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State Elections (One Vote, One Value) Bill

**Submission to Senate Legal and Constitutional References
Committee**

I am very happy that a Senator from Western Australia has introduced a bill acknowledging the Australian Parliament's jurisdiction to implement Article 25 of the 1966 International Covenant on Civil and Political Rights and that the Legal and Constitutional References Committee has asked me to contribute to its inquiry.

Let me recite the ancestry of Senator Murray's bill. My father, just before he retired as Commonwealth Crown Solicitor, participated in New York in drafting the Universal Declaration of Human Rights of 10 December 1948. Article 21(3) declared

The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and general elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

At the annual conference of the Australian Institute of Political Science in Canberra in January 1955 I modestly declared

We should at least have the safeguard in our Constitution that electorates shall be of equal population.

On 1 October 1958 the Joint Committee on Constitutional Review unanimously recommended

*the number of electors in a division in a State should not exceed by more than one-tenth, or fall short of by more than one-tenth, a quota ascertained by dividing the total number of electors in the State by the number of members to be chosen in that State....
the division of every State into electoral divisions should be reviewed at least once in every ten years...*

The Committee consisted of Neil O'Sullivan, Liberal Senator from Queensland, as Chairman, R.C. Wright, Liberal Senator from Tasmania, A.R. Downer, Liberal MHR from South Australia, P.E. Joske, Liberal MHR from Victoria, L.W. Hamilton, Country Party MHR from Western Australia, D.H. Drummond, Country Party MHR from NSW, A.A. Calwell, ALP MHR from Victoria, P.J. Kennelly, ALP Senator from

Victoria, N.E. McKenna, ALP Senator from Tasmania, R.T. Pollard, ALP MHR from Victoria, E.J. Ward, ALP MHR from NSW, and E.G. Whitlam, ALP MHR from NSW. (I was the youngest in age and had served the shortest period in the Parliament.)

In July 1961 the ALP Federal Conference endorsed all the Committee's recommendations. It pledged the Party to their implementation by means of legislation and referendums. The results of the first quinquennial census in June 1961 showed that three States had one more division and another State had one less division than their entitlements under Section 24 of the Constitution. In April 1962 the Menzies Government appointed distribution commissioners for all States. It would be the first redistribution since 1955. In October the commissioners proposed new divisions with enrolments which fell within the 10 per cent variation. The proposals for NSW, the first on which the House had to vote, entailed the abolition of a division held by the Country Party and two Sydney inner suburban divisions held by the ALP and the creation of two new Sydney outer suburban divisions. McEwen, the Deputy Prime Minister and Leader of the Country Party, to preserve one of his followers, and Calwell, the Leader of the Opposition and of the ALP, to pacify two of his followers, conspired to reject the distribution. During the dinner adjournment on Thursday 29 November Calwell asked me, his Deputy, to accompany 'Joe' Chamberlain, the Federal Secretary and the Secretary of the W.A. Branch of the ALP and the Secretary of the W.A. Trades Union Industrial Council, to McEwen's suite to consummate the deal. On the next sitting day, Tuesday 4 December, Calwell moved an amendment disapproving the distribution and calling for a fresh one. McEwen followed Calwell and announced that the Country Party would oppose the proposals. Menzies thereupon abandoned the distribution proposals for all States.

On 5 March 1964, in the debate on the Governor-General's speech opening the new Parliament, I quoted two recent judgements of the US Supreme Court:

We see no constitutional way by which equality of voting power may be evaded. The conception of political equality can mean only one thing – one person, one vote. (Gray v. Sanders)

The American Constitution means as nearly as practicable one man's vote in a congressional election is to be worth as much as another's. (Wesberry v. Sanders)

Few Australians realise that in the United States there are hundreds and hundreds of electorates in the 50 State Senates and the 49 State Houses of Representatives. (Nebraska is unicameral.). The US courts promptly insisted that they all be redistributed on the principle of one vote, one value. I attach the current lists.

US activism in securing rights for African Americans and one vote one value in Federal and State elections spurred the UN to adopt the 1965 Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the 1966 International Covenant on Civil and Political Rights (ICCPR), including 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.

At the November 1966 elections for the House of Representatives, as a result of the breach of party policy by Calwell and Chamberlain, eight of the 45 divisions in NSW had an enrolment of fewer than 40 000 electors and 11 had an enrolment of more than 60 000 electors. The range of NSW enrolments was between 99 770 and 29 268. I had 91 885 electors.

After the 1966 elections the ALP Caucus elected a new Leader, Deputy Leader, Senate Leader and Senate Deputy Leader. On 3 September 1968 Barnard, Murphy, Cohen and I met in Hobart with the surviving Labor Premier, Reece, and the Leaders of the mainland State Parliamentary Labor Parties and agreed to work for votes at 18 and one vote one value in the House of Representatives and all State Houses of Parliament.

At the December 1972 elections for the House of Representatives the ALP was committed to enacting the ICERD and ICCPR. On 21 November 1973 Senator Murphy introduced the *Human Rights Bill* to enact the ICCPR. It lapsed with the double dissolution in April 1974. On 10 July 1974 the joint sitting passed the *Commonwealth Electoral Bill (No.2) 1973*, which provided

The Distribution Commissioners may adopt a margin of allowance, to be used whenever necessary, but in no case shall the quota be departed from to a greater extent than one-tenth more or one-tenth less.

Thus my Government fulfilled the ALP policy of one-vote one-value in House of Representatives elections.

In 1974 my Government decided to enact the ICERD, which had already entered into force in January 1969 after receiving the qualifying number of 27 ratifications, before the ICCPR, which had not yet received the qualifying number of 35 ratifications; in my view Federal legislation under the external affairs power would be less vulnerable to challenges if based on an international instrument which was already part of international law. The ICERD was enacted as the *Racial Discrimination Act* and ratified in 1975. The ICCPR entered into force in March 1976.

When the Burke and Hawke Governments were elected in February and March 1983 the ALP platform stated

The support of the Australian people will be sought for amendments to the Australian Constitution... To guarantee the right to vote and ensure the principle of one-vote one-value in all Australian and State and Territory elections.

The Hawke Government was reelected in December 1984. On 9 October 1985 Attorney-General Bowen introduced the *Australian Bill of Rights Bill* enacting the ICCPR, including Article 25, and three Human Rights and Equal Opportunity Commission (HREOC) bills. All four bills were passed by the House on

14 November and introduced by Evans in the Senate on 2 December. Burke, facing reelection in February 1986, pressured Hawke to drop one vote one value. Without informing the Cabinet or the Caucus or the Parliament or the Party, Hawke agreed that his Government would abort the *Australian Bill of Rights Bill* in the Senate. On 26 November all four bills were given a second reading and amendments were moved to two of the three HREOC bills in Committee. On 28 November the amendments were carried, the *Australian Bill of Rights Bill* and the other HREOC bill were discharged from the Senate Notice Paper and the two amended HREOC bills were accepted by the House of Representatives. These two bills received assent on 6 December.

The Legislative Assembly and Legislative Council of Western Australia are now the only Houses of Parliament in Australia with electorates which are not distributed on the principle of one vote one value. The situation has deteriorated since Senator Murray's second reading speech. The report of the Western Australian Electoral Commissioner on the enrolment figures as at 30 June 2003 shows that the range of enrolments in the metropolitan area is between Wanneroo 44 725 and Perth 22 942 and in the country area between Dawesville 19 225 and Eyre 9 110.

I respectfully disagree with Senator Murray about the 15% variation permitted in clause 4 of his bill. In my view it is too large. The Joint Constitutional Review Committee considered the variation of 20% which had applied till then. The Committee reported (paragraph 316):

The full application of the margin each way to two divisions in a State could result in the electors of one division totalling 50 per cent more than the number of electors in the other division. Such a possible disparity in the value of votes is inconsistent with the full realization of democracy.

The full application of a 15% variation could result in the electors of one division totalling 30 per cent more than the number of electors in the other division. The full application of the considerations and 10% variation which have applied to divisions in the House of Representatives since 1974 seems adequate for electorates in the Houses of Parliament in all the States in Australia.

Nobody can justify the delay of more than four decades in applying one vote one value in one of the six States in Australia. It took no more than four years to apply one vote one value in the hundreds and hundreds of electorates in all 50 States in the United States.

I concede that a few Federal and State leaders of the major party which I led have frustrated the democratisation of the WA Houses of Parliament. One vote one value was first advocated in Western Australia in 1928 by the Deputy Leader of the National Party, T.A.L. Davy, a Rhodes Scholar and MLA for West Perth, who died in 1933 at the age of 42. I hope that Davy's successors in the other major party pursue his initiative. The major parties should not be resentful that a member of a minor party has given them the opportunity to promote the democratisation of all the Houses of Parliament in Australia.

USA – Members of State Houses of Representatives

New Hampshire	400	Iowa	100
Pennsylvania	203	Kentucky	100
Georgia	180	Montana	100
Missouri	163	Rhode Island	100
Massachusetts	160	Virginia	100
Connecticut	151	West Virginia	100
Maine	151	Ohio	99
New York	150	Tennessee	99
Texas	150	Wisconsin	99
Vermont	150	Washington	98
Maryland	141	California	80
Minnesota	134	New Jersey	80
Kansas	125	Utah	75
South Carolina	124	Idaho	70
Mississippi	122	New Mexico	70
Florida	120	South Dakota	70
North Carolina	120	Colorado	65
Illinois	118	Arizona	60
Michigan	110	Oregon	60
North Dakota	106	Wyoming	60
Alabama	105	Hawaii	51
Louisiana	105	Nevada	42
Oklahoma	101	Delaware	41
Arkansas	100	Alaska	40
Indiana	100		

(In Virginia the title is House of Delegates. In New Jersey, North and South Dakota and West Virginia there are two-member electorates. In Maryland and Vermont there are single-and two-member electorates.)

USA - Members of State Senates

Minnesota	67	Kentucky	38
New York	60	Michigan	38
Illinois	59	Connecticut	36
Georgia	56	Alabama	35
North Dakota	53	Arkansas	35
Mississippi	52	Idaho	35
Indiana	50	Maine	35
Iowa	50	South Dakota	35
Montana	50	Missouri	34
North Carolina	50	West Virginia	34
Pennsylvania	50	Ohio	33
Rhode Island	50	Tennessee	33
Nebraska	49	Wisconsin	33
Washington	49	Texas	31
Oklahoma	48	Arizona	30
Maryland	47	Colorado	30
South Carolina	46	Oregon	30
New Mexico	42	Vermont	30
California	40	Wyoming	20
Florida	40	Utah	29
Kansas	40	Hawaii	25
Massachusetts	40	New Hampshire	24
New Jersey	40	Delaware	21
Virginia	40	Nevada	21
Louisiana	39	Alaska	20

(Vermont has single -, two -, three- and six-member electorates.)