

Malcolm Mackerras AO



1 June 2015

The Honourable Louise Asher MP  
Chair  
Electoral Matters Committee  
Parliament of Victoria  
Spring Street  
East Melbourne  
Victoria 3002

Dear Ms Asher

My first reason to write to you is to acknowledge receipt of your letter dated 27 May which was given to me by hand by Mark Roberts. I was at Parliament House Melbourne at the time lobbying politicians in support of my views on electoral reform for the Commonwealth Senate and the Victorian Legislative Council.

My second reason to write is to indicate that I am unlikely to be in Australia for your public hearings. While I would very much like to talk to the Committee I fear that I am likely to be in some European country at that time. Consequently I hope I can make myself so clear that I do not need to follow it up any more. The understandings you have reached from your conversations with your colleagues and with Mark Roberts must suffice to add to my written words.

I feel I should explain my personal position to you. Not being a Victorian I should not actually care what the states do about their electoral systems. However, being an Australian I DO CARE about what is done to the Senate. The view I have always had is that the choice for the Commonwealth Parliament is whether to be in partnership with New South Wales or whether to be in partnership with Victoria.

Prior to the 2003 NSW general election the Parliament of that State decided to convert it's then Single Transferable Vote system into a party-list system. Consequently the 2003, 2007, 2011 and 2015 NSW Legislative Council elections have been conducted under that party-list system.

My view is that, when 21 members are being elected (as in NSW) a party-list system is appropriate. Consequently, when I showed the 2015 NSW ballot paper for the Legislative Council to your colleagues David Davis, Bernie Finn, Matthew Guy and Simon Ramsay I did not show it for the purpose of discrediting the NSW system. I showed them that ballot paper purely to indicate that a party-list system used to elect 21 members of the NSW Legislative Council would NOT BE APPROPRIATE to elect six senators at a half-Senate election. By contrast the Victorian system would be very appropriate.

When your federal counterparts considered this matter they rejected my view (that Victoria and the Commonwealth should follow each other) in favour of the view that the Commonwealth should copy NSW. Consequently when the interim report was released I damned it in my article in *The Australian* (enclosed) for Wednesday, 28 May 2014. It was titled "Winning system lost as Senate gate slams shut". When the final report was published one year later I damned it again in my *Canberra Times* article (enclosed) for Monday 11 May 2015. That article was titled "A cynical fix that won't last".

At roughly the same time as NSW was reforming its system Victoria decided upon a new system to elect its Legislative Council. Broadly speaking that system copies the Senate system but with one very important difference which I consider by contrasting the September 2013 Senate election in Victoria with the November 2014 Legislative Council election in Victoria.

The instruction for the below-the-line vote for the Senate reads: "Or below the line by placing the numbers 1 to 97 in the order of your preference". That was a wholly unreasonable option to offer to the electorate. Not surprisingly below-the-line votes were a mere 2.7 per cent. For the Legislative Council, by contrast, the

instruction is: "OR place the numbers 1 to at least 5 in these squares to indicate your choice". That has been the instruction since the system was introduced in 2006.

The Legislative Council numbers of below-the-line votes were 130,707 (4 per cent) in November 2010 and 208,875 (6.1 per cent) in November 2014. By contrast, for the Victorian Senate vote in September 2013 the number was 90,215 (2.7 per cent).

I have every objection to the federal JSCEM report I cite above but, most of all, I object to it on the ground that the Constitution forbids a party-list system as proposed. I say that because section 7 reads: "The Senate shall be composed of senators for each State, directly chosen by the people of the State, voting . . . as one electorate."

The retort such a comment attracts is that my logic says the PRESENT system must be unconstitutional. To that I say I have been writing articles about this subject for sixty years. As a consequence I explain how I can understand that the present system might be found to be constitutional by a High Court which would not tolerate any extension of the idea behind the present system. I have no doubt that if the Commonwealth Parliament tried to implement the main recommendation of the report cited above the High Court would strike the legislation down. To me it is quite clear that the main recommendation of the federal JSCEM report is unconstitutional.

Consequently the Commonwealth should now copy Victoria by legislating the Victorian system for the 2016 half-Senate election with intent, during the next federal term, to bring the Senate system fully back to the Constitution by making the reform I propose.

It happens, therefore, that both I and my opponents favour reform which would have the EFFECT of putting the "preference whisperers" out of business. Where I differ from my opponents is that their SOLE PURPOSE is to put the "preference whisperers" out of business by an unconstitutional rig in favour of the machines of three big parties (Liberal, Labor and Greens) whereas

I want to bring the system fully back to the Constitution which would have the same effect. My reform, therefore, would be entirely defensible regardless of whether or not it put the “preference whisperers” out of business. Unlike my opponents I have no need to engage in propoganda against those men.

Now let me describe my reforms by including some ballot papers and some party “how to vote” cards. Copies of some of these will have already been given to you and your colleagues by Mark Roberts.

First up is an undamaged ballot paper for the April 2014 election of six senators for Western Australia – the re-election consequent upon the voiding of the original election held in September 2013. It has “SAMPLE” marked in red upon it due to the practice of the various electoral commissions only to give these ballot papers to me after polling day and with that kind of marking. However, you also have another copy which shows how my short-term and long-term reforms would operate.

For the short-term Senate reform (to operate in 2016) I propose a simple change. The words below the line which actually read “By placing the numbers 1 to 77 in the order of your preference” would, I propose, be replaced by the words “By placing the numbers 1, 2, 3, 4, 5 and 6 in the order of your preference. You may, if you wish, vote for additional candidates by placing consecutive numbers beginning with 7 in the squares opposite the names of those additional candidates in the order of your preference for them.”

My long-term Senate reform involves the deletion of all three “contrivances” of the 1984 Senate system. (The word “contrivances” is mine. Others would use a different form of words to describe the “above-the-line” system.) The three contrivances are the ballot line, the party boxes above the ballot line and the group voting tickets. (You and your colleagues would know the term “ballot line”. It is that thick black line which runs through the Senate ballot paper.)

To illustrate the way, in practice, whereby my long-term Senate reform would work I take Group F – Australian Labor Party. It happens that Labor stood four candidates at each of the two recent WA Senate elections. For both elections Joe Bullock was first and Louise Pratt was second. The third and fourth candidates were different but that effect means there were six Labor candidates. Consequently, on both my mock ballot paper and on my mock “how to vote” card I show those six WA Labor candidates.

I enclose two Labor “how to vote” cards. The Victorian one I picked up myself at a polling place in the electoral district of Richmond when I visited Melbourne in November 2014. As I explain below I would like to see the system changed so that this “how to vote” card would, in principle, look like the Gary Gray paper on the side which is not coloured, save only that there would be five candidates, not six. Given the system which actually prevailed at that election I do not object to the Legislative Council words “no need to fill in below the line”. However, I do object strongly to the words “Do not mark any boxes below the thick black line”. Given that the Victorian Parliament had expressly given the elector the right to vote only 1, 2, 3, 4 and 5 that “how to vote” card was an insult to both the Parliament and the voter.

The second Labor “how to vote” card was given to me personally by Gary Gray when I had a recent conversation with him in Canberra. The coloured side is the actual piece of paper Gary gave me. Given the system which actually operated I have no objection to the Senate words “no need to fill in this part” below the ballot line.

Please turn over this piece of paper to the side which is not coloured. Here I give my mock “how to vote” card for my long-term Senate reform. It also serves as a guide to my Victorian reform. While the left hand side of the Victorian card would read the same for Richmond the right hand side might read, say, 1 for Jenny Mikakos, 2 for Nazih Elasmara, 3 for Jaala Pulford, 4 for Adem Somyurek and 5 for Philip Dalidakis. Then the bottom of the “how to vote” card would read: “Your vote will not count unless you number at least 5 boxes but you may vote 6, 7, 8, etc as you please.”

From all the above you will understand that my view of a “proper” reform is that it would eliminate any suggestion that we have a party-list system when actually we have a Single Transferable Vote system - STV for short. We SHOULD HAVE a candidate-based system as commanded by both the Victorian Constitution and the Constitution of the Commonwealth of Australia. Consequently the need arises to eliminate ALL THREE CONTRIVANCES introduced into the Senate system in 1984 and the Victorian Legislative Council system in 2006. The three contrivances to which I refer are the ballot line, the party boxes above the ballot line and the group voting tickets.

Fortunately for Australia we still have a genuine candidate-based system of STV, namely the Hare-Clark system operating in Tasmania and the Australian Capital Territory. For admirers of Hare-Clark (which list of admirers includes me) its most brilliant feature is Robson rotation. However, let me make this clear: I DO NOT PROPOSE THAT ROBSON ROTATION APPLY FOR THE SENATE OR THE VICTORIAN LEGISLATIVE COUNCIL.

I enclose three Hare-Clark ballot papers. Since Victoria elects five Legislative Council members for each region the Lyons and Brindabella papers are appropriate to Victoria. Actually Lyons is the appropriate one, but I have added the letters A, B, C, D and E, taken from the Brindabella ballot paper, because it would be convenient for party “how to vote” cards to have those letters there.

These ballot papers indicate a point about electoral systems: no two systems are ever exactly the same. Consequently you might ask why the numbers 11 on the bottom of Brindabella and 167 on the bottom of Molonglo appear - but no equivalent numbers appear for Lyons. The explanation is that the filling of casual vacancies is slightly different between the two Hare-Clark systems. The 11 for Brindabella means the 11<sup>th</sup> rotation (out of 60) while the 167 for Molonglo means the 167<sup>th</sup> rotation (out of 180). Tasmania, by contrast, finds no reason why the voter should know the rotation number for her/his ballot paper.

Finally, I come back to my condemnation of the federal report from their Joint Standing Committee on Electoral Matters delivered in May 2014. It was titled *Interim report on the inquiry into the conduct of the 2013 Federal Election: Senate voting practices* and my article was titled "Winning system lost as Senate gate slams shut". Essentially what drove me was the sight of politicians representing the machines of three big parties deciding that it was in the interest of those parties that the contrivances of the system be cherry-picked - with the two convenient ones retained while the inconvenient one was to be eliminated. What drives me now is an appeal to principle. Consequently I maintain that all three contrivances should be eliminated. Failing that all three contrivances should be retained.

I would be grateful if you would acknowledge receipt of this submission. You can do that by e-mail, for which my address is:

[REDACTED]

Kind regards

Yours sincerely

[REDACTED]

Malcolm Mackerras