Electoral Districts Act 1910 brought about considerable electoral equality with the State being divided into 72 single member electorates for elections to the Legislative Assembly. Each electorate had a permitted variation of one-fifth above or below the State average.

3.116 In 1931, the Moore Conservative Government reduced the number of seats to 62 and increased the weighting given to rural areas.

3.117 In 1949, the Hanlon Labor Government increased the number of seats to 75, 'a reasonable step when the electorate had grown from 526,000 in 1932 to 719,000 in 1950'[47]. The Hanlon Government also passed the Electoral Districts Act 1949 and thereby divided the State into four zones, viz.:

- a metropolitan zone (24 members);
- a south-eastern zone (28 members);
- a northern zone (13 members); and
- a western zone (10 members).

3.118 On the effects of this Colin Hughes commented:[48]

> Initially the change in Queensland did not affect the state-wide measure of electoral inequality, because enrolments of individual electoral districts had spread widely since the previous redistribution in 1935, and in 1949 electoral districts were fairly equal within their respective zones even though they differed appreciably between zones. Subsequently, as the district enrolments spread out within their zones, the picture changed, and by 1957, the last general election conducted on the Hanlon government's boundaries, the state-wide measures of inequality were almost as bad as they had been before 1910.

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47. Hughes, C A, The Government of Queensland, University of Queensland Press, 1980, p. 89. See also Evidence (Electoral Reform Committee), p. 363.
48. ibid.

3.119 The Hanlon Government justified the redistribution on the grounds that:[49]

- the State's rural areas needed special attention;
- the vast size of the electorates in the redistribution; and
- the need to ensure city-based interests did not become 'all-dominating'.

3.120 The reality was that the Labor Party saw the country areas, and particularly country mining towns, as areas of strong support.

3.121 The Opposition vehemently opposed the Hanlon Government's zoning system. One of the strongest critics was Joh Bjelke-Petersen. He described the zoning system as:

> ... a crafty and vicious piece of legislation if ever there was one.[50]

3.122 He continued:

> ... in this legislation the people are given the right of voting, admittedly, but the odds are so greatly against them that to achieve the results they desire is impossible because the predetermined zones and the numbers set out will mean nothing but that the majority will be ruled by the minority.[51]

3.123 In 1957 the Queensland Coalition was returned to power and swiftly reduced the number of zones to three, viz.:[52]

- a metropolitan zone (28 seats);
- a discontinuous provincial cities zone (12 seats); and
- a country zone (38 seats).

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49. Evidence (Electoral Reform Committee), p. 518.
50. Queensland Parliamentary Debates, Session 1948-1949 p. 2332. See also Evidence, p. 200.
51. Lunn, H D, Joh, Queensland University Press, St Lucia, 1978, p. 120.
52. Evidence, p. 201.

3.124 Subsequently weighting continued to be given to country areas. In the 1971 redistribution there was a return to four zones with a result that:

> Electorates in the Western and Far Northern Zone had an effective quota of 7,927 electors, whereas seats in the South Eastern and Provincial Cities zones had effective quotas in excess of 13,000.[53]

3.125 The Country Party prospered at the expense of both the Labor and Liberal Parties and continued to do so throughout the 1970s.

3.126 Queensland's present zoning system was established by the Electoral Districts Act 1985. This Act maintained the existing four zones and gave the task of drawing up electorates within the zones to Electoral Districts Commissioners. The Commissioners report directly to the Premier and the electoral districts are then proclaimed. No approval is required by Cabinet or Parliament.

3.127 In 1983 the Country (National) Party was able to take power in its own right with 38.1 percent of the votes cast and again in 1986 with 39.4 percent of the votes cast.[54]

3.128 The Queensland Branch of the Australian Labor Party concluded in its submission to the Committee:

> The picture has changed little since 1985 with population growth worsening the dramatic variations in electorate population size.
>
> As of the 30th April, 1987, four of the six largest electorates in the State were the Labor held seats of MANLY (23,677), LOGAN (22,683), SALISBURY (22,662) and THURINGOWA (22,485).
>
> The five smallest electorates were the National Party held seats of ROMA (7,987), GREGORY (8,099), BALONNE (8,372), WARREGO (8,863) and PEAK DOWNS (8,877).[55]

3.129 At the public hearing held in Brisbane on 10 November 1987 the Committee received submissions and heard evidence on the current problems facing the Queensland electoral system. Numerous witnesses expressed the view that electoral reform in Queensland was well overdue.

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53. ibid.
54. ibid., p. 228.
55. ibid., p. 204.

3.130 The Committee questioned witnesses as to how reform might come about and found support for some form of Commonwealth intervention from the Australian Labor Party, the Australian Democrats and the organisation Citizens for Democracy. Both the Labor Party and Citizens for Democracy believed that while it would be possible for a change of government to occur in Queensland, it was very difficult to vote out a government in Queensland.[56]

3.131 The National Party did not agree that the establishment of electorates with equal numbers of electorates would produce a 'fair' result. The National Party noted:

> ... under the most recent electoral distribution in New South Wales effected on a basis of numerically equal electorates, it has been estimated that the non-Labor Parties would need to win 52% of the two-Party preferred vote to win an election if the swing to them were uniform ...
>
> In contrast, based on results of the 1986 State Election, the Labor Party in Queensland would need to win only 51.4% of the two-Party preferred vote to become the government on the basis of a uniform swing ...[57]

3.132 The National Party stated that even if there was merit in the proposition underlying the 1987 Bill it would be inappropriate for it to be enacted. The National Party was of the opinion that the Queensland electoral system was solely a matter for Queensland.

The Constitutional Commission

3.133 The Committee noted that the work of Australia's Constitutional Commission was relevant to its own Inquiry.

3.134 The Constitutional Commission was established by the Commonwealth Government in December 1985 to inquire into and report on the revision of the Australian Constitution by 30 June 1988. The Terms of Reference of the Constitutional Commission state that the Commission shall:

> ... inquire into and report on or before 30 June 1988, on the revision of the Australian Constitution to:
>
> (a) adequately reflect Australia's status as an independent nation and a Federal Parliamentary democracy;

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56. ibid., pp. 62, 312.
57. ibid., p. 129.

(b) provide the most suitable framework for the economic, social and political development of Australia as a federation;

(c) recognise an appropriate division of responsibilities between the Commonwealth, the States, self-governing Territories and local government; and

(d) ensure that democratic rights are guaranteed.[58]

3.135 The Commission has been assisted in its work by five Advisory Committees which have now produced reports each documenting findings and making recommendations for changes to the Constitution. At this time the Commission is endeavouring to generate public debate on the recommendations contained in the five Advisory Committee reports. Those recommendations adopted by the Commission will be forwarded to the Federal Government by 30 June 1988. If the Government accepts the recommendations it may then put them to the people at a referendum.

3.136 Of particular relevance to the Committee's Inquiry into the 1987 Bill was the work of the Commission's Advisory Committee on Individual and Democratic Rights which was required to inquire and make recommendations on:[59]

- the best way to ensure and advance the individual and democratic rights of the Australian people as citizens and as a society within the legislative and judicial structure of Australian government;
- whether the Constitution should spell out guarantees of individual and democratic rights;
- whether the guarantees already provided in the existing Constitution are adequate for Australians today;
- whether Australians are already sufficiently protected by existing laws and traditions, apart from the Constitution; and
- whether if any Constitutional guarantees are desirable, which ones should be included, the form they should take, who should be bound by them and who should enforce them.

3.137 In its report the Advisory Committee stated that its Inquiry had shown the single greatest area of concern was that

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58. Constitutional Commission, **Australia's Constitution: Time to update**, AGPS, Canberra, 1987, p. iii.
59. Constitutional Commission, **Report of the Advisory Committee on Individual and Democratic Rights under the Constitution**, AGPS, Canberra, 1987, p. x.

the Constitution should stipulate as a basic standard the principle of one vote, one value. The Advisory Committee noted that the Constitution did not provide a guarantee that votes would be equal in value.

3.138 The findings of the Advisory Committee corroborated those of this Committee:

> The Federal, New South Wales, Victorian and South Australian parliaments have all passed laws to ensure that electoral divisions contain approximately equal numbers of electors, with an allowable variation of 10% above or below the average. The same applies to the Tasmanian Legislative Assembly which follows federal electoral divisions. While these reforms are unlikely to be repealed it is still open to some future government simply to legislate and alter the present position.
>
> In the other States, and in relation to the Tasmanian Legislative Council, there are wide disparities in the size of electorates. In the table below, the electorates listed in respect of each legislative body are those with the highest and lowest number of electors.
>
> **Western Australia**
>
> As at November 1986 -
>
> Legislative Assembly:
> Murdoch - 30,074
> Murchison-Eyre - 3,850
>
> Legislative Council:
> N.E. Metropolitan - 94,926
> Lower North - 8,774
>
> **Queensland**
>
> As at September 1986 -
>
> Legislative Assembly:
> Manly - 23,013
> Roma - 7,918
>
> **Tasmania**
>
> As at October 1986 -
>
> Legislative Council:
> Huon - 18,458
> Gordon - 5,390[60]

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60. ibid., p. 80.

3.139 The Advisory Committee found during its Inquiry that the most common argument against the principle of one vote, one value was that it disadvantaged rural voters. However, the Advisory Committee did not accept the view that rural voters were entitled to extra representation because of their economic contribution or unique disadvantages such as distance.

3.140 The Advisory Committee stated:

> There are many interest groups in the community who make important contributions to the economic or other well being of the nation. It has not been suggested that those creating wealth by the development of major manufacturing industry or by the supply of unique labour skills deserve extra representation in Parliament.
>
> The representation of interests is achieved in the democratic process by the operation of pressure groups representing particular interests ranging across a broad spectrum, which of course includes the vital role of the rural sector.
>
> The Committee also takes the view that legislators represent people, not trees or acres, and as such the problems of access by members representing electors in far flung and widespread electorates is a matter of real concern which must be addressed by provision of appropriate transport and communication facilities and electoral allowances rather than by distorting the fundamental principles of the democratic process. The problem is real, but solutions suggested by rural interests are considered by the Committee to be inappropriate in a democratic society.
>
> In the Committee's opinion if the principal right of electors is to choose their representatives and to maintain contact with them it is essential that the conditions of choice should as far as possible ensure equality between voters, and equal freedom for would-be candidates to present themselves to the electors.[61]

3.141 While the Advisory Committee believed there should be equally apportioned electorates it recognised there were difficulties in obtaining absolute equality. The Advisory Committee believed the 10 percent variation already adopted by

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61. ibid., pp. 81-82.

the Federal, New South Wales, Victorian and South Australian Parliaments was appropriate at this time and recommended that a new section 24A be inserted in the Constitution. This section would read:

> 24A. The number of electors in each electoral division who may vote for each member shall not vary by more than 10 per cent.[62]

3.142 The Advisory Committee did not propose to amend the existing section 24 of the Constitution part of which states that each State shall have at least five members in the House of Representatives. This was noted to be a political compromise provided for each State at the time of Federation.

3.143 The Advisory Committee also considered whether application of the principle of one vote, one value should be left to individual States. Various arguments for and against Constitutional change were noted. Those for included:[63]

- one vote, one value was a basic tenet of democracy and should be guaranteed to all citizens; and
- unless existing State electoral systems were democratic it was invalid to allow each State to determine its own system.

3.144 The arguments against included:[64]

- it was inappropriate in a federal system for the national Constitution to concern itself with individual States' electoral systems;
- enshrining the principle of one vote, one value in the Constitution would affect State elections in both Upper and Lower Houses but it would not apply to the Senate;
- the development of State Upper Houses might be hindered, eg in the future it was possible that Upper Houses could have members appointed simply to review and suggest amendments to bills but a guaranteed popular mandate would make this change difficult.

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62. ibid., p. 82.
63. ibid., pp. 82-3.
64. ibid., p. 83.

3.145 Having considered these issues the Advisory Committee recommended that the one vote, one value principle be extended to States with a new Section 106A to be included in the Constitution:

> 106A Where a State is divided into electoral divisions the number of electors in each electoral division who may vote for each member of a House of Parliament in a State shall not vary by more than 10%.[65]

Conclusions

3.146 The Committee notes that the 1987 Bill seeks to eliminate malapportionment by seeking to introduce one vote, one value. In its current form the 1987 Bill does not prevent gerrymanders.

3.147 The Committee concludes that:

> **using the three accepted measures of malapportionment (that is, the David-Eisenberg Index, the Dauer-Kelsay Index and the Gini Index), the electorates for the Western Australian Legislative Council, the Western Australian Legislative Assembly, the Tasmanian Legislative Council and the Queensland Legislative Assembly have unacceptably malapportioned electorates.**

3.148 The Committee notes that the voting system used for the Senate also exhibits malapportionment as Tasmania with some 300,000 voters and New South Wales with some 3.5 million voters both elect twelve Senators. The Committee notes that the equality in the representation of the States in the Senate was one of the historical compromises made to achieve Federation.

3.149 The Committee notes that the ratio of the number of voters in the largest electorate to the smallest (the David-Eisenberg Index) is:

Western Australia - Legislative Council	11.03
Western Australia - Legislative Assembly	7.91
Tasmania - Legislative Council	3.45
Queensland - Legislative Assembly	2.91

3.150 The Committee finds that there is a clear historical trend towards fairer electoral boundaries which seek to give all electors an equal say in determining who shall form the State or Federal Government.

3.151 The New South Wales, Victorian, South Australian and Tasmanian Parliaments and the House of Representatives now provide that electoral boundaries should be drawn so that electorates have enrolments which vary from the State average by

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65. ibid.

less than 10 percent. In the Northern Territory the maximum tolerance is 20 percent.

3.152 The Committee concludes that:

> **as a general principle redistributions should aim to have electoral enrolments which are within 10 percent of the average enrolment.**

3.153 The Committee notes that in the past malapportionment in State electorates of the order of magnitude currently existing in Queensland, Tasmania and Western Australia resulted in governments exercising power after receiving less than a majority of the vote. The Committee believes equity in voting power is a necessary first step in achieving a fair electoral system.

3.154 The Committee concludes that:

> **the Federal Government has a clear responsibility to act to overcome this infringement of the individual rights of Australian electors to have an equal say in choosing their governments and that the Federal Government therefore has a responsibility to introduce one vote, one value.**

3.155 However, the Committee is unable to accept the 1987 Bill as a model for implementing one vote, one value because of a number of inherent defects which the Committee believes exist.

CHAPTER 4

THE CONSTITUTION ALTERATION (DEMOCRATIC ELECTIONS) BILL 1987

- **Overview**
- **Mechanism of Change**
- **Examination of the Bill**

Overview

4.1 Senator Macklin indicated in his second reading speech on the Constitution Alteration (Democratic Elections) Bill 1987 (hereafter referred to as 'the 1987 Bill') that the Bill's objective was to alter the Constitution so as to guarantee the right of individuals to vote and to enshrine in the Constitution the principle of one vote, one value thereby requiring equality of electorates in the legislatures of the Commonwealth, the States and the self-governing Territories.

4.2 The provisions of the 1987 Bill would require:

- the principle of equality of electoral divisions per member of parliament to apply to Commonwealth, State and Territory legislatures;
- elections at large to be held in cases where electoral divisions do not meet the standard of equality;
- there be a guaranteed maximum franchise which would restrict the powers of the Commonwealth, State and Territory legislatures to legislate for the franchise of their own electors;
- members of State and Territory legislatures to be elected directly;
- any elector, or other person claiming to have a constitutional right to vote, to have a standing to approach the High Court of Australia to seek remedies in relation to provisions of the Constitution covering his or her voting rights; and
- Sections 25 and 41 to be deleted from the Constitution.

4.3 The 1987 Bill has nine clauses. Clause 1 states the short title of the Bill, the Constitution Alteration (Democratic Elections) Bill 1987, and Clauses 2-9 detail proposed alterations to the Constitution. In particular, Clauses 2-9 are concerned with:

2. provisions as to races disqualified from voting;

3. electoral divisions;

4. the qualifications of electors;

5. the right of electors of States;

6. the original jurisdiction of the High Court;

7. the election of members of Parliaments of States and self-governing Territories;

8. the election of members of the Parliament to represent Territories; and

9. the maximum variation between electoral divisions.

Clause 2 - Provisions as to races disqualified from voting

4.4 Clause 2 states that the Constitution is altered by repealing section 25. Section 25 relates to section 24 of the Constitution which requires the number of members of the House of Representatives to be chosen for each State to be proportional to the population of the State. Section 25 provides that for the purposes of determining the population of a State any persons belonging to a race which is excluded from voting in elections for the State's lower house will not be counted in the population of the State. However, at this time Section 25 has no practical effect because no State has a provision which disqualifies persons of a particular race from voting at elections in their respective lower houses.

Clause 3 - Electoral divisions

4.5 Clause 3 adds a paragraph to the end of Section 29 of the Constitution. Section 29 allows the Commonwealth Parliament to determine its own electoral divisions but states that 'A division shall not be formed out of parts of different states'. Section 29 also states 'In the absence of other provision, each State shall be one electorate'.

4.6 Clause 3 requires that a paragraph be added to Section 29 of the Constitution such that the electorates within a State shall, as nearly as practicable, have the same numbers of voters and furthermore that the number of voters in any electorate will not vary by more than plus or minus 10 percent from the number of voters in any other electorate in the State.

Clause 4 - Qualification of electors

4.7 Clause 4 states that a paragraph be added to section 30 of the Constitution, a section which enables the Commonwealth Parliament to determine the qualifications of electors of members of the House of Representatives. Section 30 notes that 'in choosing the members each elector shall only vote once'.

4.8 The paragraph to be added by Clause 4 states:

> Laws made by the Parliament for the purposes of this section shall be such that every Australian citizen who complies with any reasonable conditions imposed by those laws with respect to residence in Australia or in a part of Australia and with respect to enrolment and has attained the age of 18 years or such lower age as the Parliament may determine is, subject to any disqualification provided by those laws with respect to persons who are of unsound mind or are undergoing imprisonment for an offence, entitled to vote, but nothing in this paragraph prevents the Parliament from making laws permitting voting by other persons who were, immediately before the commencement of the Constitution Alteration (Democratic Election) 1987, entitled to vote.

4.9 The effect of Clause 4 is to ensure that the laws of the Commonwealth Parliament guarantee the right to vote of every Australian citizen:

- who complies with any reasonable requirement regarding residence in Australia; and
- who has attained the age of 18 years or any lower age as Parliament determines; and
- who is not disqualified by those laws because he [or she] is of unsound mind or is undergoing imprisonment for an offence.[1]

4.10 Clause 4 also ensures that non-citizens who are entitled to vote will not have their voting rights affected by the Bill.

Clause 5 - Right of electors of States

4.11 Clause 5 states that the Constitution is altered by repealing section 41. Section 41 states:

> No adult person who has or acquires a right to vote at elections for the more numerous

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1. **Evidence** (Electoral Reform Committee), pp. 192-3.

> House of the Parliament of a State shall, while the right continues, be prevented by any law of the Commonwealth from voting at elections for either House of the Parliament of the Commonwealth.

4.12 The proposed repeal of this section arises for two reasons. First, the section has ceased to have any practical operation following the decision of the High Court in The Queen v. Pearson; Ex parte Sipka (1983) 152 C.L.R. 254 and second, if retained in the Constitution it would conflict with the proposed amendment to section 30.

Clause 6 - The original jurisdiction of the High Court.

4.13 Clause 6 adds a paragraph to section 75 of the Constitution which specifies five categories of matters in which the High Court has original jurisdiction.

4.14 The paragraph to be added by Clause 6 states that 'The High Court shall have original jurisdiction in matters arising under, or involving the interpretation of, section 7,8,9,24,29,30,106A,122A or 125A of this Constitution ...' These sections deal with:

7. the composition of the Senate;

8. the qualification of electors of senators;

9. the method of electing senators;

24. the composition of the House of Representatives;

29. electoral divisions for which members of the House of Representatives may be chosen;

30. qualifications of electors of members of the House of Representatives;

106A. the election of members of Parliaments of States and self-governing Territories;

122A. the election of members of the Parliament to represent Territories; and

125A. the maximum variation between electoral divisions.

4.15 The paragraph also confers on any elector of the Commonwealth or of the State or Territory, as the case requires, or any person whose right to be an elector is in question, the right to institute proceedings in the High Court.

Clause 7 - Election of Members of Parliaments of States and self-governing Territories

4.16 Clause 7 states that a new section 106A shall be inserted after section 106 in the Constitution. Section 106 states:

> 106. The Constitution of each State of the Commonwealth shall, subject to this Constitution, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be, until altered in accordance with the Constitution of the State.

Commenting on section 106 Lumb and Ryan have noted:

> This section makes it clear that the Constitution of each State, as amended from time to time in accordance with the State's constitutional procedures, will remain unimpaired by the federal Constitution except to the extent to which the latter otherwise provides or gives to the Commonwealth Parliament power to deal with matters previously falling within State constitutional power.[2]

4.17 The proposed new section 106A relates to the elections of the Parliaments of the States and self-governing Territories. In particular, it states that:

- members of the Houses of Parliament in States or self-governing Territories shall be directly chosen by the people of the respective State or Territory;
- the State laws conferring on citizens an entitlement to vote for members of a State Parliament must comply with the same conditions as apply, by reason of the abovementioned amendment of section 30, to Houses of the Commonwealth Parliament with regard to the entitlement to vote for members of the Commonwealth Parliament. (See paragraph 4.9);
- each elector shall vote only once;
- electorates within a State or self-governing Territory shall, as nearly as practicable, have the same number of voters and the number of voters in

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2. Lumb, R D, and Ryan K W, The Constitution of the Commonwealth of Australia Annotated, 2nd Ed., Butterworths, Sydney, 1977, p. 344.

any electorate shall not vary by more than plus or minus 10 percent from the number of voters in any other electorate in the State or Territory.

- where the electorates of a State or self-governing Territory are not constituted in accordance with this section the State or Territory shall, for the purposes of a general election, be one electorate and the method of choosing members shall be, as nearly as practicable, the same as the method for choosing senators for the State or Territory'.

Clause 8 - Election of Members of the Parliament to represent Territories

4.18 Clause 8 states that a new section 122A shall be inserted after section 122 in the Constitution. Section 122 concerns the government of Territories and gives the Commonwealth the power to legislate for a Territory. Section 122 states:

> 122. The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit.

4.19 The proposed new section 122A relates to the elections of members from non-self-governing Territories to the Commonwealth Parliament. The purpose and detail of section 122A are largely the same as that for section 106A. (See paragraph 4.16). However, the method of choosing members is not stated.

Clause 9 - Maximum variation between electoral divisions

4.20 Clause 9 states that the Constitution is to be altered by inserting a new section 125A after the existing Section 125 which concerns the determination and location of the seat of Government of the Commonwealth.

4.21 The proposed section 125A contains provisions for the parliaments of the Commonwealth, the States and the self-governing Territories to make laws which reduce the 10 percent tolerance for an electorate to a lesser figure. The section proposes that in cases of inconsistency between

Commonwealth law and the law of a State or a self-governing Territory, in relation to the tolerance in electorate size, the following shall apply:

- where the tolerance fixed by the law of the Commonwealth is the same or less than the tolerance fixed by the law of a State or Territory, the law of the Commonwealth shall prevail;

- where the tolerance fixed by law of the Commonwealth is greater than the tolerance fixed by the law of the State or Territory, the law of the State or Territory shall apply to elections of members of the House of Representatives for that State or Territory and to elections of members of the House of the Parliament of that State or Territory.

Mechanism of Change

4.22 Section 128 of the Constitution details the means whereby the Constitution may be altered. The process involves a bill such as the 1987 Bill, which outlines proposed changes to the Constitution, being passed by the Parliament and then being put to a vote of the people at a referendum. Subject to certain qualifications approval of the bill by a majority of all electors and by a majority of the electors in a majority (that is 4 out of 6) of the States leads to the bill being presented to the Governor-General for assent. Once the bill is assented to the Constitution is altered.

4.23 A Constitution alteration bill is like any other bill. It may originate in either the House of Representatives or the Senate. Normally the bill must be passed by an absolute majority in both Houses and once passed it is required that, in not less than 2 months and in not more than 6 months, the bill be put to a referendum of electors in all the States and Territories.

4.24 While an absolute majority in favour of the bill is normally required in both Houses Pettifer notes:

> If the bill passes one House and the other House rejects or fails to pass it, or passes it with any amendment to which the originating House will not agree, the originating House, after an interval of 3 months in the same or next session, may again pass the bill in either its original form or in a form which contains any amendment made or agreed to by the other House on the first occasion. If the other House again rejects or fails to pass the bill or passes it with any amendment to which the originating House will not agree, the Governor-General **may** submit the bill as last proposed by the originating

> House, either with or without any amendments subsequently agreed to by both Houses, to the electors in each State and Territory. The words 'rejects or fails to pass, etc.' have the same meaning as those in section 57 of the Constitution.[3]

4.25 The procedures for conducting a referendum are set out in the Referendum (Machinery Provisions) Act 1984. and reflect those procedures in the Commonwealth Electoral Act 1918 for the conduct of an election.

4.26 While Constitution alteration bills may be complex and difficult to understand the Referendum (Machinery Provisions) Act 1984 ensures that before a referendum is held a pamphlet setting out the case for and against the bill is distributed by mail to all electors.[4] The pamphlet also includes the textual alterations and additions proposed to be made to the Constitution.

4.27 Schedule 1 of the Referendum Act also sets out the format of the ballot paper to be used in a referendum and provides that the title of the bill be presented on the ballot paper together with the question: 'Do you approve of this proposed alteration?' The title of the 1987 Bill is:

> An act to alter the Constitution so as to ensure that the Members of the Parliament of the Commonwealth and of the Parliaments of the States and of self-governing Territories are chosen democratically by the people.[5]

4.28 A referendum may be held in conjunction with an election for the House of Representatives and/or the Senate and more than one referendum may be held at a time. The cost of conducting a referendum independently of an election is estimated to be $30 million.[6]

Examination of the Bill

4.29 Chapter 2 of this report notes that the Committee's Inquiry into the 1987 Bill followed on the work of the Electoral Reform Committee and its Inquiry into the 1985 Bill. A comparison of the Bills shows they are the same except for the addition of paragraphs to Clauses 3,6,7 and 8 and the addition of a new Clause 9 in the 1987 Bill. Appendix A sets out the two bills and highlights the differences between them.

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3. Pettifer, J A, (Ed.), **House of Representatives Practice**, Australian Government Publishing Service, Canberra, 1981, p. 24.
4. Australia, Referendum (Machinery Provisions) Act, 1984, section 11.
5. Australia. Senate. **Constitution Alteration (Democratic Elections) Bill 1987**, Presented and read at first time, 23 September 1987.
6. Evidence (Electoral Reform Committee), p. 937.

4.30 The discussion in this section is aimed at the 1987 Bill, however, where appropriate, comments are presented in relation to the 1985 Bill.

4.31 The Committee's views on the Electoral Commission's alternative approach of specifying detailed mechanisms rather than broad principles in the Constitution, and the alternatives of State action and Commonwealth legislation are discussed in Chapter 5.

Repeal of Sections 25 and 41 of the Constitution

4.32 Clauses 2 and 5 are the same in the 1985 Bill and the 1987 Bill and state that sections 25 and 41 of the Constitution are to be repealed.

4.33 There were no objections voiced about either of these clauses. With regard to section 25 Senator Macklin had indicated in his second reading speech that it was 'an archaic and objectionable provision'[7] and evidence presented to the Committee indicated that section 25 of the Constitution had no practical effect.[8] Similarly, the removal of section 41 from the Constitution was found to have no legal significance.[9] The Attorney-General's Department noted:

> The decision of the High Court in The Queen v. Pearson; Ex parte Sipka (1983) 152 C.L.R. 254 has rendered S.41 of the Constitution effectively a 'dead letter'...[10]

Electorates - 'as nearly as practicable, the same'

4.34 In both the 1985 Bill and the 1987 Bill Clauses 3,7 and 8 work together to provide for the equality of the number of electors per member of parliament. In the 1985 Bill the clauses provide that in respect of the Commonwealth, State and self-governing Territory electoral provisions:

> The numbers ascertained ... by dividing the number of electors in each division by the number of members to be chosen for the division shall be, as nearly as practicable, the same.[11]

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7. Senate, **Hansard**, 23 September 1987, p. 531.
8. **Evidence** (Electoral Reform Committee), pp. 207, 569.
9. ibid., pp. 207, 571.
10. ibid., p. 571.
11. See Appendix A: Comparison of the texts of the Constitution Alteration (Democratic Elections) Bill 1985 and the Constitution Alteration (Democratic Elections) Bill 1987.

4.35 In the 1987 Bill this provision is qualified by the addition of the words:

> ... and the number so ascertained in respect of a division ... shall not be greater than the number so ascertained in respect of any other division ... by more than one-tenth or such lesser fraction as is fixed ... under section 125A of this Constitution.[12]

4.36 The use of the words 'as nearly as practicable' in the 1985 Bill generated widespread criticism. On two occasions the Australian Electoral Commission expressed grave concern about the words and noted that their immediate effect would be to invalidate all State, Commonwealth and Territory electoral boundaries because they could be improved considerably in terms of strict numerical equality. The Electoral Commission stated:

> Insofar as the proposed amendments would also serve as the criteria for determining the constitutional validity of the current Commonwealth, State and Territory statutory provisions governing distributions these could also be challenged in the High Court. It could be argued that since they all allow for a margin of tolerance around the average enrolment to be used by those drawing the boundaries, they are thereby inconsistent in their operation with (the proposed) constitutional requirements, and therefore invalid.[13]

4.37 Both the Electoral Commission and the Attorney-General's Department indicated that the words 'as nearly as practicable' could give rise to problems in so far as the High Court might adopt a strict interpretation of the words with the result that the electoral divisions provided for by the Commonwealth Electoral Act 1918 would be struck down.[14] The Electoral Act provides for present inequality in order to achieve future equality.

4.38 While it was acknowledged by the Electoral Commission that the High Court could interpret the words 'as nearly as practicable' such that there would be some tolerance in electorate size it was noted that in the United States, judicial involvement in the enforcement of electoral equality had run into great difficulties.[15]

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12. ibid.
13. Evidence (Electoral Reform Committee), p. 4.
14. ibid., pp. 4, 569.
15. ibid., p. 5.

4.39 Commenting on the United States experience the Electoral Commission stated:

> One interpretation of the reasoning underlying the pronouncements of the U.S. Supreme Court has been that 'legislatures and administrative agencies must make an honest and good faith effort to achieve equality'. In the 1983 case of Karcher v. Daggett, however, the U.S. Supreme Court, in pursuance of this view, struck down on the ground of inequality of populations a set of New Jersey Congressional Districts in which the maximum deviation from the average population was only 0.43%. The Court ruled that even where strict equality is so closely approximated, a plaintiff still need only show that a transfer of entire subdivisions from one proposed division to another could have led to an even more precise approximation. This then imposes a burden on the State authorities to prove that the proposed deviations, no matter how small, are justified.
>
> In Karcher v. Daggett, the U.S. Supreme Court explicitly rejected the notion that an 'as nearly as practicable' approach allows those drawing boundaries merely to aim at keeping deviations from equality within a fixed tolerance, no matter how small. Justice Brennan, in delivering the Court's opinion, quoted the opinion of the Court in the case of Kirkpatrick v. Preisler:
>
> > "The whole thrust of the 'as nearly as practicable' approach is inconsistent with adoption of fixed numerical standards which excuse population variances without regard to the circumstances of each particular case."[16]

4.40 The Electoral Commission noted that there were a number of High Court judgements which supported the view that the High Court would adopt a strict interpretation of 'as nearly as practicable'. Such a view could lead to difficulties if the provision was interpreted to apply continuously because the number of voters in any electorate was always changing. This was in contrast to the United States where the requirement for equality did not create such difficulties because electoral boundaries were drawn on the basis of population figures which were based on census figures produced once every 10 years.[17] A paper prepared by the Attorney-General's Department on the 'as nearly as practicable' test is Appendix D.

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16. ibid.
17. ibid., p. 6.

4.41 In summarising its views the Electoral Commission stated that the main problem with the proposal to use the words 'as nearly as practicable' was that it would lead to constant uncertainty in the status of electoral boundaries. The Electoral Commission proposed that to achieve certainty it would be preferable for the details to be worked out by the Parliament for incorporation in the Constitution rather than waiting for the High Court to come to an interpretation of 'as nearly as practicable'.[18] In essence, the Commission believed the formulations for electoral equality in the Commonwealth Electoral Act 1918 should be incorporated into the Constitution.

4.42 While the Committee noted this approach it was of the view that only principles of electoral equality should be enshrined in the Constitution. The Constitution was not to be cluttered with formulae which may not stand the test of time. In this regard the Committee noted comments by Senator Macklin that the Constitution needed to be adaptable to changing circumstances rather than being so rigid that it would become outmoded in a short space of time.[19]

4.43 Numerous witnesses appearing before the Electoral Reform Committee suggested that there was a need to specify detail rather than use the words 'as nearly as practicable'. As a result the 1987 Bill included a provision that there be a maximum tolerance of 10 percent above or below the average quota. However, the 1987 Bill retained the words 'as nearly as practicable'. (See paragraphs 4.6, 4.16 - 4.17).

4.44 Commenting on the 1987 Bill the Electoral Commission stated that the additional words were ambiguous and had not solved the problem. It was felt that 'they still may not create a permissible degree of variation within the State so long as the offending words "as nearly as practicable the same" remain.'[20] The Electoral Commission reiterated its view that a provision for a 10 percent variation should be spelt out explicitly along the lines of section 73(4) of the Commonwealth Electoral Act 1918.

4.45 On this matter the Attorney-General's Department concluded that the additional words provided in the 1987 Bill served not to resolve any legal difficulties but rather to create two possibly conflicting tests, the 'as nearly as practicable' test and the 'one-tenth or such lesser fraction' tolerance test. The Department suggested two possible solutions, viz.:[21]

1. the relevant paragraph could be redrafted such that the 'as nearly as practicable' test was satisfied if the 'one-tenth or lesser fraction' test was satisfied; and

2. the 'as nearly as practicable' test could be deleted.

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18. ibid., p. 7.
19. Evidence, p. 117.
20. ibid., p. 6.
21. ibid., p. S5.

Conclusion and Recommendation

4.46 The Committee notes the 1987 Bill still requires electorate enrolments to be 'as nearly as practicable' the same but has an added provision specifying an upper limit on the tolerance of 10 percent. It is a matter of serious concern to the Committee that no lower limit has been specified in the 1987 Bill and that the Bill retains the 'as nearly as practicable' requirement.

4.47 The Committee notes the continuing difficulty presented by the words 'as nearly as practicable' in the 1987 Bill. The Committee concludes that:

> **Clauses 3, 7 and 8 of the 1987 Bill, in their current form, would introduce an unacceptable element of uncertainty into the electoral process.**

4.48 The Committee recommends that:

> **the proposal to introduce an 'as nearly as practicable' test be rejected; and**
>
> **the 'as nearly as practicable' test be replaced with a maximum tolerance of 10 percent to be explicitly spelt out in the Constitution.**

Timing of One Vote, One Value

4.49 Both the 1985 Bill and the 1987 Bill contain the provision for elections at large to be held should there be inequality between electoral divisions. The Committee noted that there was no stated intention in the 1987 Bill as to when the test for equality (that is, one vote, one value) should be met.

4.50 Senator Sir John Carrick stated the problem with particular reference to Clause 3:

> The numbers ascertained by dividing, we know when that is done, that is done at the beginning. Assuming that means that at the distribution point there are three ways something could be done to get one vote one value, my point to you is this: You could test it [that is, one vote, one value] at the distribution point; you could test it at mid-point - as this Committee [that is, the Joint Select Committee on Electoral Reform] did for the Commonwealth; or you could test it at the ballot-box point.[22]

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22. Evidence (Electoral Reform Committee), p. 478.

4.51 Both the Electoral Reform Committee and the Committee recognised that under the 1987 Bill the final decision as to when the test for equality should apply would be left to the High Court. Nevertheless, both committees sought comment from witnesses as to their understanding and views of when the test should apply.

4.52 It was found that this aspect of the respective Bills was of little concern to many witnesses. However, support was noted for each of the possible options posed by Senator Sir John Carrick.

4.53 Some witnesses commented that the ideal time for obtaining equality was at the time of an election because this was when votes were given their value.[23] However, any redistribution which followed would not be completed until after the election. Moreover, because there were no fixed term parliaments it would be difficult to be sure when an election may occur.

4.54 The Committee noted the view of the Electoral Commission that:

> To be at all effective in achieving the strict 'one vote, one value' that the Bill seeks to achieve the High Court would need to construe the new provisions as prescribing a State quota, as fixing a permissible + or - 10% variation from that quota, and fixing the close of the rolls as the point in time at which the prescribed equality was to be tested. However, even on this construction the provision is fraught with danger. The Commonwealth, the States and the Northern Territory would not know until after the roll had closed whether the election was to be at large. Despite their best efforts in effecting redistributions with the + or - 10% equality at the time of the next election in mind (and it should not be forgotten that there are no fixed elections) and systematic enrolment and roll maintenance campaigns, a close of roll enrolment rush could force an election at large. Only one deviant Division is sufficient to trigger an election at large and thus on 11 July 1987 Queensland would have voted as one electorate for the House of Representatives because of the Division of McPherson and New South Wales would have voted at large on 1 December 1984 because of the Division of Phillip. A Constitutional provision with this sort of effect must attract ridicule ...[24]

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23. ibid., pp. 385, 980.
24. Evidence, pp. 6-7.

4.55 Some witnesses indicated that the distribution point would be a suitable time for the equality test because of practical considerations.[25] However, it was noted that the delay between a redistribution and the next election could result in gross distortions developing in electorate sizes by the time of the election. In relation to this problem it was suggested that the various legislatures affected by the Bill could adopt the Commonwealth's approach of attempting to achieve equality at the midpoint between redistributions by taking population growth into account and seeking regular redistributions.[26]

4.56 The Committee noted the view of the Australian Labor Party that achievement of any of the three testing points would be satisfactory compared to the existing problems in some areas. At a public hearing of the Electoral Reform Committee held on 21 April 1986 the then National Secretary of the Labor Party, Mr Robert McMullan stated:

> ... when you get that close [to equality], I would settle for any of the three, compared to what we have in most places. I believe the preferred outcome is always to have it equal at election time.
>
> What I am saying is if we had universally and nationally, such that there were frequent regular distributions and that they were equal at the time of the distribution, it would give me no heartburn, although I would think that it could be slightly improved.[27]

and later:

> It is true that I do not suppose that without stopping people from changing their addresses you can get a perfectly equal system, but you can get one that is as near as possible to it. The target of equal enrolment at the time of the ballot is the best formula of which I am aware. Within decent parameters as to how big a variation you can have at the time of distribution, I think you can get fairly close to it.[28]

4.57 On the question of the timing of the test Mr Frank Marris of the Attorney-General's Department stated:

> I think the High Court would probably be prepared to say the numbers ascertained at the redistribution would be acceptable for the purposes of this clause [ie. Clause 3]. An alternative approach that the High Court might find acceptable is an estimate made at

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25. Evidence (Electoral Reform Committee), pp. 456-7, 548-9.
26. ibid., p. 413.
27. ibid., p. 478.
28. ibid., p. 481.

> the time of the redistribution designed to achieve equality at the next expected election ...
>
> I think it [clause 3] is framed in terms which would permit either of those two approaches to be adopted by the legislature and still comply with the requirements. ...
>
> I feel that the High Court would consider that either of those approaches would be within the terms of the provision.[29]

Conclusion and Recommendation

4.58 The Committee notes that unlike the United States, where electorate size is determined by census population statistics which only vary once in ten years, Australia's electorate enrolments are constantly varying. However, the Committee concludes that:

> **the 1987 Bill is unclear as to when the test of equality would be made by the High Court and as a result introduces unnecessary uncertainty.**

4.59 The Committee recommends that:

> **the test of electoral equality at the Federal and State level be made at the time of a redistribution, subject to population growth being taken into consideration and there being a guarantee of regular (that is, every 7 years) redistributions.**

Elections at large

4.60 The provision in the 1985 Bill and the 1987 Bill for inequality between electorates to result in elections at large was noted by Senator Macklin to be an incentive for the States to comply with the Constitution in relation to the one vote, one value principle.[30] (See also paragraphs 2.14 - 2.15). Some witnesses recognised the practical effects of the proposal. For example, a submission from the Government of Western Australia stated:

> ... the quota in an election [at large] would be merely 1.73% for the Western Australian Legislative Assembly and is of course even lower elsewhere. This solution could encourage minority fringe groups to prefer

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29. ibid., pp. 580-1.
30. Evidence, pp. 100-1.

> the election at large for the sole reason that such an election is likely to secure them representation.[31]

4.61 In the respective Bills Clause 7 states that where an election at large is held for a State or one of the self-governing Territories:

> ... the method of choosing members shall be, as nearly as practicable, the same as the method of choosing senators for the State or Territory.[32]

4.62 Clause 8 concerns the election of members to the House of Representatives from non self-governing Territories and like Clause 7 provides for elections at large. However, Clause 8 does not specify the method of choosing members in this situation (see paragraphs 4.18 - 4.19).

4.63 Commenting on the 1985 Bill the Australian Electoral Commission stated that the election at large provision led to a number of difficulties. The Electoral Commission was uncertain as to whether the provision would apply to the Tasmanian Legislative Council which did not have general elections. Similar uncertainties existed with the Victorian and Western Australian upper houses. The Electoral Commission highlighted the fact that the 1985 Bill made no provisions for the method of election for members of the House of Representatives from the States and the Territories. In this matter it was possible the draftsman had chosen to rely on section 29 of the Constitution which gives the Commonwealth Parliament the power to make laws for determining electoral divisions.

4.64 The various comments made by the Electoral Commission were reiterated by other witnesses. There was a recognition that Clause 8 was deficient in so far as it failed to specify the method of electing members in an election at large.

4.65 In examining the provision for elections at large the Committee noted compelling evidence that such elections would be difficult to conduct. In particular, the Committee noted a submission from the Australian Electoral Commission which stated:

> The scope of the expression 'method of choosing senators' is by no means clear, and there is really no knowing how much of the machinery set up in the Commonwealth Electoral Act would be held by a Court to be covered by it. Quite apart from the policy question of whether it would be desirable to have proportional representation applying at State and Territory elections with a quota of only 1-2% of the formal vote, it must be

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31. **Evidence** (Electoral Reform Committee), p. 338.
32. See Appendix A: Comparison of the texts of the Constitution Alteration (Democratic Elections) Bill 1985 and the Constitution Alteration (Democratic Elections) Bill 1987.

> realised that the current Senate scrutiny provisions would be unworkable if applied in such cases. At the 1984 Senate election, over 3000 counts and subcounts took place in New South Wales; there were only 7 vacancies to be filled and only 40 candidates. On a larger scale, the system would collapse completely.[33]

4.66 The Committee was also aware of an election at large held in Illinois (USA) in 1964.[34] In this election it was agreed that:

> The Democrats and the Republicans would each nominate 118 candidates to the 177 seat Illinois House. It was argued the 118 figure would guarantee minority party representation 59 seats in case of a landslide. House candidates were placed on a nearly yard long, separate orange ballot that quickly won the nickname 'bedsheet'. ... Throughout the State horror stories were told of weary election judges weighing instead of counting house ballots and of other judges disregarding individual choices and merely totalling straight party votes.[35]

Conclusions

4.67 The Committee is concerned that under the 1987 Bill, in the run-up to a Federal or State election, legal action could result in the High Court ordering an election at large without warning. The Committee notes that minor parties would benefit from the use of proportional representation for elections to lower houses as the quota for a 100 member assembly would be less than one percent. Also, it is unlikely that any major party would secure a majority in a lower house. Therefore, this sanction will act as a powerful incentive to comply.

4.68 The Committee concludes that:

> **it would be a backward step to introduce a voting system which would lead to the election of minority governments dependent on minor parties holding the balance of power in a lower house.**

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33. Evidence, p. 19.
34. ibid., p. 112.
35. Green, P.M., 'Legislative redistributing in Illinois 1871-1982: a study of geo-political survival', in Merrit, A J, (Ed), Redistricting: an exercise in prophecy, Institute of Government and Public Affairs and the Department of Journalism, University of Illinois, 1982.

4.69 In addition, the Committee shares the concern of the Electoral Commission that an election at large would be difficult to conduct and therefore concludes that:

> **an election at large should only be used as a last resort.**

4.70 Moreover, the Committee is of the view that an election at large should only be used after a government has ignored a clear warning that an election at large will follow unless it legislates to implement the principle of one vote, one value.

Casual Vacancies

4.71 A requirement of Clauses 7 and 8 of the 1987 Bill is that members of the Parliament of a State or of a self-governing Territory or of the Commonwealth Parliament shall be directly chosen, that is by electors voting for members at elections. The provision first appeared in the Constitution Alteration (Democratic Elections) Bill 1974 and was 'designed to strike down the indirect method of election which was used for the NSW Legislative Council'[36].

4.72 Several submissions noted that the requirement for direct elections could lead to difficulties in filling casual vacancies in the Parliaments of the Commonwealth and the States. The Australian Electoral Commission indicated that the provision would render invalid the procedures outlined in the Commonwealth Electoral Act 1918 relating to vacancies for senators from a Territory but would not affect the filling of casual vacancies for senators from the States because of the provisions of section 15 of the Constitution.[37] The Commission noted the provision 'could also possibly deny to the States any non-elective method of filling casual vacancies for any multi-member constituencies.'[38]

4.73 At the public hearing held on 21 April 1986 the Electoral Reform Committee requested the Attorney-General's Department to provide written comment on the effect of section 106A proposed to be inserted in the Constitution by Clause 7 and in particular, the effects on the provisions relating to the filling of casual vacancies in the New South Wales Legislative Council, the South Australian Legislative Council and the Tasmanian House of Assembly.[39]

4.74 The response provided by the Department stated that Clause 7 did not contain a provision for filling casual vacancies by appointment or any other means. The Department noted the phrase 'directly chosen' appeared in sections 7 and 24 of the Constitution and that section 24 had been the subject of consideration by the High Court in Attorney-General (6th); Ex rel

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36. Evidence, p. 21.
37. ibid.
38. ibid.
39. Evidence (Electoral Reform Committee), pp. 587-9.

McKinley v. Commonwealth (1975) 135 C.L.R.1. In this case Gibbs, J expressed the view that the members of the House of Representatives were not chosen by some indirect means as was the case for some State Parliaments.[40]

4.75 The Attorney-General's Department could not see why 'directly chosen' in the proposed section 106A would be treated differently to the judgement given in relation to section 24. The Department concluded:

> On this approach, it would seem that there would be real doubts as to the validity of the methods for filling casual vacancies provided for in ss.22C and 22D of the New South Wales Constitution Act, s.13 of the South Australian Constitution Act and s.132A of the Tasmanian Electoral Act. If it were desired under proposed s.106A to allow the filling of a casual vacancy in a House of a State Parliament by appointment or other means then an express provision to this effect would be necessary (cf. s.15 of the Constitution in relation to Senate casual vacancies).[41]

Conclusion and Recommendation

4.76 The Committee notes that the 1987 Bill may lead to difficulties in the filling of casual vacancies and concludes that:

> **the 1987 Bill is deficient in its lack of a provision for the filling of casual vacancies.**

4.77 The Committee recommends that:

> **any proposal to alter the Constitution be drafted so that the existing procedures for filling casual vacancies may continue.**

Franchise Provisions

4.78 Clause 4 of the 1987 Bill details the qualifications of electors (see paragraphs 4.7 - 4.9) which are reiterated again in Clauses 7 and 8 for elections to parliaments of the States, self-governing Territories and the House of Representatives. In essence, Clauses 4, 7 and 8 restrict the powers of the Commonwealth, State and self-governing Territory legislatures to make laws to limit the franchise. The result of this is effectively a minimum guarantee of the right to vote.[42]

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40. Evidence, p. S25.
41. ibid.
42. ibid., p. 20.

4.79 Few submissions provided comment on this aspect of the 1987 Bill (or the 1985 Bill). However, those submissions which did provide comment highlighted two matters in particular, viz.:

- the use of the word 'reasonable'; and
- the effect of Clause 4 of the 1987 Bill on section 93(8)(c) of the Commonwealth Electoral Act 1918, and other similar sections of some State legislation.

4.80 Commenting on the use of the word 'reasonable' a submission from the Attorney-General's Department stated:

> While there is a degree of vagueness about the word, the test of 'reasonableness' is not inappropriate for use in this context and is a concept with which the High Court would be familiar (cf. The Queen v. Commonwealth Industrial Court; Ex parte The Amalgamated Engineering Union, Australian Section (1960) 103 C.L.R. 368; Reg. v. Joske; Ex parte Australian Building Construction Employees and Builders' Labourers' Federation (1974) 130 C.L.R. 87 at p.94). I do not think that the provision would operate so as to prevent the Parliament from legislating for residential qualifications in a manner similar to that contained in the current Commonwealth Electoral Act. While the reference to 'residence in Australia or in a part of Australia' could, prima facie, allow the legislature to impose residential qualifications not relevant to the division with which an elector is connected, it would seem that the requirement that the conditions be 'reasonable' would ensure that it was not open to the legislature to impose conditions which required inappropriate residential requirements of electors.[43]

4.81 The Australian Electoral Commission was critical of use of the word 'reasonable' stating that it would necessitate intervention by the High Court. The Commission reiterated its often expressed view that it would be preferable for the formulation of rules to be undertaken by the Parliament rather than leaving them for the High Court to resolve. The Commission believed problems could arise in places such as the Northern Territory 'where the transitory nature of the population could lead to a quite legitimate desire for stricter residence requirements than those found elsewhere'.[44]

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43. Evidence (Electoral Reform Committee), p. 570.
44. Evidence, p. 20.

4.82 The Attorney-General's submission also noted that Clause 4 would invalidate section 93(8)(c) of the Commonwealth Electoral Act 1918 to the extent that it applies to persons convicted of treason or treachery but not actually undergoing imprisonment.[45] Section 93(8)(c) states:

> A person who has been convicted of treason or treachery and has not been pardoned, is not entitled to have his name placed on or retained on any Roll or to vote at any Senate election or House of Representatives election'.[46]

4.83 The Attorney-General's submission observed that the presence of section 93(8)(c) in the Electoral Act was a result of a recommendation made by the Electoral Reform Committee appointed during the 33rd Parliament of the Commonwealth. The Electoral Reform Committee had recommended that a person convicted of treason or treachery would be permanently disqualified from voting, except if pardoned.[47,48]

4.84 The Committee noted and agreed with the conclusion of the Attorney-General's Department:

> This Department is inclined to consider the current position to be sound and is not aware of any reasons that have been [put] forward to justify the proposed change.[49]

4.85 The Committee also noted that Clause 7 would invalidate any State legislation which was similar to s.93(8)(c) of the Electoral Act. Two State governments provided comment on the effect of s.93(8)(c). The Victorian Government saw it was desirable for there to be uniformity of voting qualifications between the States and the Commonwealth but indicated a possible conflict for Victorian law. The South Australian Government advised the Committee that it could not accept this provision and concluded:

> Clause 4 of the bill and the relevant part (i.e. the Second paragraph) of proposed new Section 106A [Clause 7 of the Bill] of the Constitution are appropriate but would be supported only provided that the reference to persons 'undergoing imprisonment for an offence' were deleted;[50]

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45. Evidence (Electoral Reform Committee), p. 570.
46. Australia. Commonwealth Electoral Act 1918, Section 93(8)(c) Reprinted as at 30 September 1984.
47. Evidence (Electoral Reform Committee), p. 571.
48. See Joint Select Committee on Electoral Reform, First Report, September 1983, p. 106.
49. Evidence (Electoral Reform Committee), p. 571.
50. ibid., p. 213.

4.86 The Committee sought advice from the Attorney-General's Department on the findings and conclusions of the South Australian Government. The advice stated:

> The South Australian Government submits that cl. 7 of the Bill should be modified in two respects. The first modification (also proposed in respect of cl. 4 of the Bill) relates to the second paragraph of s.106A which deals with the qualifications of electors of members of State and Territory Parliaments. The relevant effect of that paragraph is that 'persons who ... are undergoing imprisonment for an offence' may, if State or Territory law so provides, be disqualified from voting. The paragraph would not require disqualification of such persons but disqualification would be permitted. South Australian law does not presently disqualify such persons from voting. No change would be required to South Australian law. It would be open to the South Australian Parliament (as it is now open to it) to enact a law disqualifying such persons from voting. An example of an existing disqualifying provision that would not be affected by s.106A is s.21(b) of the Parliamentary Electorates and Elections Act 1912 (N.S.W.).[51]

Conclusion

4.87 The Committee's notes the comments made on the proposed changes, however, the Committee is not convinced of the need for change.

Original jurisdiction of the High Court

4.88 Clause 6 of the 1985 Bill and the 1987 Bill confers original jurisdiction upon the High Court in relation to certain electoral matters. The 1985 Bill states that these matters relate specifically to sections 7,8,9,24,29,30,106A and 122A of the Constitution whereas the 1987 Bill also relates to section 125A of the Constitution. The 1985 Bill lists two situations where the jurisdiction may be invoked and the 1987 Bill lists these situations plus two others. (See paragraphs 4.13 - 4.15 and Appendix A).

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51. Evidence, p. S21.

4.89 Submissions dealing with Clause 6 made two main points, viz.:

1. it was possible the present situation was satisfactory whereby a State Attorney-General could challenge a Commonwealth provision and the Commonwealth could likewise challenge at State provision;[52] and

2. the Commonwealth Parliament had already conferred original jurisdiction on the High Court in relation to the abovementioned matters by section 30(a) of the Judiciary Act 1903.[53]

4.90 With reference to the second point the Attorney-General's Department stated:

> Section 76 of the Constitution empowers the Commonwealth Parliament to confer additional original jurisdiction on the High Court in relation to certain ... matters arising under the Constitution, or involving its interpretation ... the High Court already has jurisdiction by virtue of an Act of the Parliament and not directly from the Constitution. The effect of cl. 6 would be that the jurisdiction conferred by it could not be removed by an Act of Parliament.[54]

4.91 Some submissions indicated support for Clause 6. The Committee noted in particular, the submission of the South Australian Government which indicated qualified support for Clause 6. The South Australian Government pointed out that of recent times the High Court had been given too much work and as a result, under the terms of the Judiciary Act 1903, had devolved some of its work back to the State supreme courts.[55]

4.92 Representing the South Australian Government at a public hearing held on 13 May 1986 the South Australian Assistant Crown Solicitor, Mr Kym Kelly stated:

> ... provisions in the Judiciary Act exist whereby the High Court in fact may remit matters before it back to the supreme courts of the States or to the courts of the Territories and the mere provision in the Constitution, through the Macklin Bill, of the proposal that the High Court be vested with original jurisdiction would by no means represent a certainty that the High Court would hear matters relating to the matters contained in the Macklin Bill. In effect, the High Court may well send back to the States on remission the questions relating to the section it is proposed to change - section 106A - which affects the States. It would be expected, perhaps, that the High Court would take that action particularly where there is the question of State electors or the qualifications of electors concerned.[56]

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52. Evidence, p. 21.
53. Evidence (Electoral Matters Committee), p. 571.
54. ibid., p. 571.
55. ibid., p. 895.

4.93 The Committee was of the view that it was appropriate for the High Court to continue to decide if it would hear cases or remit them to a lower court. The Committee noted that Clause 6 may cause little change in the way in which matters were dealt with by the High Court. Nevertheless, Clause 6 would guarantee the High Court of the power to decide the way in which it dealt with certain matters brought before it.

4.94 The Committee also noted advice provided by the Attorney-General's Department that the words `a person to whose right to be such an elector the matter relates' could be deleted from sub-paragraphs (b) and (c) in Clause 6 of the 1987 Bill. This was because the proposed section 125A contained no provision relating to the qualification of electors and as a result the words `a person to whose ... the matter relates' served no purpose.

Clause 9

4.95 The 1987 Bill contains a clause, Clause 9, which provides for the insertion of a new section 125A in the Constitution after the existing section 125. Section 125A contains provisions for a maximum tolerance of 10 percent between electorates at both the State and Federal level. It permits the Commonwealth to reduce the tolerance by amendment of the Commonwealth Electoral Act 1918. Any reduction undertaken by the Commonwealth is then required to be undertaken by the States in their respective State electoral systems. (See paragraphs 4.20 - 4.21).

4.96 In his second reading speech on the 1987 Bill Senator Macklin indicated the proposed section 125A had a number of advantages. He noted two advantages, viz.:[57]

1. small States could, if their State governments so wished, reduce their electoral margins without having to wait for the Commonwealth or other States to catch up; and

2. large States would not have to order electoral redistributions simply because a smaller State had been able to take account of demographic changes.

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56. Evidence (Electoral Reform Committee), p. 890.
57. Senate, Hansard, 23 September 1987 p. 527.

4.97 The Attorney-General's Department was unaware of any precedents for the provision contained in the proposed section 125A but knew of no legal objection to it. The Department noted one outcome of the provision was that the tolerances for House of Representatives electorates could vary 'from State to State and Territory to Territory'. The Department reminded the Committee that, according to section 109 of the Constitution, Commonwealth laws prevail in cases on inconsistency between the Commonwealth and State laws.[58]

4.98 The Australian Electoral Commission described the new provision as 'quite amazing' and outlined what it saw as the 'remarkable effect' of the provision that:

> ... the Commonwealth could for reasons of political expediency throw a State or Territory to an election-at-large, and a State or Territory could similarly throw a Commonwealth election in that State or Territory to an election-at-large. The Commonwealth or State or Territory need only wait until the other Parliament has been dissolved, then legislate to void its boundaries and throw the impending election to be at large. This seemingly innocuous provision would create unprecedented opportunities for gross manipulation by a State Parliament of Commonwealth electoral arrangements, and vice versa. Certainly the opportunities for State interferences would far exceed those overcome by the Senate Elections (Queensland) Act 1982, which removed the power of the Queensland Parliament to divide that State into Divisions for the purpose of Senate elections.[59]

4.99 At the public hearing held on 10 November 1987 the Committee sought comment from Senator Macklin on section 125A. Senator Macklin explained that the provision was inserted because of his belief that in the longer term it would be easier to achieve a tolerance much less than the 10 percent tolerance. It was for this sort of reason that he had originally used the words 'as nearly as practicable'. While he was endeavouring to amend the Constitution he wanted to leave it with some flexibility so that it would not have to be amended within a short space of time.[60]

4.100 Senator Macklin explained that if the Commonwealth were to reduce the tolerance to 5 percent then the States would be required to follow. He also noted that a previous Electoral Reform Committee had recommended a 10 percent tolerance even though a

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58. Evidence, p. S7.
59. ibid., p 8.
60. ibid., pp. 113, S32.

majority of members adhered to a policy of 5 percent. This decision was made because the evidence indicated it was not possible, at that time, to achieve a 5 percent tolerance.

4.101 The Committee noted the desired effects of the proposed section 125A but found there to be some difficulties involved in its implementation. While the Committee noted the difficulties predicted by the Australian Electoral Commission it believed the implementation of a tolerance lower than 10 percent could be difficult. Moreover, the Committee believed there was probably a need for the 10 percent tolerance to handle population growth occurring between a 7 year redistribution.

Conclusion

4.102 The Committee concludes that:

> **the provision of the 1987 Bill which allows the maximum variation in electoral enrolment to be reduced to less than 10 percent by a State or Federal Parliament is unworkable.**

Further Amendments to the 1987 Bill

4.103 At the public hearing held on 10 November 1987 Senator Macklin presented to the Committee proposed amendments to the 1987 Bill. The amendments were to apply to Clauses 3, 7 and 8. To each of these clauses it was proposed to add:

> The process of determining the boundaries of electoral divisions referred to in this section shall be based on fair and non-partisan proceedings and criteria designed to ensure equal suffrage and free expression of the will of the electors.[61]

4.104 In proposing these amendments it was Senator Macklin's intention to ensure the existence of a mechanism for drawing electoral boundaries that would prevent the practice of gerrymandering. In evidence to the Committee, Senator Macklin noted that gerrymandering was known to exist but that proving its existence was 'a somewhat more elusive task'.[62] He noted that the use of computers in the United States had shown the electoral drawing process to be very precise. Moreover, the Committee noted the precision was such that boundaries were being drawn to advantage particular parties.

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61. Evidence, pp. 96-7.
62. ibid., p 91.

4.105 Senator Macklin stated:

> I imagine that if I were drafting it [that is, the 1987 Bill] from the beginning nowadays, I would try to address not only the problem of malapportionment ... but also that problem of the process by which boundaries are drawn.[63]

4.106 The Committee sought details from Senator Macklin on the composition of any redistribution commissions that would result from his amendments. In response Senator Macklin indicated that his amendments would put only a general requirement in the Constitution. The High Court would then pursue any cases where an elector felt aggrieved about an electoral redistribution and would determine not only whether the letter of law had been carried out but also whether the intention of the law had been carried out.[64]

4.107 The Attorney-General's Department provided the Committee with comments on Senator Macklin's amendments noting it was not clear what the amendments would achieve. For example, it was difficult to see how the process of determining electoral boundaries related to the 'free expression of the will of the electors'.[65] The Department concluded:

> Because of the uncertainty of the wording, it is by no means clear that provisions such as those contained in the current Commonwealth Electoral Act 1918 would comply with its requirements.[66]

Conclusion and Recommendation

4.108 The Committee notes Senator Macklin's proposed amendments for a mechanism for the drawing of electoral boundaries which would prevent the practice of gerrymandering. However, the Committee agrees with the comments made by the Attorney-General's Department regarding the uncertainty of Senator Macklin's proposed amendments and concludes that:

> **the wording of Senator Macklin's proposed amendments to the 1987 Bill which aim to prevent the practice of gerrymandering are lacking in certainty.**

4.109 The Committee therefore recommends that:

> **the wording of Senator Macklin's proposed amendments to the 1987 Bill be rejected.**

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63. ibid., p. 107.
64. ibid., pp 108-11.
65. ibid., p. S7. Note that the phrase 'free expression of the will of the electors' is taken from the International Convenant on Civil and Political Rights. (See paragraph 5.26).
66. Evidence, p. S7.

CHAPTER 5

ALTERNATIVES

- **The Electoral Commission's Approach**
- **State Action**
- **Commonwealth Legislation**

5.1 While the Committee's Inquiry was concerned primarily with the 1987 Bill the Committee noted there were several alternative methods that could be used to implement the principle of one vote, one value in Australia's electoral systems. In particular, the Committee noted:

- an approach proposed by the Australian Electoral Commission that mechanisms rather than principles should be specified in the Constitution;
- the views of various States that electoral reform was a matter for each individual State and that Commonwealth intervention was an infringement of States' rights; and
- the implementation of the one vote, one value principle could be achieved by Commonwealth legislation in accordance with Section 51 of the Constitution.

The Electoral Commission's Approach

5.2 The Australian Electoral Commission advised both the Electoral Reform Committee and the Committee that the appropriate way of achieving one vote, one value was to specify in the Constitution mechanisms for regular redistributions rather than principles. The Electoral Commission believed that in the long term this approach would achieve 'both certainty in electoral arrangements and a sound appreciation of the principle'.[1]

5.3 The Electoral Reform Committee asked the Electoral Commission to prepare a paper on what the Commission saw as the minimum provisions, that would have to be made to the Constitution to give practical effect to the principle of one vote, one value. The paper prepared by the Electoral Commission set out a scheme which had the aim of specifying 'mechanisms which would in practice lead to the achievement of approximately equal electors per member ratios across divisions, rather than specifying an obligatory outcome of unspecified mechanisms (the Macklin Bill approach)'.[2]

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1. Evidence, p. 7.
2. ibid., p. 23.

5.4 The proposed scheme had three fundamental elements, viz.:

- a requirement for continuous enrolment and roll maintenance;
- a requirement that redistributions be held regularly at Commonwealth, State and Territory levels; and
- a requirement that boundaries, at redistribution time embody no more than the prescribed level of enrolment inequality.

In addition, the provisions would be set down to enable the enforcement of relevant requirements.

Finally, special provision would be made for the Tasmanian Legislative Council and similar chambers.[3]

5.5 The Electoral Commission's proposal is Appendix G.

Conclusion

5.6 The Committee has examined the proposal of the Australian Electoral Commission to include in the Constitution detailed requirements similar to relevant sections of the Commonwealth Electoral Act 1918 which ensure fair redistributions are carried out. While the Committee believes the Electoral Commission's proposal has merit it concludes that:

> the proposal of the Australian Electoral Commission to include in the Constitution requirements similar to the sections of the Commonwealth Electoral Act 1918 which ensure fair redistributions are carried out, is open to the criticism that the Constitution should only contain principles of electoral equality and not be cluttered with detail.

State Action

5.7 Chapter 3 details the steps taken by various States to implement the principle of one vote, one value and notes that at the time of the respective inquiries into the 1985 Bill and the 1987 Bill zoning was still in use in Queensland and Western Australia.

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3. ibid.

5.8 Both the Electoral Reform Committee and the Committee sought comment from the States and the Northern Territory as to their views on the respective bills. Those views are summarised below.

Queensland

5.9 The Bjelke-Petersen National Party Government did not provide a submission to the Inquiry into the 1985 Bill but members of the National Party did provide a submission and appeared before the Committee at its hearing on 10 November 1987. These witnesses stated that the National Party of Australia in Queensland did not accept the 1987 Bill as a 'guarantee of electoral justice or fairness' and noted that the Bill's only criterion of fairness was the 'numerical equality of electors entitled to vote in electoral divisions'. Moreover, it was stated that fairness in electoral systems was dependent on more than simple numerical equality between electorates.[4]

5.10 With the election of Mr Michael Ahern as Premier of Queensland the Committee wrote to the new Premier inviting him to comment on the 1987 Bill. In response the Premier noted that the members of the Queensland Branch of the National Party had appeared before the Committee and that he had no additional comment to make. The Premier also provided the Committee with a submission made by the Queensland Government to the Constitutional Commission concerning the Report of the Advisory Committee on Individual and Democratic Rights. This submission clearly stated that Queensland's electoral laws were a matter for Queensland.[5]

Victoria

5.11 The Cain Labor Government indicated that it strongly supported the principle of one vote, one value and provided details of its own reforms in this area. It saw the principle of one vote, one value as fundamental to the democratic process and stated that for this reason it should be enshrined in the Constitution. The Government also stated:

> The Government recognises the argument that all State electoral matters should be governed solely by State legislation but considers that, in this case, that argument is outweighed by the importance of the 'one vote one value' principle.[6]

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4. ibid., pp. 155.
5. ibid., pp. S109-S170.
6. Evidence (Electoral Reform Committee), p. 241.

Tasmania

5.12 The Gray Liberal Government stated that it had a fundamental opposition to the 1987 Bill stating:

> If anything, the changes made to the 1985 Bill render the proposal more objectionable to this State. The effect is that not only will State electoral boundaries be subject to the Commonwealth Constitution, but they will also be subject to change by the Commonwealth Parliament, given its proposed power to reduce the permissible 10% variation in the size of electorates. Quite clearly, this is a major intervention in the continued existence of the States, and the States' capacity to function as sovereign States will be substantially impaired if the proposal proceeds. It is not acceptable to this State for matters of such significance to be determined by those with little knowledge of the particular conditions applying here.[7]

5.13 The Gray Government foresaw that implementation of the 1987 Bill would fundamentally alter the Tasmanian Legislative Council from an independent House of Review to a party dominated House.

South Australia

5.14 The Bannon Labor Government indicated that it supported the principles contained in the 1985 Bill but was concerned that the Bill would impinge on existing South Australian electoral laws. The South Australian Assistant Crown Solicitor appeared on behalf of the South Australian Government at a public hearing held on 13 May 1986. He noted that it was quite clear that the South Australian Government was 'vitally, concerned with principles of electoral equality'. Furthermore, he stated that the South Australian Government believed the principles of electoral equality it had achieved in 1975 by amending the South Australian Constitution should be applied throughout Australia.[8]

Western Australia

5.15 The Burke Labor Government advised the Electoral Reform Committee that it believed the State Parliament was the appropriate place for the amendment of State electoral laws. The Government then stated:

> If the Australian Constitution was amended to guarantee that the number of electors per member shall be as nearly as practicable the same, there seems little doubt that the gross malapportionment in Western Australia would be found to be unconstitutional. Action in the High Court to remedy the present situation would be almost inevitable and if insufficient time was available, Western Australians could find themselves ordered to conduct the next election under a system not enacted by their State Parliament. This possibility is seen as undesirable by the State Government. A Constitution Alteration (Democratic Elections) Referendum coming after the State Parliament has reformed its own electoral laws would be a much more acceptable sequence.[9]

5.16 The Government requested more time to implement its own electoral reforms and electoral reform legislation passed both Houses of the Western Australian Parliament during 1987. However, on 27 November 1987 the Premier advised the Committee that while reforms had occurred the legislation originally proposed by the Western Australian Government had been subject to compromise as a result of the Liberal/National Party majority in the Legislative Council. As a result malapportionment continued to exist and it was difficult to say how further reform might occur in the near future. The Premier thanked the Commonwealth Government for the extra time the Western Australian Government had been given to conduct its own reform and concluded:

> If the Commonwealth Government holds a referendum seeking to enshrine the principle of democratic elections in the Constitution, the Western Australian Government would strongly support the YES case.[10]

Northern Territory

5.17 The Tuxworth Liberal Country League Government advised the Electoral Reform Committee that from its point of view the 1985 Bill was largely uncontentious, nevertheless, the Government had some difficulties with the Bill's provisions concerning the qualifications of electors and the tolerances for electoral divisions. It was noted that in the Northern Territory a 20 percent tolerance was needed because of the relatively small population. The 1985 Bill would be totally impracticable in this regard.[11]

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7. Evidence, p. S107.
8. Evidence (Electoral Reform Committee), pp. 884-5.
9. ibid., p. 329.
10. Evidence, p. S44.
11. Evidence (Electoral Reform Committee), p. 108.

New South Wales

5.18 The Wran Labor Government did not make a submission to the Electoral Reform Committee or the Committee. Nevertheless, the Committee noted those reforms which had been made towards one vote, one value in New South Wales. These reforms included the introduction of a 10 percent tolerance in electorate quotas and direct election of Members of the New South Wales Legislative Council.

5.19 In examining the views of the various States and the Northern Territory the Committee acknowledged the validity of the argument that State electoral laws should be the preserve of individual State parliaments. The Committee noted submissions which suggested the 1987 Bill limited the powers now possessed by the State parliaments to change their own constitutions and moreover, that the Bill denied the right of each State to choose its own style of government.[12]

Conclusions and Recommendation

5.20 The Committee notes that electoral reforms with regard to one vote, one value have already occurred in South Australia, Victoria and New South Wales and that in Western Australia there has been an attempt to reform. However, the Committee concludes that:

> **in time individual States may achieve electoral reform but there is no guarantee reform will occur.**

5.21 The Committee believes the Constitution provides a valid means of instituting change in States' electoral laws and notes that the Constitution was drawn up to consider the rights of not only the federated States but also the wishes of the Australian people. Hence, if there is support for change from a majority of Australians and a majority of States then change will occur.

5.22 The Committee concludes that:

> **the final question in achieving one vote, one value is one of State Governments' rights versus individuals' rights and that the latter is of paramount importance.**

5.23 The Committee strongly recommends that:

> **the views of Australian voters on one vote, one value be tested by way of a referendum.**

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12. ibid., pp. 131, 147-50.

Commonwealth Legislation

5.24 Various submissions suggested that the 1987 Bill and its forerunner, the 1985 Bill, would not succeed in implementing the principle of one vote, one value because of the historical difficulty in passing referenda. The alternative suggested was for the Commonwealth to legislate to achieve equality of electorates. It was argued this could be successfully done because:

1. Section 51 (xxix) of the Constitution provided the Commonwealth with the power to make laws with respect to external affairs, that is the Commonwealth had the power to legislate to enforce treaties to which it was a signatory; and

2. Australia was a signatory to the International Covenant on Civil and Political Rights 1966 (ICCPR).

5.25 The idea for the Covenant originated during the Second World War.[13] The ICCPR was adopted by the United Nations and opened for signature on 19 December 1966 and entered into force on 23 March 1976.

5.26 For the purposes of electoral reform matters in Australia, Articles 25, 26 and 50 of the ICCPR are relevant, viz.:

> Article 25:
>
> Every citizen shall have the right and the opportunity ...
>
> (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
>
> Article 26:
>
> All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion,

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13. A history of the International Covenant on Civil and Political Rights can be found in: Pechota, V., 'The development of the Covenant on Civil and Political Rights', in Henkin, L., (Ed.), **The International Bill of Rights**, Columbia University Press, New York, pp. 32-71.

political or other opinion, national or social origin, property, birth or their status; and

Article 50:

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.[14]

5.27 The Committee noted that both the Queensland Branch of the Australian Labor Party and the organisation Citizens for Democracy strongly supported the approach of using Commonwealth legislation while the Queensland Division of the Australian Democrats supported Constitutional reform. The Queensland Branch of the Labor Party expressed the view that the Commonwealth had an obligation to apply the ICCPR in Australia.[15]

5.28 The supporters of enacting Commonwealth legislation admitted readily that any such legislation would probably be subject to a challenge in the High Court. In this area the Queensland Branch of the Labor Party had gone so far as to obtain a legal opinion on the Constitutional authority upon which the Commonwealth legislation would rest. In its submission to the Committee three areas were noted where the legislation could be invalidated, viz.:

- the definition of equal suffrage [in the ICCPR];
- the Reservations and Declarations [in the ICCPR]; and
- implied limitations under s. 106 [of the Constitution].[16]

5.29 The opinion provided to the Queensland Branch of the Labor Party indicated that while the legal position remained less than totally clear it was likely that the Commonwealth could validly enact an equal suffrage law which related to elections to State Parliaments.[17]

5.30 Aside from these aspects the Committee noted that the *travaux preparatoires* (preparatory work) for the ICCPR had shown the parties responsible for its drafting had not meant the words 'equal suffrage' to mean one vote, one value. In particular, some parties had indicated at that time that they would not sign the ICCPR if anything relating to an insistence on one vote, one value was put in.[18,19]

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14. Evidence (Electoral Reform Committee), pp. 270-1, 275.
15. Evidence, p. 226.
16. ibid., pp. 229-30.
17. ibid., p. 276.
18. ibid., p. 92.
19. Evidence (Electoral Reform Committee), pp. 427-9.

Conclusion

5.31 The Committee notes the various suggestions that electoral reform should be pursued via Commonwealth legislation. The Committee recognises that the legislative approach could achieve electoral equality but that the fate of the legislation would be decided ultimately by the High Court.

Michael J Lee, MP
Chairman
28 April 1988

DISSENTING REPORT

TO

THE REPORT OF THE JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

ON AN

INQUIRY INTO THE CONSTITUTION ALTERATION (DEMOCRATIC ELECTIONS) BILL 1987

The Committee in preparing its report "One Vote One Value" has made a major contribution to the examination of the electoral laws of the Commonwealth and the States. Notwithstanding this we are unable to support the major recommendation of the Committee to conduct a referendum on the issue of incorporating provisions in the Commonwealth Constitution which would seek to regulate the electoral laws of the Australian States.

In dissenting from the recommendation of the Committee we make the following points:

1. We believe it inappropriate for any constitutional referenda to proceed without it first being considered by a conference of elected representatives of the Commonwealth and the States, i.e. a Constitutional Convention.

2. It is not appropriate to recommend a referendum on a matter which would alter not only the Commonwealth Constitution but also the relationship between the States and Commonwealth without knowing the detail of the proposed changes.

3. The proposal will not ensure fair and democratic elections.

4. The proposed referendum is in conflict with the philosophy of a "Federal Compact", which is a corner stone of the

Federation as expressed in Sections 106 and 107 of the Constitution.

> 106. The Constitution of each State of the Commonwealth shall, subject to this Constitution continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be, until altered in accordance with the Constitution of the State.
>
> 107. Every power of the Parliament of a Colony which has become or becomes a State, shall, unless it is by this Constitution exclusively vested in the Parliament of the Commonwealth or withdrawn from the Parliament of the State, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be.

The electoral laws of the States are an integral part of the States Constitution.

The intrusion of the Commonwealth is unwarranted and would be a first step in dissolving our federal system.

5. The majority report of the Committee acknowledges that:
   (i) The enactment of electoral laws limiting enrolment differences between electorates to an arbitrary 10% would not prevent or eliminate the gerrymandering of electoral boundaries for the political advantages of one group.
   (ii) The Australian Constitution itself does not provide for one vote one value in that each original State is guaranteed 12 Senators and at least 5 seats in the House of Representatives, irrespective of population. As a result of these provisions there are major differences between States in the value of an elector's

Senate vote. A similar "malapportionment" also occurs with respect to the Tasmanian House of Representatives seats relative to seats in other States.

6. The majority report of the Committee accepts continuation of this Commonwealth "malapportionment" as an "historical compromise", yet proposes to overturn the historical compromise of the "Federal Compact" contained in Sections 106 and 107.

   These provisions in the Commonwealth Constitution are a recognition of "interests" as being significant in the framing of electoral laws, as well as numbers. Indeed this same recognition of "interests" is contained in the electoral laws of States.

   These provisions recognise that to ensure equal and effective representation consideration cannot be given solely to numbers. Economic, geographic, climatic and other factors must be considered. All citizens are entitled to the same attention, access and quality of representation.

7. The Committee finds "there is a clear historical trend towards fairer electoral boundaries ..." and concludes, "in time individual States may achieve electoral reform". This recognition of the progress to reform undermines the justification for Commonwealth involvement to force change in an area where States are not only sovereign but also taking action. It may also limit progress to further voluntary change.

8. The proposal to incorporate provisions affecting State electoral laws in the Commonwealth Constitution will inevitably result in the High Court becoming involved in

disputes over these issues. These disputes are invariably Party political in character. This will politicise the Court. Additionally, there are some limits through Section 24 of the Constitution on the right of the Commonwealth to draw electoral boundaries.

Signed by:

C.W. Blunt (Deputy Chairman)

Senator J.R. Short

P.D. Shack

Senator Brian Harradine

Appendix A

Comparison of the texts of the Constitution Alteration (Democratic Elections) Bill 1985 and the Constitution Alteration (Democratic Elections) Bill 1987.

NOTE: The text of the Constitution Alteration (Democratic Elections) Bill 1985 appears on the even numbered pages and the text of the Constitution Alteration (Democratic Elections) Bill 1987 appears on the odd numbered pages. The additional text in the 1987 Bill is underlined.

1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(SENATOR MACKLIN)

A BILL

FOR

An Act to alter the Constitution so as to ensure that the Members of the Parliament of the Commonwealth and of the Parliaments of the States and of self-governing Territories are chosen directly and democratically by the People

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:

Short title

1. This Act may be cited as the *Constitution Alteration (Democratic Elections) 1985*.

1987

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(Presented and read a first time, 23 September 1987)

(SENATOR MACKLIN)

A B I L L

FOR

An Act to alter the Constitution so as to ensure that the Members of the Parliament of the Commonwealth and of the Parliaments of the States and of self-governing Territories are chosen directly and democratically by the People

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:

Short title

1. This Act may be cited as the Constitution Alteration (Democratic Elections) 1987.

1,700/23.9.1987—(203/87) Cat. No. 87 4961 X

Provision as to races disqualified from voting

2. The Constitution is altered by repealing section 25.

Electoral divisions

3. Section 29 of the Constitution is altered by adding at the end the following paragraph:

"The numbers ascertained in respect of the several divisions of a State by dividing the number of electors in each division by the number of members to be chosen for the division shall be, as nearly as practicable, the same.".

Qualification of electors

4. Section 30 of the Constitution is altered by adding at the end the following paragraph:

"Laws made by the Parliament for the purposes of this section shall be such that every Australian citizen who complies with any reasonable conditions imposed by those laws with respect to residence in Australia or in a part of Australia and with respect to enrolment and has attained the age of 18 years or such lower age as the Parliament may determine is, subject to any disqualification provided by those laws with respect to persons who are of unsound mind or are undergoing imprisonment for an offence, entitled to vote, but nothing in this paragraph prevents the Parliament from making laws permitting voting by other persons who were, immediately before the commencement of the *Constitution Alteration (Democratic Elections) 1985*, entitled to vote.".

Right of electors of States

5. The Constitution is altered by repealing section 41.

2. The Constitution is altered by repealing section 25.

Electoral divisions

3. Section 29 of the Constitution is altered by adding at the end the following paragraph:

"The numbers ascertained in respect of the several divisions of a State by dividing the number of electors in each division by the number of members to be chosen for the division shall be, as nearly as practicable, the same and the number so ascertained in respect of a division of a State shall not be greater or less than the number so ascertained in respect of any other division of the State by more than one-tenth or such lesser fraction as is fixed in respect of the State under section 125A of this Constitution.".

Qualification of electors

4. Section 30 of the Constitution is altered by adding at the end the following paragraph:

"Laws made by the Parliament for the purposes of this section shall be such that every Australian citizen who complies with any reasonable conditions imposed by those laws with respect to residence in Australia or in a part of Australia and with respect to enrolment and has attained the age of 18 years or such lower age as the Parliament may determine is, subject to any disqualification provided by those laws with respect to persons who are of unsound mind or are undergoing imprisonment for an offence, entitled to vote, but nothing in this paragraph prevents the Parliament from making laws permitting voting by other persons who were, immediately before the commencement of the Constitution Alteration (Democratic Elections) 1987, entitled to vote.".

Right of electors of States

5. The Constitution is altered by repealing section 41.

Original jurisdiction of High Court

6. Section 75 of the Constitution is altered by adding at the end the following paragraph:

"The High Court shall have original jurisdiction in matters arising under, or involving the interpretation of, section 7, 8, 9, 24, 29, 30, 106A or 122A of this Constitution and that jurisdiction may be invoked—

(a) where the matter arises under section 106A of this Constitution, by any elector of the State or Territory concerned, or a person to whose right to be such an elector the matter relates; or

(b) where the matter arises under any other of those sections, by any elector of the Commonwealth or a person to whose right to be such an elector the matter relates.".

Original jurisdiction of High Court

6. Section 75 of the Constitution is altered by adding at the end the following paragraphs:

"The High Court shall have original jurisdiction in matters arising under, or involving the interpretation of, section 7, 8, 9, 24, 29, 30, 106A, 122A or 125A of this Constitution and that jurisdiction may be invoked:

(a) where the matter arises under section 106A of this Constitution, by any elector of the State or Territory concerned, or a person to whose right to be such an elector the matter relates;

(b) where the matter arises under section 125A of this Constitution with respect to a law of the Commonwealth (whether or not it also arises with respect to a law of a State or of a self-governing Territory), by any elector of the Commonwealth, or a person to whose right to be such an elector the matter relates;

(c) where the matter arises under section 125A of this Constitution with respect to a law of a State or of a self-governing Territory (not being a matter to which paragraph (b) applies), by any elector of the State or Territory concerned or a person to whose right to be such an elector the matter relates; or

(d) where the matter arises under any other of those sections, by any elector of the Commonwealth or a person to whose right to be such an elector the matter relates.

"In this section, 'self-governing Territory' has the same meaning as it has in section 106A of this Constitution.".

7. The Constitution is altered by inserting after section 106 the following section:

Election of members of Parliaments of States and self-governing Territories

"106A. Each House of the Parliament of a State or of a self-governing Territory or, where there is only one House of the Parliament of a State or of a self-governing Territory, that House, shall be composed of members directly chosen by the people of the State or Territory.

"Laws made with respect to the qualification of electors of members of a House of the Parliament of a State or of a self-governing Territory shall be such that every Australian citizen who complies with any reasonable conditions imposed by those laws with respect to residence in the State or Territory or a part of the State or Territory and with respect to enrolment and has attained the age of 18 years or such lower age prescribed by those laws is, subject to any disqualification provided by those laws with respect to persons who are of unsound mind or are undergoing imprisonment for an offence, entitled to vote, but nothing in this paragraph prevents the making of laws permitting voting by other persons who were, immediately before the commencement of the *Constitution Alteration (Democratic Elections) 1985*, entitled to vote.

"In the choosing of members of a House of the Parliament of a State or of a self-governing Territory, each elector shall vote only once.

"Where there are electoral divisions of a State or of a self-governing Territory for the purposes of choosing members of a House of the Parliament of the State or Territory, the numbers

7. The Constitution is altered by inserting after section 106 the following section:

Election of members of Parliaments of States and self-governing Territories

"106A. Each House of the Parliament of a State or of a self-governing Territory or, where there is only one House of the Parliament of a State or of a self-governing Territory, that House, shall be composed of members directly chosen by the people of the State or Territory.

"Laws made with respect to the qualification of electors of members of a House of the Parliament of a State or of a self-governing Territory shall be such that every Australian citizen who complies with any reasonable conditions imposed by those laws with respect to residence in the State or Territory or a part of the State or Territory and with respect to enrolment and has attained the age of 18 years or such lower age prescribed by those laws is, subject to any disqualification provided by those laws with respect to persons who are of unsound mind or are undergoing imprisonment for an offence, entitled to vote, but nothing in this paragraph prevents the making of laws permitting voting by other persons who were, immediately before the commencement of the Constitution Alteration (Democratic Elections) 1987, entitled to vote.

"In the choosing of members of a House of the Parliament of a State or of a self-governing Territory, each elector shall vote only once.

"Where there are electoral divisions of a State or of a self-governing Territory for the purposes of choosing members of a House of the Parliament of the State or Territory, the numbers

ascertained in respect of the several divisions by dividing the number of electors in each division by the number of members to be chosen for the division shall be, as nearly as practicable, the same.

"Where there are electoral divisions of a State or of a self-governing Territory for the purposes of choosing members of a House of the Parliament of the State or Territory and those divisions are not constituted in accordance with this section, the State or Territory shall, for the purposes of a general election of those members, be one electorate, and the method of choosing those members shall be, as nearly as practicable, the same as the method of choosing senators for the State or Territory.

"In this section—

'Parliament', in relation to a self-governing Territory, means the body, other than the Parliament of the Commonwealth, for the time being having power to make laws for the peace, order and good government of the Territory;

'self-governing Territory' means a territory, or 2 or more territories, referred to in section 122 of this Constitution where, apart from the powers of the Parliament of the Commonwealth, the power to make laws for the peace, order and good government of the territory or territories is exclusively vested in a body the members of which are chosen by the people of the territory or territories.".

ascertained in respect of the several divisions by dividing the number of electors in each division by the number of members to be chosen for the division shall be, as nearly as practicable, the same and the number so ascertained in respect of a division of a State or of a Territory shall not be greater or less than the number so ascertained in respect of any other division of the State or Territory by more than one-tenth or such lesser fraction as is fixed in respect of the State, or of the Territory, as the case may be, under section 125A of this Constitution.

"Where there are electoral divisions of a State or of a self-governing Territory for the purposes of choosing members of a House of the Parliament of the State or Territory and those divisions are not constituted in accordance with this section, the State or Territory shall, for the purposes of a general election of those members, be one electorate, and the method of choosing those members shall be, as nearly as practicable, the same as the method of choosing senators for the State or Territory.

"In this section:

'Parliament', in relation to a self-governing Territory, means the body, other than the Parliament of the Commonwealth, for the time being having power to make laws for the peace, order and good government of the Territory;

'self-governing Territory' means a territory, or 2 or more territories, referred to in section 122 of this Constitution where, apart from the powers of the Parliament of the Commonwealth, the power to make laws for the peace, order and good government of the territory or territories is exclusively vested in a body the members of which are chosen by the people of the territory or territories.".

8. The Constitution is altered by inserting after section 122 the following section:

Election of members of the Parliament to represent territories

"122A. The representation of a territory referred to in section 122 of this Constitution in either House of the Parliament shall be by a member or members directly chosen by the people of the territory or of the territory and another territory or territories.

"Laws made by the Parliament for the purposes of the election of a member or members of either House of the Parliament to represent any such territory shall be such that every Australian citizen who complies with any reasonable conditions imposed by those laws with respect to residence in the territory or a part of the territory and with respect to enrolment and has attained the age of 18 years or such lower age as the Parliament may determine is, subject to any disqualification provided by those laws with respect to persons who are of unsound mind or are undergoing imprisonment for an offence, entitled to vote, but nothing in this paragraph prevents the Parliament from making laws permitting voting by other persons who were, immediately before the commencement of the *Constitution Alteration (Democratic Elections) 1985*, entitled to vote.

"In the choosing of a member or members of a House of the Parliament to represent any such territory, each elector shall vote only once.

"Where there are electoral divisions for the purposes of choosing members of a House of the Parliament to represent any such territory, the numbers ascertained in respect of the several divisions by dividing the number of electors in each division by the number of members to be chosen for the division shall be, as nearly as practicable, the same.

8. The Constitution is altered by inserting after 122 the following section:

Election of members of the Parliament to represent territories

"122A. The representation of a territory referred to in section 122 of this Constitution in either House of the Parliament shall be by a member or members directly chosen by the people of the territory or of the territory and another territory or territories.

"Laws made by the Parliament for the purposes of the election of a member or members of either House of the Parliament to represent any such territory shall be such that every Australian citizen who complies with any reasonable conditions imposed by those laws with respect to residence in the territory or a part of the territory and with respect to enrolment and has attained the age of 18 years or such lower age as the Parliament may determine is, subject to any disqualification provided by those laws with respect to persons who are of unsound mind or are undergoing imprisonment for an offence, entitled to vote, but nothing in this paragraph prevents the Parliament from making laws permitting voting by other persons who were, immediately before the commencement of the Constitution Alteration (Democratic Elections) 1987, entitled to vote.

"In the choosing of a member or members of a House of the Parliament to represent any such territory or any 2 or more such territories, each elector shall vote only once.

"Where there are electoral divisions for the purposes of choosing members of a House of the Parliament to represent any such territory or any 2 or more such territories, the numbers ascertained in respect of the several divisions by dividing the number of electors in each division by the number of members to be chosen for the division shall be, as nearly as practicable, the same and the number so ascertained in respect of a division of that territory, or of those territories, shall not be greater or less than the number so ascertained in respect of any other division of that territory, or of those territories, than one-tenth or such lesser fraction as is fixed in respect of that territory or of those territories under section 125A of this Constitution.

"Where there are electoral divisions for the purposes of choosing members of a House of the Parliament to represent any such territory and those divisions are not constituted in accordance with this section, the territory or, if the members are to represent 2 or more territories, those territories, shall, for the purposes of a general election of those members, be one electorate."

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"Where there are electoral divisions for the purposes of choosing members of a House of the Parliament to represent any such territory and those divisions are not constituted in accordance with this section, the territory or, if the members are to represent 2 or more territories, those territories, shall, for the purposes of a general election of those members, be one electorate.".

9. The Constitution is altered by inserting after section 125 the following section:

Maximum variation between electoral divisions

"125A. The Parliament of the Commonwealth may make laws fixing a fraction, being a fraction less than one-tenth, for the purposes of sections 29, 106A and 122A of this Constitution and, if it does so, the fraction so fixed has effect, subject to this section, as the fraction fixed under this section for the purposes of those sections in respect of -

(a) each electoral division for the purpose of choosing members of the House of Representatives to represent a State;

(b) each electoral division for the purpose of choosing members of the House of Representatives to represent a territory, or 2 or more territories; and

(c) each electoral division for the purpose of choosing members of a House of the Parliament of a State or of a self-governing Territory.

"The Parliament of a State may make laws fixing a fraction, being a fraction less than one-tenth, for the purposes of sections 29 and 106A of this Constitution and, if it does so, the fraction so fixed has effect, subject to this section, as the fraction fixed under those sections in respect of:

(a) each electoral division for the purpose of choosing members of the House of Representatives to represent that State; and

(b) each electoral division for the purpose of choosing members of a House of the Parliament of that State.

"The Parliament of a self-governing Territory may make laws fixing a fraction, being a fraction less than one-tenth, for the purposes of sections 106A and 122A of this Constitution and, if it does so, the fraction so fixed has effect, subject to this section, as the fraction fixed under those sections in respect of:

(a) each electoral division for the purposes of choosing members of the House of Representatives to represent that Territory; and

(b) each electoral division for the purpose of choosing members of a House of the Parliament of that Territory.

"Where, at any time, a law of the Commonwealth fixes a fraction for the purposes of sections 29, 106A and 122A of this Constitution and:

(a) a law of a State fixes a fraction for the purposes of sections 29 and 106A of this Constitution; or

(b) a law of a self-governing Territory fixes a fraction for the purposes of sections 106A and 122A of this Constitution;

then:

(c) if the fraction fixed by the law of the Commonwealth is the same as or less than the fraction fixed by the law of that State or Territory - the law of the Commonwealth prevails and the law of that State or Territory has no force or effect; and

(d) if the fraction fixed by the law of the Commonwealth is greater than the fraction fixed by the law of that State or Territory - the law of that State or Territory prevails and the law of the Commonwealth has no force or effect in respect of the electoral divisions for the purpose of:

(i) choosing members of the House of Representatives to represent that State or Territory; or

(ii) choosing members of a House of the Parliament of that State or Territory:

but has force and effect in respect of each other electoral division to which section 29, 106A or 122A applies.

In this section, 'self-governing Territory' has the same meaning as it has in section 106A of this Constitution.".

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Appendix B

Conduct of the Inquiry - Joint Select Committee on Electoral Reform

The Joint Select Committee on Electoral Reform was appointed by the 34th Parliament of the Commonwealth of Australia on 28 February 1985.

The members of the Electoral Reform Committee were:

Senator R F Ray (Chairman)
The Hon. M J R Mackellar, MP (Deputy Chairman)
Senator The Hon. Sir John Carrick KCMG
Senator B Harradine
Senator M J Macklin
Senator G F Richardson
Mr C W Blunt, MP
Mrs C A Jakobsen, MP
Mr A H Lamb, MP
Mr M J Lee, MP
Mr J L Scott, MP

On 6 December 1985 the Senate referred the Constitution Alteration (Democratic Elections) Bill 1985 to the Committee for inquiry and report. The Bill had been introduced into the Senate by Senator Michael Macklin on 17 April 1985.

During the Electoral Reform Committee's Inquiry submissions were received from the following individuals and organisations:

Submission Number:	Individual/Organisation,Date:
1	Australian Electoral Commission, dated January 1986
2	Australian Labor Party Banks Federal Electorate Council, dated 9 January 1986
3	R C Moran, Welling Point, QLD, dated 21 January 1986
4	Mrs A Bode, Boyup Brook, WA, dated 26 January 1986
5	Mr E K Jones, Padstow, NSW, dated 27 February 1986
6	Queensland Academics for Human Rights, dated February 1986

7	Australian Democrats (NSW Division) dated 25 February 1986
8	Mr J Berry, Duncraig, WA, dated 10 February 1986
9	**Submissions in a standard format from:**

Mr M Leach, Highgate Hill, QLD, dated 7 February 1986

M J Flannery, Shorncliffe, QLD, undated

K Callaghan, Morningside, QLD, dated 13 February 1986

D Ryle, Rainworth, QLD, dated 10 February 1986

P M & G Porta, Wilston, QLD, dated 10 February 1986

R T Langford, Brisbane, QLD, undated

Mr P B Wilson, Taringa, QLD, dated 11 February 1986

Ms J Byrne, Upper Mt Gravatt, QLD, dated 11 February 1986

Mr R E Turner, Taringa, QLD, dated 11 February 1986

Mr M Campbell, Highgate Hill, QLD, dated 10 February 1986

Mr K Barrett, Bulimba, QLD, dated 10 February 1986

Ms J Long, M Long, J J Long, M D Long and S S Long, West Chermise, QLD, dated 13 February 1986

Ms E Leu, Spring Hill, QLD, dated 18 February 1986

F D Fielding, St Lucia, QLD, dated 16 February 1986

P M Fleming, Mt Gravatt, QLD, dated 18 February 1986

H Julius, Rosalie, QLD, dated 20 February 1986

H Beazley, St Lucia, QLD, dated 11 February 1986

Mr P Keith, St Lucia, QLD, dated 24 February 1986

Mr Walker, Brookfield, QLD, undated

Mr M Sariban, Lutwyche, QLD, dated 24 February 1986

Ms E Felton, East Brisbane, QLD, undated

Ms M Maher, Highgate Hill, QLD, dated 27 February 1986

A McNamara, Windsor, QLD, dated 1 March 1986

Mr G Kennedy and Ms D Williams, New Farm, QLD, undated

Ms A Hunter, Indooroopilly, QLD, dated 17 March 1986

H Denny, Mt Gravatt, QLD, undated

S Minns, West End, QLD, dated 5 May 1986

Ms G Fatseas, Holland Park, QLD, undated

10 Mrs J Hicks, Chapel Hill, QLD, dated 13 February 1986

11 Dr D Rumley, Senior Lecturer in Political Geography, University of Western Australia, Nedlands, WA, dated 14 February 1986

12 Mrs Walter, Hillsborough, NSW, undated

13 The Hon. Ian Tuxworth, Chief Minister of the Northern Territory, dated 17 February 1986

14 Mr A Stein (address unknown) dated 17 February 1986

15 Electoral Reform Society, London, ENGLAND, dated 21 February 1986

16 Mr I Maclean, Gordon Park, QLD, dated 24 February 1986

17 Proportional Representation Society of Australia, West Pymble, NSW, dated 21 February 1986

18 Mr P Day, Department of Regional and Town Planning, University of Queensland, St Lucia, QLD, dated 24 February 1986

19 Australian Council on Smoking and Health (Inc.), West Perth, WA, dated 25 February 1986

20 Professor J Rydon, Department of Politics, La Trobe University, Bundoora, VIC, dated 26 February 1986

21 Mr L O'Loughlin, West Ryde, NSW, dated 26 February 1986

22 Mr P Turner, Artarmon, NSW, dated 24 February 1986

23 Dr C Sharman, Department of Politics, University of Western Australia, Nedlands, WA, dated 27 February 1986

24 Mr R F Stephens, Manning, WA, dated 21 February 1986

25 Mrs S Robinson, Childers, QLD, dated 23 February 1986

26 Shire of Metcalfe Residents and Ratepayers Association (Inc.), Taradale, VIC, dated 27 February 1986

27 Citizens for Democracy, South Brisbane, QLD, dated February 1986

28 League of Women Voters of Victoria, North Caulfield, VIC, dated 11 March 1986

29 R H Gentle, Benowa, QLD, dated 1 March 1986

30 Government of the State of South Australia, dated February 1986

31 Dr B Stinebrickner, Department of Government, University of Queensland, Brisbane, QLD, dated 18 March 1986

32 Bayside Citizens for Democracy, Manly, QLD, dated 21 March 1986

33 Electoral Reform Society of Western Australia, Nedlands, WA, dated 26 March 1986

34 Premier of Victoria, Mr John Cain, MLA, dated 21 March 1986

35 Australian Labor Party, dated March 1986

36 Dr P Coaldrade, School of Social and Industrial Administration, Griffith University, Nathan, QLD, dated 21 March 1986

37 Dr W Swan, Lecturer in Public Administration, Queensland Institute of Technology, QLD, undated

38 Western Australian Government, dated March 1986

39 Australian Democrats (WA Division), dated 2 April 1986

40 Australian Democrats (Queensland Division), South

	Brisbane, QLD, dated 9 April 1986
41	Australian Labor Party (Queensland Branch), dated February 1986
42	Mr F S Marris, First Assistant Secretary, Attorney-General's Department, Canberra, ACT, dated 17 April 1986
43	Mr E Willheim, First Assistant Secretary, Attorney-General's Department, Canberra, ACT, dated 16 June 1986
44	Mr P V Wardrop, Townsville Prison, Townsville, QLD, dated 27 April 1986
45	Mr S Johnston, Willeton, WA, dated 5 May 1986
46	The Hon. Arthur Tonkin, MLA, Warwick, WA, dated 7 May 1986
47	Mr A Mensaros, MLA, (Liberal) State Opposition Spokesman on Parliamentary, Electoral & Constitutional Matters in Western Australia, dated 12 May 1986
48	Mr J Smith, Charlestown, NSW, dated 13 May 1986
49*	Government of Tasmania, dated May 1986
50*	Association of Labor Lawyers (Queensland), dated 11 June 1986
51*	Dr P Kavanagh, School of Law, Macqurie University, North Ryde, NSW, dated 12 June 1986
52	Australian Electoral Commission (Submission titled: Identifying Gerrymanders), dated May 1986
53	Australian Electoral Commission (Submission titled: Constitution Provisions Relating to Redistributions)
54	Professor J Goldring, Professor of Law, Head of School, Macquarie University, North Ryde, NSW, dated 26 February 1986
55	Electoral Reform Society of Western Australia, Applecross, WA [13 May 1986]
56	Dr D Rumley, Geography Department, University of Western Australia, Perth, WA, dated 16 October 1969

* These submissions were received by the Electoral Reform Committee but not authorised for publication. This was done by the Joint Standing Committee on Electoral Matters.

The Electoral Reform Committee held two public hearings as part of its Inquiry into the Constitution Alteration (Democratic Elections) Bill 1985, viz.:

- Brisbane: Monday, 21 April 1986; and
- Perth: Tuesday 13 May 1986.

The witnesses who appeared before the Electoral Reform Committee at these hearings were:

Brisbane: Monday, 21 April 1986

- Dr Owen Peter Coaldrake, Political Analyst, Paddington, QLD
- Ms Diane Judith Zetlin, Convenor, Citizens for Democracy, West End, Brisbane, QLD
- Dr Ian Lowe, Member for Steering Committee, Citizens for Democracy, South Brisbane, QLD
- Mr Robert Leach, Secretary, Queensland Academics for Human Rights, Social Studies Department, Brisbane College of Advanced Education, Kelvin Grove, QLD
- Mr Robert Leslie Lingard, Member, Queensland Academics for Human Rights, Social Studies Department, Brisbane College of Advanced Education, Kelvin Grove, QLD
- Mr Howard Guille, Member, Queensland Academics for Human Rights, Social Studies Department, Brisbane College of Advanced Education, Kelvin Grove, QLD
- Mr Robert Francis McMullan, National Secretary, Australian Labor Party, Canberra, ACT
- Mr Gary Gray, National Organiser, Australian Labor Party, Canberra, ACT
- Ms Cheryl Kernot, President, Australian Democrats (Queensland Division), South Brisbane, QLD
- Mr Peter Douglas Beattie, State Secretary, Queensland Branch, Australian Party, Newstead, QLD
- Mr Frank Sidney Marris, Senior Assistant Secretary, General Counsel Division, Attorney-General's Department, Canberra, ACT

Perth: Tuesday 13 May 1986

- Mr John Gordon Evans, Vice-President, Australian Democrats, Western Australian Division, West Perth, WA
- Dr George Campbell Sharman, Senior Lecturer, Department of Politics, University of Western Australia, Perth, WA
- Mr John Hubert Taplin, President, Electoral Reform Society of Western Australia, Applecross, WA
- Mr Jason Berry, Duncraig, WA
- Dr Dennis Rumley, Geography Department, University of Western Australia, Perth, WA
- Mr Kym Leonard Kelly, Assistant Crown Solicitor, Crown Solicitor's Office, Attorney-General's Department, Adelaide, SA
- Dr Colin Anfield Hughes, Electoral Commissioner, Australian Electoral Commission, Canberra, ACT
- Mr Andrejs Cirulis, Deputy Electoral Commissioner, Australian Electoral Commission, Canberra, ACT
- Mr Malcolm John Bryce, Deputy Premier and Minister for Parliamentary and Electoral Reform, Government of Western Australia, Perth, WA
- Mr Graham Hawkes, Consultant to Minister for Parliamentary and Electoral Reform, Perth, WA
- Mr Arthur Raymund Tonkin, Warwick, WA
- Mr Andrew Mensaros, MLA, Parliamentary Liberal Party of Western Australia, Parliament House, Perth, WA

With the dissolution of the Federal Parliament on 5 June 1987 the Electoral Reform Committee ceased to exist and therefore was unable to conclude its Inquiry. The Electoral Reform Committee did not report to the Parliament on its Inquiry.

Conduct of the Inquiry - Joint Standing Committee on Electoral Matters

The Joint Standing Committee on Electoral Matters was appointed on 21 October 1987. The Committee's Resolution of Appointment stated that:

> a joint standing committee be appointed to inquire into and report on such matters relating to electoral laws and practices and their administration as may be referred to it by either House of the Parliament or a Minister.[1]

The Resolution of Appointment also stated that:

> the Committee or any sub-committee have power to consider and make use of ... the evidence and records of the Joint Select Committee on Electoral Reform appointed during previous Parliaments.[2]

On 28 October 1987 the Senate referred the Constitution Alteration (Democratic Elections) Bill 1987 to the Committee for inquiry and report. In conducting its Inquiry the Committee continued the work begun by the Joint Select Committee on Electoral Reform on its examination of the Constitution Alteration (Democratic Elections) Bill 1985.

The Committee commenced its Inquiry by writing to all State Premiers, the Chief Minister of the Northern Territory, major political parties and other interested organisations.

The Committee received submissions from the following individuals and organisations.

Submission Number:	Individual/Organisation,Date:
1	Government of Tasmania, dated May 1986
2	Association of Labor Lawyers (Queensland), dated 11 June 1986
3	Dr P Kavanagh, School of Law, Macquarie University, North Ryde, NSW, dated 12 June 1986

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1. Australia, House of Representatives, Votes and Proceedings No.9 Thursday, 24 September 1987, p. 86.
2. Ibid., p. 87.

4 Australian Electoral Commission, Canberra, ACT, dated 5 November 1987

5 Citizens for Democracy, Brisbane, QLD, dated November 1987

6 Australian Democrats (Queensland Division) South Brisbane, QLD, dated 3 November 1987

7 Mr Nev Warburton, MLA, Leader of the Queensland Parliamentary Labor Party, Brisbane, QLD, dated 10 November 1987

8 Mr P Beattie, State Secretary of the Queensland Branch Australian Labor Party, South Brisbane, QLD, dated 10 November 1987

9 Mr I McLean, State President of the Queensland Branch of the Australian Labor Party, [10 November 1987]

10 National Party of Australia - Queensland, Brisbane, dated 10 November 1987

11 Rev R Barraclough, Chaplaincy Centre, University of Queensland, St Lucia, Brisbane, QLD, dated 16 November 1987

12 Attorney-General's Department, Canberra, ACT, dated 18 November 1987

13 Senator Michael Macklin, Deputy Leader of the Australian Democrats, The Senate, Canberra, ACT, dated 19 November 1987

14 Mr Brian Burke, MLA, Premier of Western Australia, Perth, WA, dated 27 November 1987

15 Mr Robin Gray, MLA, Premier of Tasmania, Hobart, TAS, dated 1 December 1987

16 Mr Mike Ahern, MLA, Premier of Queensland, Brisbane, QLD, dated 1 March 1988.

The Committee held one public hearing. This was in Brisbane on Tuesday 10 November 1987. The following witnesses appeared before the Committee on this day:

The Honourable Sir Vernon Christie, Member, Co-ordinating Committee, Citizens for Democracy, South Brisbane, QLD

Mr Jef Clark, Co-Coordinator, Citizens for Democracy, South Brisbane, QLD

- Mr Chris Griffith, Co-Coordinator, Citizens for Democracy, South Brisbane, QLD
- Ms Bronwyn Stevens, Member, Co-ordinating Committee, Citizens for Democracy, South Brisbane, QLD
- Dr Kenneth James Walker, Member, Co-ordinating Committee, Citizens for Democracy, South Brisbane, QLD
- Senator Michael Macklin, Australian Democrats *Senator for Queensland, Parliament House*, Canberra, ACT
- Mr David Graham Russell, Chairman, Policy Standing Committee, National Party of Australia in Queensland, and member, State Management Committee, Spring Hill, QLD
- Mr Mark David Stoneman, Member for Burdekin, Queensland Parliament, representing the National Party of Australia *in Queensland, Spring Hill*, QLD
- Mr Peter Douglas Beattie, State Secretary, Australian Labor Party, South Brisbane, QLD
- Mr Ian McLean, State President, Australian Labor Party, South Brisbane, QLD
- Mr Neville George Warburton, Leader of the Parliamentary Labor Party, South Brisbane, QLD

With the election of Mr Angus Innes as the Leader of the Liberal Party in Queensland and Mr Michael Ahern, MLA, as Premier of Queensland the Committee wrote to both Mr Innes and Mr Ahern seeking their comment on the Constitution Alteration (Democratic Elections) Bill 1987. Mr Ahern responded to the Committee's invitation on 1 March 1988 (Submission number 16).

Appendix D

The 'as nearly as practicable' test - a paper prepared by the Attorney-General's Department.

See: Evidence (Electoral Reform Committee), p. 575-9.

ATTACHMENT

The 'as nearly as practicable' test

(i) U.S. developments

The requirement in the paragraph proposed to be added to s.29 of the Commonwealth Constitution that electorates are to be 'as nearly as practicable, the same' in terms of numbers of electors introduces a principle similar to that derived from decisions of the Supreme Court of the U.S.A. over the last 24 years beginning in 1962 with the landmark decision of Baker v. Carr (369 US 186). Those words do not appear in the Constitution of the United States but the Supreme Court has found in Art.I, s.2 (in respect of Congress) and in the 'Equal Protection' clause in the 14th Amendment (in respect of the states and local government) an implication that electorates must be as nearly as practicable equal in population.

Art.I, s.2 provides:

> 'The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature'.

The equal protection clause provides that:

> 'No State shall ... deny to any person within its jurisdiction the equal protection of the laws.'

In relation to congressional districts, the Supreme Court in Wesberry v. Sanders (1964) 376 US 1 stated:

> '... construed in its historical context, the command of Art.I, s.2 that Representatives be chosen "by the People of the several States" means that as nearly as is practicable one man's vote in a

> congressional election is to be worth as much as another's ... While it may not be possible to draw congressional districts with mathematical precision, that is no excuse for ignoring our Constitution's plain objective of making equal representation for equal numbers of people the fundamental goal for the House of Representatives.' (at pp.7-8 and 18).

Subsequently, the Supreme Court also held that, as a basic constitutional standard, State legislative districts (Reynolds v. Sims (1964) 377 US 533) and electoral districts in local communities (Avery v. Midland County (1968) 390 US 474) must be of equal population.

In respect of both congressional districts and State and local government districts, the Supreme Court has recognised that precise mathematical equality is a practical impossibility. In each case the test of a valid distribution has been stated in similar terms. In Reynolds v. Sims the Supreme Court said the test was whether or not a State had made 'an honest and good faith effort to construct districts ... as nearly of equal population as is practicable' (at p.577). In relation to congressional districts, in Karcher v. Daggett (1983) 462 US 725 at p.730 the Court affirmed the principle stated in Kirkpatrick v. Preisler (1969) 394 US 526 that '(t)he "as nearly as practicable" standard requires that the State make a good-faith effort to achieve precise mathematical equality'. However, the Court noted that, because of the unusual rigour of the standard set by the decisions in Wesberry v. Sanders and Kirkpatrick v. Priesler, 'we have required that absolute population equality be the paramount objective of apportionment only in the case of congressional districts, for which the command of Art.I, s.2, as regards the National Legislature outweighs the local interests that a State may deem relevant in apportioning districts for representatives to state and local legislatures, but we have not questioned the population equality standard for congressional districts'. (pp. 732-733).

The factors justifying departure from the equal population principle in relation to State electoral districts would seem to be substantially comparable with some factors commonly considered in Australia. For instance, in Reynolds v. Sims the qualification 'as nearly as practicable' was considered to permit some departure from the equal population principle by reference to factors such as State policies of maintaining political subdivision integrity and providing for compact districts of contiguous territory. Considerations such as natural or historical boundary lines may validly underlie such aims (pp. 578-9). However, the Court further stated, at pp.579-580, that:

> '... neither history alone, nor economic or other sorts of group interests, are permissible factors in attempting to justify disparities from population-based representation. Citizens, not history or economic interests, cast votes. Considerations of area alone provide an insufficient justification for deviations from the equal-population principle. Again, people, not land or trees or pastures, vote. Modern developments and improvements in transportation and communications make rather hollow, in the mid-1960's, most claims that deviations from population-based representation can validly be based solely on geographical considerations. Arguments for allowing such deviations in order to insure effective representation for sparsely settled areas and to prevent legislative districts from becoming so large that the availability of access of citizens to their representatives is impaired are today, for the most part, unconvincing.'

The Supreme Court has consistently required that those responsible for drawing electoral boundaries (at any level) seek to achieve equality between districts, and has rejected invitations to pronounce, as acceptable, a specified small degree of departure from the standard of equality of population.

Thus, in Kirkpatrick v. Preisler the Court stated that:

> '... to consider a certain range of variances de minimis would encourage legislators to strive for that range rather than for equality as nearly as practicable' (at 531).

In Karcher v. Daggett the Court held that a reapportionment plan did not satisfy Art. I, s.2 of the Constitution as the plan was not a good faith effort to achieve population equality even though the population in the largest congressional district under the plan was less than one per-cent greater than the population of the smallest district.

(ii) Australian Position

If the High Court were to follow the American decisions, it would require redistribution authorities to make an honest and good faith effort to achieve electoral equality paying no regard to area or remoteness. It may be that it would not allow any consideration of factors such as community of interest. The High Court's own decisions provide little guidance on this point. The phrase 'as nearly as practicable' does occur elsewhere in the Constitution and its occurrence in s.24 was the subject of consideration in Attorney-General (N.S.W.); Ex rel. McKellar v. Commonwealth (1977) 139 C.L.R. 527 but the context is a very different one. That section contains the phrase as a qualification of the nexus requirement, which is followed by the specification of a provisional method of determining the number of members of the House of Representatives. After examining the legislation in question, the Court was able to say that the method prescribed by Parliament did not produce as accurate a result (measured in terms of the constitutional imperative) as the provisional method (see Barwick C.J. at p..535 and Gibbs J. at p.549).

The judgment of Gibbs J. does, however, suggest that, if faced with the problem of interpreting the proposed constitutional amendments, the High Court would be likely to take a similar approach to that of the U.S. Supreme Court in excluding from the redistribution process any consideration of factors such as area and remoteness. In applying the test in its s.24 context Gibbs J. said that no matters, other than those mentioned in s.24 itself, would need to be considered (see at p.548).

It it clear that enactment of Constitutional amendments providing for an 'as nearly as practicable' test for electoral purposes would require a review of all Commonwealth, State and Territory legislation to ascertain whether they met the new Constitutional requirements.

Appendix E

Constitutional Provisions Relating to Redistributions - a paper prepared by the Australian Electoral Commission.

See: Evidence, p. 23.

CONSTITUTIONAL PROVISIONS RELATING TO REDISTRIBUTIONS

INTRODUCTION

At its Brisbane hearings, the Joint Select Committee asked that the Commission prepare a paper on what the Commission sees as the minimum provisions, in terms of Constitutional requirements, which would have to be made to give practical effect to the principle underlying the Macklin Bill. This paper sets out such a scheme. The scheme is predicated on the assumption that its aims can best be achieved by requiring that redistributions should take place regularly, and embody rules limiting enrolment derivations from the State average enrolment to no more than a fixed percentage (say 10%) of that average.

2. The aim of the scheme would be to specify mechanisms which would in practice lead to the achievement of approximately equal electors per member ratios across divisions, rather than specifying an obligatory outcome of unspecified mechanisms (the Macklin Bill approach). This line of attack would achieve certainty in the operation of the relevant constitutional provisions.

3. Consistent with this, the paper only develops those elements of the scheme which are essential for its practical operation.

4. The proposed scheme would have three fundamental elements: a requirement for continuous enrolment and roll maintenance; a requirement that redistributions be held regularly at the Commonwealth, State and Territory levels; and a requirement that proposed boundaries, at redistribution time, embody no more than the prescribed level of enrolment inequality. In addition, provisions would be set down to enable enforcement of the relevant requirements. Finally, special provision would be made for the Tasmanian Legislative Council and similar chambers.

CONTINUOUS ROLL MAINTENANCE

5. In the absence of a continuously maintained roll and compulsory enrolment, the requirement that redistributions be based on approximate equality of enrolments would be devoid of content. Such a regime would therefore be necessary for the proposed scheme to be effective.

TIMING OF REDISTRIBUTIONS

6. If redistributions are held regularly, a basic limit is placed on the length of time over which enrolment inequalities are able to develop. It is therefore proposed that redistributions would be initiated one year after the commencement of the provisions, for the House of Representatives, and all legislative houses in the States and self-governing Territories which have electoral divisions. Redistributions would thereafter have to take place at least once every seven years.

7. Additional redistributions at the Commonwealth level would from time to time be required to give effect to changed State representation entitlements.

8. There would be no limitation on the right of individual States or Territories to have more frequent redistributions.

9. Any redistribution would have to be concluded within twelve month of its commencement.

10. By-elections to fill casual vacancies arising after a redistribution would be held on the boundaries of the division for which the vacating member was elected, rather than on the new boundaries.

THE EQUALITY CRITERION

11. It would be specified that a redistribution would not be valid for the purposes of the Constitution unless it produced divisions deviating in enrolment by less than 10 per cent from the State average enrolment determined as at the commencement of the redistribution.

ENFORCEMENT

12. It would be provided that if a redistribution were not commenced or concluded at the required time, or if a purported redistribution did not embody the equality criterion, an elector could, within a specified period, approach the High Court for relief, which would take the form of an order by the Court, directing a person or persons to effect a redistribution in accordance with such directions as the Court might give; these could

simply be directions to effect the redistribution in accordance with the relevant laws of the Commonwealth, or of a State or Territory.

TASMANIAN LEGISLATIVE COUNCIL

13. While the general scheme set out above would apply to the Tasmanian Legislative Council, special provision to cover the absence of State legislation would have to be made for the rotation of its members, since general elections as such are not held, members being chosen over a cycle of annual elections. In the case of each redistribution, specific provision would have to be made to determine future election dates for each District, and to determine the retirement dates of the then-current members. It would be provided that, subject to any subsequent State legislation, such a stipulation would be made by the person or body conducting the redistribution or any other person or body so directed by the High Court.