

CORRECTED EVIDENCE

ELECTORAL MATTERS COMMITTEE

Inquiry into the conduct of the 2014 Victorian state election

Melbourne — 5 October 2015

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Mr Malcolm Mackerras (*via teleconference*).

The DEPUTY CHAIR — Hi, Malcolm, it is Ros Spence speaking. I am the Deputy Chair of the committee and Acting Chair today. Louise Asher was unable to be here and she has asked that I pass on her apologies to you. Hansard is here to record your evidence. I advise you that the evidence you provide today will be covered by parliamentary privilege; however, anything that is said outside this hearing will not be covered. I ask you to provide your full name and say whether or not you are attending in a private capacity or representing an organisation.

Mr MACKERRAS — My name is Malcolm Hugh Mackerras and I am attending in a private capacity.

The DEPUTY CHAIR — Thank you. If you would like to talk to your submission and provide your evidence now, and then at the conclusion of that we may have some questions for you.

Mr MACKERRAS — I begin by saying that I have been following these things in considerable detail for about 60 years — literally 60 years. I have noticed, in the case of the Senate, that because of the way in which the system developed from 1934 to 1984 there was a substantial increase in the number of informal votes. It kept on increasing.

The Labor Party got very sick of this, because the Labor Party decided and worked out quite clearly that it was suffering as a result of this very substantial informal vote. The Labor Party in 1974 and early 1975 when in government under the Whitlam government tried to do the very thing that I am now proposing Victoria should do — that is, have an optional preferential vote and require the elector to vote 1, 2, 3, 4, 5, and you may go beyond that if you wish to do so. What the Labor Party was proposing under the Whitlam government and later under the Hawke government is exactly what I am now proposing should be done in Victoria.

For a variety of reasons, of which I would say the main reason was the bloody-mindedness of the Liberal Party at the time, the Liberal Party psyched itself into believing that there was some democratic principle in requiring the elector to number every square. There was no democratic principle, but the Liberal Party believed that, and, frankly, its behaviour was thoroughly bloody-minded.

In the face of this the Labor Party was forced to do something else, which it did not really want to do — namely, have this above-the-line voting system which we now have. In order to implement this, which they were able to do by getting majorities in both houses, they put into place for the Senate ballot paper what I call the three contrivances. The three contrivances, which were not there before, which were not there in the ballot paper up to 1983, begin with the ballot line — that is, the thick black line which runs through the ballot paper. The second contrivance is above the ballot line. There you find the party boxes. The third contrivance is the group voting ticket.

I argue that in the case of Victoria, this state never had any need for these contrivances when it brought in the new Legislative Council system. The reason why it never had any need for the contrivances was that Victoria started from the very word go to do what the Whitlam government had requested in 1975 and what the Hawke government had requested in 1983 — namely, that the elector cast a vote going 1, 2, 3, 4, 5, and nothing beyond that is needed.

Had people thought these things through logically, when the system for the Legislative Council was reformed, beginning with the 2006 election, they would have realised that there was no need for these contrivances. The numbering 1, 2, 3, 4, 5 would enable the parties to hand out quite sensible how-to-vote cards. I have given you an example with my proposal for the Senate in the case of Western Australia, where six are to be elected and 1, 2, 3, 4, 5, 6. Now that could have been done. Why was it not done? The reason it was not done was that the new system for the Senate was quite popular. It was very, very successful, and people did not think you needed to get rid of these contrivances.

What I argue is that now these contrivances should be gotten rid of in both the Senate and the Victorian Legislative Council, and the Victorian Parliament should give the lead, and the Electoral Matters Committee — the people to whom I am now speaking — should give the lead to the Parliament, which would then give the lead to the Commonwealth in recommending the complete elimination of these three contrivances, which were never necessary anyway.

Why are these contrivances a bad thing? You only need to read today's *Australian* newspaper to see why they are a bad thing. Senator Nick Xenophon, who is the greatest gamer of systems ever elected to any Australian

Parliament, you will notice this morning, has come up with a fresh scheme to rig the system in his own favour. Unfortunately — and I am sorry to have to say it — these three contrivances essentially lead to rigging the system. What should be done by the Victorian Parliament and by the Commonwealth Parliament is to get rid of the three contrivances and return the system to constitution. Section 7 of the Australian constitution says:

The Senate shall be composed of senators for each State, directly chosen by the people of the State, voting ... as one electorate.

Now that commands that the system be candidate based. What I object to about the present system is that it is not really a candidate-based electoral system, and therefore it really is unconstitutional. I am quite happy to go into the details of this if I am questioned about it.

In the case of Victoria it is not exactly the same, because back in 1899, when the founding fathers of the Australian constitution wrote those words, New South Wales had an appointed upper house and Victoria had an upper house not elected by universal adult franchise. Nevertheless it was the case from 1952 to 2002 — that is a period of 50 years — that every member of the Victorian Parliament was directly chosen by the people.

Unfortunately, when the system was brought into Victoria, the provision of directly choosing the members of the Legislative Council was not really implemented, because when Victorians go to the polls they do the same things as Australians do when they go to the polls for a Senate election. If you take the most recent Senate election in September 2013, the Australian people did not directly choose their senators. What they did was they distributed numbers of party machine appointments, according to a formula, which is popularly known as proportional representation, and exactly the same thing happened in November 2014 when the people of Victoria distributed numbers of party machine appointments to the Legislative Council. The reason why this controversy has arisen is that in the 2013 Senate election there was a case — one case only — of what I would call an odd result. It was an odd result, distinctly, that Ricky Muir should take the seat which really should have gone to the then existing senator, who was Senator Kroger. That was an odd result.

In November 2014 five odd results occurred, and if you read the submission by Antony Green, you can see that the five oddly elected are Jeffrey Bourman, Fiona Patten, Daniel Young, Rachel Carling-Jenkins and James Purcell. Now I am not gunning for these people. It is not my purpose to make their re-election more difficult, but I do acknowledge that it would have that effect. My reform would have the effect of making it more difficult for these members to get re-elected. I do not deny that; I do not avoid that. I simply say that my purpose in promoting this reform is to bring the Senate electoral system on the one hand and the Victorian Legislative Council electoral system on the other hand back to the constitutional commandment that the members be directly chosen by the people, as was the case in Victoria for those 50 years, as was commanded by the founding fathers of the Australian constitution. And I think I will complete my statement by saying I now invite your questions.

The DEPUTY CHAIR — Thank you, Mr Mackerras.

Ms PATTEN — Malcolm, it is Fiona Patten here. I am appropriately slapped for my how-to-vote card; thank you for that. It is interesting, but one of the suggestions that has been made — I think following some of your concerns — is allowing for an optional above-the-line vote so that you could vote for parties rather than individuals. In your opinion, would that make it even further unconstitutional?

Mr MACKERRAS — Yes, it would. I have no doubt about that. It would make it more unconstitutional because it would cement into the system the concept that it is a party list system which is to be permanent. Now if you do that, that is what you do. That is what the Senate would do if it adopted the report of the Joint Standing Committee on Electoral Matters, which, as you have seen, I denounced. Unfortunately I was the only person who did denounce that report, apart from people directly affected by it. I was the only independent commentator to denounce it. Other people, regrettably I am sorry to have to say, either promoted it or acquiesced in it.

Here I want to bring in the Proportional Representation Society. I have a lot of respect for the Proportional Representation Society. I am not a member, mainly because I am not actually a fan of PR per se, but I have a great deal of respect for the Proportional Representation Society because I have found their expertise on these matters to be impeccable and very valuable to me, and only wish that other independent analysts followed their view more than they do.

My recommendations are in fact identical to those of the Proportional Representation Society, save for only two things. There are only two respects in which I think differently from them in this matter. Respect number one: they are keen on Robson rotation. I do not wish Robson rotation to be imported into the system, because I do not wish to render how-to-vote cards completely out of the question. I do object to your how-to-vote card, Fiona Patten, as you have seen.

Ms PATTEN — I know.

Mr MACKERRAS — I do object to that, but I do not object to how-to-vote cards which merely recommend preferences in the squares beside the names of individual candidates. I do not object to that. For that reason I am not in favour of the Robson rotation system, which would render how-to-vote cards completely useless.

The other respect in which I disagree with the Proportional Representation Society is I do not wish to import countback as the mechanism for replacing casual vacancies. I think the current system should be retained. In all other respects my view is identical to that of the Proportional Representation Society. That society includes a significant number of extremely well-informed psephologists, shall we say, and that is why I am very regretful of the fact that I think Antony Green has had too much influence on the debate in question, but I am happy to tell you that if you go through these submissions very closely and you compare and contrast the five independent experts — and the people I am referring to Antony Green, Anthony van der Craats, Malcolm Mackerras, Chris Curtis and the PR Society, but the PR Society of course is several people — you will find that mine actually is a synthesis of the views of the experts, so if you adopted my recommendation, you could actually say that you were adopting the recommendation of the experts. Has that answered your question?

Ms PATTEN — Yes. Just following on, looking at your sample Senate, where you get rid of the box, you get rid of the line, you have the name of the party, and as you say the party could then choose the order in which they placed their candidates and there would be no rotation of any sort. In my opinion this would mean that the only opportunity for a party of any size to get up would be in such a case that you would have to run five candidates. You could not, as is often the case with smaller parties, run two or three candidates, you would need to run a full form of five.

Mr MACKERRAS — You would not have to, but in practice I agree, you probably would. So, for example, the Greens, let's say, might run four candidates and have 1, 2, 3, 4 for their candidates and no. 5 for the Labor candidate who might have a chance of taking the seat. But yes, in practice, parties would choose five candidates for a Legislative Council election and six for a half-Senate election. In practice that would be the case, yes.

Ms PATTEN — That's right, and if they did not, then the voter would be forced to vote for another party, so in that example of the Greens, a Greens voter would have to choose a fifth person outside the Greens ticket.

Mr MACKERRAS — If the Greens chose to stand four candidates, yes, they would have to recommend a fifth person as another candidate, but I think the Greens in practice would select five candidates, and I think the Labor Party and Liberal Party would do the same. And the coalition in Western Victoria Region, for example, and northern and Eastern Victoria Region. I think the Liberal-National coalition, their how-to-vote card would simply read 1, 2, 3, 4, 5 for the candidates, and the numbers would be beside the candidate's name so that, taking the example of the ballot paper I have in front of me: 1 — Bernie Finn; 2 — Stephen Reynolds; 3 — Wayne Tseng; 4 — Ann Bitans, and so forth. In other words, what I am saying is it should be a candidate-based electoral system. The how-to-vote cards would still be permitted of course, and in practice the how-to-vote cards would show 1, 2, 3, 4, 5, and you, the voter, could go 6, 7, 8, 9, 10, right up to the number of candidates, and that would be the way it would work, yes.

Ms PATTEN — That would mean that it would cost \$10 000 to run in an upper house region, for a party. If you were to run in all eight regions, obviously that would be \$80 000 just in registration fees. It seems to me that that would exclude a number of people, just by that very cost.

Mr MACKERRAS — I do not know that it would have this effect. The question for me is whether in the implementation of this principle — and I claim it is a principle — should we really be just saying, 'Well, the numbers are the numbers in the Parliament, and let's just accept this'? I have some difficulty believing that the big parties — the Liberal Party and the Labor Party and the Greens, because those three are the big parties —

will forever be willing to allow their seats to be stolen in the way that Senator Helen Kroger had her seat stolen from her by Mr Ricky Muir, who is now Senator Ricky Muir. I wonder for how long they are willing to allow that, bearing in mind that they can implement the principle that I am putting forward, which is a candidate-based electoral system. Given that this operates very well in the Hare-Clark system in the ACT and Tasmania, I think the Hare-Clark system is the appropriate system, but without the Robson rotation, which ruins the how-to-vote cards.

Ms PATTEN — I tell you, the most vicious preference conversations I have are with the major parties, as a small party. They all want our preferences, obviously.

The DEPUTY CHAIR — Are there any further questions?

Mr DIXON — Your interest in how-to-vote cards — do you see them as something essential to democracy or is there a practice? Why do you have what seem to be fairly strong views on how-to-vote cards?

Mr MACKERRAS — I do not object to how-to-vote cards, but in most democracies they are not necessary. In New Zealand, for example, if you go to the next New Zealand election, or the last one or the one before, you will notice that there are not a lot of people standing outside polling places with how-to-vote cards. Likewise in the ACT and in Tasmania, under the Hare-Clark system you do not have people standing around giving out how-to-vote cards because essentially the Hare-Clark system wrecks the how-to-vote cards anyway, and in fact they are banned. I do not see this as being a matter of principle — whether there should be how-to-vote cards or not — what I am saying simply is that the how-to-vote card is an established feature of the Australian electoral landscape. We have had them for about 90 years at the federal level, and I do not see anything wrong with them.

The reason why I objected to Fiona Patten's how-to-vote card is that it tells the voter, 'You must not fill in the space below the ballot line'; in other words it tells the voter, 'Do not exercise your right to vote for candidates'. That is what it says. That is why I object to it, and that is why I singled it out as being the how-to-vote card to which I objected, and I did not object to your how-to-vote card, Mr Dixon, by the way.

Mr DIXON — Thank you.

Mr MACKERRAS — Well, I did not. I am not sure if I included it in my collection, but I did not because the difference between your card and hers is that hers instructed the voter not to use their right to vote below the line 1, 2, 3, 4, 5 — a right given to the elector by the legislature. Yours did not do that. Yours simply said, 'There is no need to mark below the line'. That is a perfectly accurate statement, and I did not object to your how-to-vote card, but I did object to Fiona Patten's, for the reason I have described.

Mr DIXON — Thank you.

Ms PATTEN — I think the VEC should have picked that up.

The DEPUTY CHAIR — Mr Mackerras, thank you for providing that evidence to us today. You will be provided with a transcript from Hansard in a couple of weeks, and you can correct any errors in that transcript, but they need to be errors of typing rather than errors of substance, so again, on behalf of the committee, thank you.

Mr MACKERRAS — Okay, thank you.

Committee adjourned.