

ELECTORAL MATTERS COMMITTEE

Inquiry into the Conduct of the 2022 Victorian State Election

Melbourne – Thursday 10 August 2023

MEMBERS

Will Fowles – Chair

Evan Mulholland – Deputy Chair

Brad Battin

David Ettershank

Sam Hibbins

Emma Kealy

Nathan Lambert

Lee Tarlamis

Emma Vulin

WITNESS (*via teleconference*)

Malcolm Mackerras.

The DEPUTY CHAIR: I declare open the public hearings of the Electoral Matters Committee's Inquiry into the Conduct of the 2022 Victorian State Election. All mobile telephones should now be turned to silent.

I would like to begin this hearing by respectfully acknowledging the Aboriginal peoples, the traditional custodians of the various lands each of us are gathered on here today, and pay my respects to their elders, ancestors and families. I particularly welcome any elders or community members who are here today to impart their knowledge of this issue to the committee or who are watching the broadcast of these proceedings.

I am Evan Mulholland, Deputy Chair of the committee and Member for Northern Metropolitan. The other members of the committee who are here today are –

Emma VULIN: Emma Vulin, Member for Pakenham.

Nathan LAMBERT: Nathan Lambert, Preston.

Lee TARLAMIS: Lee Tarlamis, South-Eastern Metropolitan Region.

Sam HIBBINS: Sam Hibbins, Member for Prahran.

The DEPUTY CHAIR: And I understand David Ettershank is here as well.

I welcome Malcolm Mackerras to these hearings, and I will remind you that all evidence taken by this committee is protected by parliamentary privilege. Therefore you are protected against any action for what you say here today, but if you go outside and repeat the same things, including on social media, those comments may not be protected by this privilege. The committee does not require witnesses to be sworn, but questions will be answered fully, accurately and truthfully. Witnesses found to be giving false or misleading evidence may be in contempt of Parliament and subject to penalty.

All evidence given today is being recorded by Hansard and is also being broadcast live on the Parliament's website. You will be provided with a proof version of the transcript for you to check as soon as possible. Verified transcripts, PowerPoint presentations and handouts will be placed on the committee's website as soon as possible.

Mr Mackerras, I invite you to proceed with a brief 5-minute opening statement to the committee, which will be followed by questions.

Malcolm MACKERRAS: Hello. My name is Malcolm Hugh Mackerras, and I am appearing in a private capacity. I do have a university job in Canberra, but I am appearing in a private capacity. I have written a submission, I believe a lengthy submission, which is actually the first to appear on the website.

I sent yesterday a little speech, but I thought it would be better for me just to send it and you can read this little speech and then you can ask me questions. Unless you want me to read the speech, I think it is better for me to assume that you have read it and just want to ask me questions.

The DEPUTY CHAIR: Excellent. Well, I am happy to pass on to someone else to have a question first. Maybe perhaps Mr Lambert?

Nathan LAMBERT: Thank you, Chair. I am just interested – you are vehemently opposed to Robson rotation but otherwise very much in favour of the Tasmanian system. What is the complaint about Robson rotation?

Malcolm MACKERRAS: It is a system which applies only when a lower house election, with Hare-Clark, is held separately. When you have a separate election – as in Tasmania, as in the ACT – you can ban how-to-vote material and you can have Robson rotation. But in the Victorian system that I am proposing, the Legislative Council and the Legislative Assembly election will be held on the same day. The Legislative Assembly ballot paper is arranged in an order that enables parties to hand out how-to-votes for the Legislative

Assembly, and I am proposing therefore that the Legislative Council not have Robson rotation in order to allow political parties to hand out the normal how-to-vote material that they now do, and with the Legislative Council, simply show one, two, three, four, five for the candidates of the party in question. So because the elections are held on the same day, because how-to-vote material is regular and normal customary practice – except under Hare-Clark in Tasmania and the ACT – I think Robson rotation is not a good idea.

Nathan LAMBERT: Yes, all right. I was interested in it because, you would appreciate, that elsewhere in your submission, you argue against – you know, that is a standard reason for doing it. It is certainly, from the perspective of political parties, an arrangement that allows you to hand out how-to-votes, but I suppose elsewhere in your submission you are less supportive of many other things that are introduced to the system to favour political parties. But anyway, I take your answer.

Malcolm MACKERRAS: Well, I dislike political parties rigging ballot papers. Now in my opinion the Senate ballot paper is a rigged ballot paper, because it has been rigged to ensure that big parties get their senators elected in the correct order. That is why I describe it as being a rigged ballot paper. Now what I am proposing is a Hare-Clark system which does not involve rigging, except I do think the party should be allowed to arrange the candidates in the order wanted by the party and agreed to by each of the candidates of the party.

Nathan LAMBERT: What is the empirical basis for the proposition that an above-the-line system favours larger parties over smaller ones?

Malcolm MACKERRAS: Well, yes, smaller parties, particularly, only win one seat. So in Tasmania, for example, the Greens concentrate all their publicity on the one candidate that they can get elected, so that Rosalie Woodruff, for example, in Franklin, gets all the publicity. That makes her in effect the number one candidate, although not strictly speaking so, and that is the way the system works. That is fine in Tasmania, where the elections are held separately – that is, the Legislative Council and Legislative Assembly elections are not held on the same day – and in the ACT, there is no Legislative Council. Whereas in Victoria, what I am proposing is that the basic arrangement for having the two elections on the same day with the parties allowed to hand out how-to-vote material should continue as previously.

Nathan LAMBERT: Yes, I am just wondering if there was empirical support; if we think about the original switch to above-the-line voting, your argument is that minor party vote share should have fallen in 1984, is that right?

Malcolm MACKERRAS: Sorry, say again?

Nathan LAMBERT: You are saying that the switch to above-the-line voting is a mechanism by which major parties increase their vote, so therefore when it switched, if I remember correctly, in 1984, the minor party vote should have dropped as a result; is that what your hypothesis would suggest?

Malcolm MACKERRAS: Well, my argument is that in 1984, the introduction of above-the-line voting was sold as a way of making it easier for people to vote. But when one looked at it more thoroughly, one realised that that was not really the case. The purpose of above-the-line voting is to rig the ballot paper to make it more difficult for voters to vote for candidates other than the first candidate and make it very, very easy for the candidate who is number one to get the vote. So that, for example, at the first election in Queensland in 1984, you put your number one above-the-ballot line for the National Party and you are voting first preference for Ron Boswell. If you want to vote for the second third or fourth of that party group, you have to go to a lot of trouble to do that. That is not as bad in Victoria at the moment because you are only required to do five. But the whole system of above-the-line voting has, in my opinion, been a rig by the political parties to get their candidates elected in the correct order – that is, the big political parties. The smaller ones, it does not matter so much, because even if you had a Robson rotation, you could make a de facto first candidate by giving all the publicity to that candidate.

Nathan LAMBERT: Yes, all right. Look, we will not take up too much of the committee's time. I suppose I would just come back to the observation that a Robson rotation is obviously a potential solution to that issue that you feel strongly about. Just, through you, Chair, a couple of others quickly. Numbering at least five boxes as a consistent rule is an interesting suggestion. Is there any particular reason for the choice of the number five?

Malcolm MACKERRAS: That is the number you are electing to the Legislative Council. That is the current below-the-line vote requirement. Therefore I think that should be retained, because what I am suggesting is that whereas the present system gives the voter an easy below-the-line vote – one, two, three, four, five – in practice this whole business of rigging by the above-the-line vote means that you never get more than 10 or 11 or 12 per cent at the most voting below the line. Therefore the correct way to get that figure up is to take away the above-the-line option altogether. That is what I am proposing.

Nathan LAMBERT: Yes, totally. I suppose there just does not necessarily need to be a direct mechanical connection between the number of spots available and the number of boxes they fill out. Obviously if they fill out boxes for people who – well, the vote could still exhaust regardless. There will still be exhausted ballots if people are numbering five boxes.

Malcolm MACKERRAS: Well, that does not matter. That is the choice of the voter. If the voter just chooses to vote one, two, three, four, five and then nothing further, that is the choice of the voter not to number further.

Nathan LAMBERT: I was just observing that the five is absolutely arbitrary, but anyway –

Malcolm MACKERRAS: What I would say also is if you adopt my scheme – look, in my opinion, you would make Victoria's democracy the best democracy in the country, because you would create in Victoria a unique situation whereby the two houses are elected together on the same day and the two ballot papers are the same in principle in the sense that you are told to number one, two, three, four, five and that is a formal vote. You do not have to go beyond that. It is nice and simple. It is easy to explain. There are none of the complications that we get under the present systems, federal and state. At the moment we have this dreadful federal Senate ballot paper business with all the lies told by the Electoral Commissioner and the polling officials about how you need to do this and that which you do not need to do because the voting informal positions are not properly explained. Mine would be very simple, and it would reduce the informal vote. For example, in Werribee, where you had to number 15 squares, and in Point Cook, where you had to number 15 squares, you had these informal votes of 10 per cent or so. Now, imagine my ballot paper being adopted. You could have the western region, which I have given my model ballot paper. You are told to number five. You are told it is informal if you do not. You are told you can go beyond five if you want to. You are told you do not have to stay within any particular party – it is not rigged in favour of any particular party or its machine. And then, let us say, on the Assembly ballot paper you are not required to number 15; you are required to number only five. The informal vote of 10 per cent in Werribee, I think, would have been about 4 or 5 per cent if my scheme had been adopted, because you would not have gotten the mistakes that people make when they are told they have got to number 15 squares.

Nathan LAMBERT: All right, thank you. I would certainly agree. The simplicity of it does recommend it. I am going to just pass you over, Mr Mackerras, just because we are having to pass an iPhone across the committee here. I am just going to pass you to the next questioner, but thank you.

Malcolm MACKERRAS: Do you mind me asking who you are?

The DEPUTY CHAIR: That was Nathan Lambert, the Member for Preston. My name is Evan Mulholland, I am the Deputy Chair of the Electoral Matters Committee and Member for Northern Metropolitan Region.

Malcolm MACKERRAS: Yes, righto. And you are a Liberal. Yes, good.

The DEPUTY CHAIR: Yes, that is right.

Malcolm MACKERRAS: Your colleague Brad Rowswell told me recently that I should meet you.

The DEPUTY CHAIR: Oh, very good. I am happy to talk to you now. I just want to ask for your views on the inclusive Gregory method in contrast to a possible shift that has been canvassed to a weighted inclusive Gregory method for single transferable votes. Do you support this, or do you have any views on this?

Malcolm MACKERRAS: Yes, I have a strong view, which is that I fully support what Kevin Bonham says, I fully support what Antony Green says, I fully support what the Proportional Representation Society says and I fully agree with the way Western Australia has done away with this particular distortion that still exists in

Victoria and for the Senate elections. As I said, recently I was invited to a round table in Canberra for the federal thing, and Kevin Bonham explained all this in detail. I said, 'Look, I don't fully understand it all, but I fully support what Kevin Bonham has said.' In fact, although he and I disagree about all sorts of things, we fully agree with that, so I think when you do a proper, full reform in Victoria, you should adopt Kevin Bonham's proposals.

The DEPUTY CHAIR: Excellent. Thanks for that. I am just going to pass you on now to Sam Hibbins, the Member for Prahran.

Sam HIBBINS: Thank you, Chair. Sorry, you may have touched on this before in the previous answer, but just in terms of your proposal for below-the-line voting in the upper house and that one to five is a legal vote, won't that lead to just massive exhaustion of votes and a very high percentage of votes just not being counted?

Malcolm MACKERRAS: It won't lead to massive exhaustion; it will lead roughly to what you have in Tasmania. Bear in mind also that the one to five is the requirement for both houses under my scheme, and it won't lead to massive exhaustion. But anyway, if it does, I say that is the decision of the voter.

Sam HIBBINS: But in terms –

Malcolm MACKERRAS: I don't think the exhaustion thing is as important as people say. I mean, I completely, emphatically disagree with the view that people are being disenfranchised if they only go one, two, three, four, five. They are not being disenfranchised; they are simply voting as directed. They are taking the number of preferences actually required for the formal vote, and if they choose not to go further, well, that is the choice of the elector. The votes should be allowed to exhaust rather than be told you have got to express preferences that you may not necessarily have and may not want to express.

Sam HIBBINS: A couple of points on that. Number one: you accept that if the Hare-Clark system was in the Victorian upper house, there would be a lot more candidates on the ballot paper than in Tasmania, wouldn't there, given the larger number of parties?

Malcolm MACKERRAS: I would think there would be twice as many parties and twice as many candidates as in Tasmania. But the ballot paper would still be a much prettier ballot paper than the present ballot paper and would certainly be vastly prettier than the Senate ballot paper, in addition to being honest. But I agree. I think you would find about twice as many candidates in the Victorian Legislative Council election as you currently get in Tasmania or the ACT.

Sam HIBBINS: And you do not see exhaustion – I mean, you said, 'Well, that's the will of the voter if they only vote five', but isn't that similar to saying, 'Well, given the higher amounts of informal votes when there is a large amount of candidates –

A system can produce a high amount of informal votes, a high amount of exhausted votes. Isn't that kind of like saying, 'Oh well, if the voter did not fill out the ballot formally, that is their choice'?

Malcolm MACKERRAS: No, I am not saying that at all. What I am saying is that in the case of the informal vote, where you get these big informal votes, it is not people protesting against the system. I mean, it is people making mistakes. It is quite unreasonable to tell the elector of Point Cook or the elector of Werribee that 'You must number 15 squares.' It is completely unreasonable. That leads to mistakes. That is why the informal vote is so high in the seats like that. It would be very, very reasonable to ask people to number one, two, three, four, five for both houses. The exhausting ballot paper would not be all that great, and to the extent that it exists it is because the electorate chose that way.

Sam HIBBINS: A final question, just to get to the heart of your proposal –

Malcolm MACKERRAS: Do you mind me asking you a question after you ask me my question?

Sam HIBBINS: Sorry?

The DEPUTY CHAIR: Participating in the committee means that the members ask the questions. I will just allow Mr Hibbins to continue.

Sam HIBBINS: Thank you. Just finally, what your proposal is really getting at is what you would really like to see is an electoral contest between candidates of the same party when there are multiple seats up for grabs. That goes to the heart of your proposal.

Malcolm MACKERRAS: Well, no, I am not saying that, because I am allowing the parties to arrange the candidates in the order wanted by the party, and the party how-to-vote material would list the candidates one, two, three, four, five down the ballot paper. The great majority of people would do that. I am not actually explicitly encouraging a contest between candidates of the same party. What I am saying is that – this is an important point – fairness to the voter requires that the act of voting for this candidate should be as difficult as the act of voting for some other candidate. In respect of every candidate, the act of voting for this candidate is of the same degree of ease as the act of voting for some other candidate. I have this dreadful cynicism. If you wanted to vote for Lidia Thorpe, for example, you just put a one above the line for the Greens party. But if you wanted to vote for any of the candidates and not Lidia Thorpe, you would be told that you have got to number one, two, three, four, five, six, all the way up to 12, so the act of voting for Lidia Thorpe is vastly, vastly easier than the act of voting for any other candidate from the Greens group. Now, under my scheme: okay, the first candidate would be favoured because the how-to-vote material would rank them. In this particular case, the how-to-vote Greens would have put one for Lidia Thorpe and two, three, four, five, six for the others. That would help her in practice. But the point is the act of voting for her would have the same degree of difficulty as the act of voting for other candidates in the same group.

Sam HIBBINS: Okay. Thank you.

Malcolm MACKERRAS: Therefore, I am not actually implicitly encouraging party indiscipline. What I am saying that is fairness to voters requires what I am proposing and the Senate system in particular and to a much lesser extent the Victorian system itself in particular. That is why I call it a rig. It is rigged.

Sam HIBBINS: Okay. Thank you. Yes, sorry, I understand now. I understand the principle there.

Malcolm MACKERRAS: If you vote for the leader, ‘Just put a 1 up there’. If you vote for the other candidates: ‘Oh, you’ve got to number to 12.’ You are told your vote is informal if you do not go to 12. That is what the ballot paper says.

The DEPUTY CHAIR: Mr Ettershank, do you have a question?

Malcolm MACKERRAS: Sorry?

The DEPUTY CHAIR: I have just got David Ettershank, Member for Western Metropolitan, to ask a question.

David ETTERSANK: I do not know if Mr Mackerras can hear me or not.

The DEPUTY CHAIR: He can.

David ETTERSANK: Fantastic. Looking at your very extensive submission – thank you so much for that: I am perhaps not understanding the totality of your proposal, but it would seem to me in the context of the Legislative Council the net effect would be that there would be almost no-one elected from the smaller parties. Effectively, if we replayed the 2022 election using your rules, we would end up with I think possibly no-one apart from Labor, the current Liberal–Nationals and the Greens. Am I reading that correctly?

Malcolm MACKERRAS: I have to admit to you, yes. I do admit this to you: under my system you would not have been elected because the Greens party would have won that seat. The seat that you won would have been won by the Greens. I admit that.

David ETTERSANK: And that would be across the state. I was flattered to see my name mentioned in your submission. That was very kind of you, Sir. I am correct in understanding that there would literally be no-one in the Legislative Council apart from those parties?

Malcolm MACKERRAS: Well, Mr Somyurek would have been elected for Northern Metropolitan Region. Now, in Tasmania there is an independent elected for the division of Clark. What you are really saying is I am trying to confine the Council to Labor, Liberal, National and Greens. That is in effect what you are saying.

David ETTERS HANK: No, no, no –

Malcolm MACKERRAS: Well, what else are you getting at?

David ETTERS HANK: I am not impugning your character there. I am simply trying to understand the net effect if your proposal was adopted.

Malcolm MACKERRAS: Well, my answer to your question is to admit to you what I have just said about you personally, and I admit that. My proposition is this: I am not in the business of constructing a party system. I am not in that business at all. What I am in the business of doing is constructing a good system – good for the voters, fair to the voters – giving voter empowerment and, in my opinion, being fair between parties. But I am not in the business of conducting a party system and I am not in the business of constructing an electoral system for the purpose of constructing a party system. I am in the business of designing a good system, and after that I simply say let the chips fall where they may. I can understand why you would say what you are saying, but as far as I am concerned, it is not a question of me being hostile to you or your colleague in the Legislative Council other than to admit to you, and I do admit to you, that under my scheme you would not have been elected and your other party member would not have been elected. I admit that, but I am not in the business of discriminating between parties, nor am I in the business of creating a necessary overall proportional representation. For example, the Greens got four seats out of 40, which is 10 per cent, and they got 10 per cent of the vote. You could therefore say this present system is perfect because it gave the Greens exactly the same percentage of seats as they got votes, and then you could go on to say, ‘Oh, look, you, Mackerras, would have given the Greens two more seats at the expense of the Legalise Cannabis Party. It would have over-represented the Greens.’ Well, I say I am not in the business of caring which particular party or which particular candidate gets elected under my scheme. I am simply saying: I am proposing a good scheme, which has operated in Tasmania very successfully since 1909. It is the best proportional representation system in the world, and it has been since 1909. Beyond that, I simply say let the chips fall where they may, and I am completely indifferent as to which particular party might gain this or that seat. I am afraid that is the answer I have to give to you.

David ETTERS HANK: That is perfectly acceptable. Thank you. Can I just clarify one other point: am I understanding correctly that effectively what you are saying is that if your approach is not adopted for the Legislative Council, your preference would be that the current system is retained?

Malcolm MACKERRAS: Yes, well, I am afraid that is my view. I say that because the present system has significant virtues. I mean, contrast it to the Senate system. The Senate system is completely without virtue or merit of any kind. You are told to vote for up to six parties above the line when a single vote is a formal vote, and you are told to vote for 12 below the line. It is all completely rigged. The Legislative Council of Victoria’s system by contrast is rigged in one sense. They make it easy for you to put a 1 above the line – that is true; they do – but on the other hand, you are allowed to number one, two, three, four, five below the line, and that is reasonably easy. In fact it is the easiest below-the-line version of all the systems, because the below-the-line vote in the Senate is 12, in New South Wales it is 15, in South Australia it is 12 and in Western Australian under the new system it will be 20. So Victoria’s one, two, three, four, five below the line makes it the best of these upper house systems. Does that answer your question?

David ETTERS HANK: It does. Thank you very much. Chair, that concludes my questions. Thank you.

The DEPUTY CHAIR: Excellent. Thank you, Mr Mackerras. I believe that unless Ms Kealy is there –

Emma KEALY: If I can ask a quick question, please. Thank you very much, Mr Mackerras, for sharing your expertise around Australian voting systems and global voting systems. I really appreciate it. I just wanted to quickly ask a question, and I realise we are very short on time. We heard evidence earlier today around our current system being prone to vote whispering, and I would just like to understand your proposal in terms of what is the risk of your proposal being corrupted by a vote whispering system whereby minor parties or individuals can group together in a preference deal that may not end up with elected officials that represent the voters’ intent?

Malcolm MACKERRAS: I am sorry, but the audio is defective and I did not really comprehend your question.

Emma KEALY: Evan, can you translate for me, please?

The DEPUTY CHAIR: No worries. Emma was just asking about the voting system and that we have heard from witnesses about preference whispering and people being able to arrange deals between parties, and we wanted to know whether under your model that would still be possible?

Malcolm MACKERRAS: No, certainly not. Certainly not. There are no preference whisperers in Tasmania. There are no preference whisperers in the ACT. No, of course not, because what I am saying is that the voter's vote is his or her vote. You are not giving your vote to anybody – certainly not. I take this view: my objection to – I should not name names, but my objection to the proposals by Antony Green, for example, is that in my opinion he is basically saying all that matters is we have got to put Glenn Druery out of business. That is really all he is saying, and that is pretty much what Kevin Bonham is saying and that is what quite a lot of the submissions are saying: 'Just put Glenn Druery out of business – that's all we need to do.' I do not agree with that at all. I say construct a good system, and when you construct a good system it will have the effect of putting him out of business. That is what I am doing: I am constructing a good system. It will have the effect of putting Glenn Druery out of business, but I am not doing it specifically for that purpose, and I am not in favour of putting him out of business if in the act of putting him out of business you replace a bad system with another bad system. That is precisely why I objected so strongly to the Senate voting system. The federal politicians have made it more difficult to vote for Senate elections than it was before, and now they have put Glenn Druery out of business; that is true. The point is the sole purpose of what they did, the entire purpose of the so-called reform of the Senate voting system, the sole purpose of it, was to put Glenn Druery out of business. Now, I am not in favour of that. They replaced a bad system with a worse system purely for the purpose of putting him out of business. Well, what I am saying is I am replacing quite a good system with an excellent system, and it would have the effect of putting him out of business.

Emma KEALY: Thank you.

The DEPUTY CHAIR: Thanks, Emma. And thank you, Mr Mackerras, for your contribution to the committee. It certainly helps us go a long way to reviewing the 2022 election and goes a long way to helping us form important opinions for our report, so each witness is valued.

Malcolm MACKERRAS: Do you mind me asking, is Emma the Member for Lowan?

The DEPUTY CHAIR: Yes.

Malcolm MACKERRAS: Emma is the Member for Lowan?

The DEPUTY CHAIR: Yes.

Malcolm MACKERRAS: It is nice to know all of you.

Emma KEALY: Lovely to meet you virtually.

The DEPUTY CHAIR: Thank you so much, and I will close the meeting.

Committee adjourned.