

ELECTORAL MATTERS COMMITTEE

Inquiry into Victoria's Upper House Electoral System

Melbourne – Wednesday 21 May 2025

MEMBERS

Dylan Wight – Chair

Chris Crewther – Deputy Chair

Jacinta Ermacora

David Ettershank

Emma Kealy

Nathan Lambert

Sarah Mansfield

Evan Mulholland

Lee Tarlamis

WITNESS (*via videoconference*)

Malcolm Mackerras.

The CHAIR: I declare open the public hearing for the Electoral Matters Committee's Inquiry into Victoria's Upper House Electoral System. All mobile phones 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 is gathered on today, and pay my respects to their ancestors, elders 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 the proceedings.

I am Dylan Wight, the Member for Tarneit. The other members of the committee that are here today are Christopher Crewther, Deputy Chair and the Member for Mornington; Nathan Lambert, the Member for Preston; Sarah Mansfield, a Member for Western Victoria; and also Lee Tarlamis, the Member for South-Eastern Metropolitan Region.

I would like to welcome Mr Malcolm Mackerras AO. Welcome.

All evidence given 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 the same privilege. The committee does not require witnesses to be sworn, but questions must 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.

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You will be provided with a proof version of the transcript to check as soon as it is available. Verified transcripts, PowerPoint presentations and handouts will be placed on the committee's website as soon as possible.

Malcolm, I might invite you to proceed with a brief, maybe 3- or 4-minute opening statement to the committee, which will then be followed by some questions up until roughly 20 past 9.

Malcolm MACKERRAS: I begin by saying I have written you a letter, and the critical thing to understand about that letter is my reference to the Western Australian general election held recently. The Western Australian election held recently has changed my mind on the appropriate reform for the Victorian Legislative Council. In one respect my mind is not in any way changed. My first genuine democratic request to the Parliament is that the present system should apply at the November 2026 election. That is my first request – that the present system should apply at the November 2026 election. My second request is that there should be a referendum to accompany that general election. What that referendum should do is the following: firstly, it should insert into the constitution a requirement of Victoria, such as exists in Western Australia, that every member of the Parliament shall be directly chosen by the people. That should be inserted and should only be capable of repeal by having another referendum. That is very important in principle.

The next thing the referendum should do is describe the Western Australian Legislative Council system, because I have come to the conclusion that what I originally suggested is not ideal. The sensible thing for Victoria to do is simply to copy the new system for the election of members of the Legislative Council of Western Australia – simply copy it precisely, literally. Let me explain it to you. Firstly, there are 37 members. Secondly, they are elected from the state voting as one electorate. Thirdly, there is an honest ballot paper in the election of members of the Legislative Council in Western Australia. Fourthly, the number 37 is a very sensible number. The way I proceed is to say this: you might think it is a bit odd that the size of the Legislative Council of Victoria should be the same as in Western Australia with its much smaller population. My answer to that is that it is more sensible to compare with New South Wales. I am proposing this: the referendum in question should ask the people to approve an increase in the size of the Legislative Assembly by three members, changing from 88 to 91, while also reducing the size of the Legislative Council from 40 to 37. The politicians

would be asking the people to vote for a reform which leaves the number of politicians exactly unchanged but simply shifts three seats from the Council to the Assembly. The argument for the Council is that you just say, quite simply, that there were some criticisms of the new Western Australian system but that those who supported the introduction of that system now assert quite clearly that the operation of the system at the March election in Western Australia has been a resounding success. It has been so successful that I argue it would be very sensible for Victoria to simply copy it.

On the subject of copying, in my letter I described how different the procedures are for polling officials between the federal Senate and the Victorian Legislative Council. My reason for doing that is because, unfortunately, we have people like Antony Green and Kevin Bonham who love this Senate system. I think their love for it is purely because they own it. I think it is an absolutely disgraceful system. It is completely disgraceful. The public does not realise it is disgraceful, because the public does not realise that the public is being told lies by polling officials. That is the case. The legislation requires the electoral commissioner at the federal level to pump out misinformation about Senate voting, and the electoral commissioner then requires polling officials to tell lies to voters. I have given a lot of details of these lies. The essential point is this: the ballot paper is completely dishonest. It says you must number at least six boxes above the line or 12 below the line. It is a fact that a single first preference above the line is required by law to be counted as a formal vote, and six below the line is required by law to be counted as a formal vote. Therefore it is a lie to say you need to number at least six boxes or at least 12 boxes.

No state has copied the federal Senate system. In fact the states of New South Wales, South Australia and Western Australia have devised a sensible ballot paper which is honest and which permits the voter to put a single 1 above the line and tells the voter that that is a formal vote, which is what should be the case. All I am suggesting is Victoria should copy Western Australia. Then the four states of New South Wales, Victoria, South Australia and Western Australia would all have the same principle in their ballot papers – namely, stating that a single first preference above the line is counted as a formal vote. When that is done what should happen is that the Senate electoral system should be reformed, and it should be done during the current Commonwealth Parliament. In other words, then you would have all five upper house jurisdictions with exactly the same principle – namely, telling the elector that a single first preference above the line is counted as a formal vote, which is in fact the case for the federal level. It is just that people are not told that.

I think I have said what I need to say, but one thing I will add is this. Comparing New South Wales and Victoria, I am proposing that the Victorian Legislative Assembly have 91 members. New South Wales has 93 members. The average number of electors in New South Wales for each lower house member is 61,236. If you had 91 in Victoria, the average would be 50,333. The average for the New South Wales Legislative Council for 42 members is 135,594. For Victoria, with 37, it would be 123,793. New South Wales and Victoria would then bear a sensible relationship with each other. I would actually argue that the Victorian system would then be superior to that in New South Wales, being made superior by the fact that the people endorsed it at a referendum, including the important statement of principle that every member shall be directly chosen by the people. I think I have said what I need to say, and I invite questions.

The CHAIR: Fantastic. Thank you for that outline, Malcolm. I am going to go to the Deputy Chair, Christopher Crewther, first.

Chris CREWTER: Firstly, Malcolm, thank you very much for your evidence today as well as your comprehensive submission – or, should I say, submissions. We talked a little bit about the group voting tickets and the potential abolishment of that a couple of days ago. Do you see any potential perverse outcomes from abolishing group voting tickets while keeping the same system as we have now?

Malcolm MACKERRAS: If you did that, what you would do is cut out of the Parliament all minor parties. The Parliament would then consist of Labor, Liberal, National and Greens. There would be the occasional independent winning a lower house seat, but you would not get any independents or minor parties in the upper house. Each region would return only Labor, Liberal, National and Greens. That is what in fact would happen. If you want to cut out minor parties, go ahead and do that. As far as I am concerned, that would be an act of rigging the system.

Chris CREWTER: Do you believe that such a system would increase the number of Greens representatives, though?

Malcolm MACKERRAS: Yes, it would.

Chris CREWITHER: More broadly, do you believe that a referendum is definitely required for a change of regions as against a special or super majority?

Malcolm MACKERRAS: Yes, I do. A referendum is required, and it is desirable. It is both required and desirable. I think it would be highly desirable to have the people install this system. Then you could say how proud you are of Victorian democracy that the people have installed this system. So it is both necessary and desirable.

Chris CREWITHER: In your submission you oppose appointment to the Legislative Council by parties or any change that would allow for that for the Legislative Assembly. Can you please expand upon that?

Malcolm MACKERRAS: Once you put in a provision that every member shall be directly chosen by the people, what you would do is guarantee that vacancies in the Legislative Assembly shall be filled by having by-elections. That has been the case, we know, but the point is it is possible at present to do away with by-elections. In the Legislative Council it would mean that casual vacancies are filled by recounting votes from the previous election. That is what is done in Western Australia for the Legislative Council, that is what is done under the Hare-Clark system in the ACT and Tasmania and that is the proper way of doing things. It is the proper way of doing things to recount votes when you have a proportional representation system and to have by-elections when you have single member electoral districts.

Chris CREWITHER: Thank you. Do you see any issues with a statewide system in terms of in the Legislative Assembly there are, as you know, more members from metropolitan Melbourne than there are from non-metropolitan Melbourne? Do you think there is a potential problem in the upper house in terms of it not counterbalancing that overly metro focus in the Legislative Council through a statewide system?

Malcolm MACKERRAS: I did see that argument, which is why my second-last letter to the committee proposed to have two metropolitan regions and one for the remainder of the state. I do not withdraw that exactly. That would be quite a sensible thing to do – and elect 12 from each of them and have 36 as the number. That is what I proposed. I certainly do not withdraw that. It is just that I increasingly have come to the view that the Western Australian thing really is the desirable thing to do. I have not really changed my position. I have simply changed from thinking that one way of doing it is better than the other to the reverse opinion. I just think that the Western Australian example now is such that we should say what the Western Australians say, namely local representation is provided in the Assembly, and in the Council it is better to elect from the state voting as one electorate. That would help minor parties to win seats; you would have minor parties winning seats.

Take, for example, the Animal Justice Party. The Animal Justice Party has a member in the Legislative Council of New South Wales because 21 are elected. It has now a member in Western Australia because 37 are elected. It also has one in Victoria. The election of the Animal Justice Party member in Victoria creates great objection. I do not share that objection. All I say is, unfortunately, in Victoria, because only five are elected for each region, the Animal Justice Party can only get a member by what they call ‘gaming the system’.

What you have done by having this peculiar system is employ people like Glenn Druery. I do not share the view that others have about Glenn Druery. As far as I am concerned, Glenn Druery is a great democrat. I say that seriously, because he understood perfectly well that above-the-line voting corrupts the system of the single transferable vote by making it a party system when the single transferable vote is a candidate-based system. He then also understood that just as the big parties have put this idea in place for their own benefit, namely to guarantee the order of election of their candidates shall be the same as the machine order, he could find ways of helping minor parties do that. For that reason, I do not object at all to his activity; in fact I commend his activity. What I object to is the idea of doing what was done for the Senate, namely passing a piece of legislation, rigging the system and doing it for the sole purpose of putting him out of business. My proposals would have as a by-product that he would go out of business. I am quite happy to accept that. I am quite happy to accept the idea of having a genuine democratic reform, a by-product of which is that Glenn Druery goes out of business. But until the committee finds a way to do that, all I can say is I think the present system should apply at the forthcoming election in November 2026. That is my first request: you must not undo the present system except by having a genuine democratic reform.

Now, on having a genuine democratic reform, I know I could argue for my original proposal of having three regions – two metropolitan and one for the rest of the state – but I am increasingly coming to the view that it is better to do exactly what the Western Australians have done.

The CHAIR: I am just conscious of time, Malcolm. Are there any other questions from committee members, pressing questions? A quick one from Nathan Lambert, the Member for Preston.

Nathan LAMBERT: Just a quick one for you, Mr Mackerras. You said that 37 was the ideal size of our upper house. It is a prime number, I suppose – it is not often one that comes immediately to mind. Why 37?

Malcolm MACKERRAS: Well, the argument is to have an odd number.

Nathan LAMBERT: There are a lot of odd numbers.

Malcolm MACKERRAS: But the point is that Victoria has even numbers for both the Assembly and the Council – that is, you have 88 and then you have 40. Western Australia has odd numbers for both chambers. Now, it is not terribly important – it is not a matter of great importance – but the theory of proportional representation is that the number should be an odd number because otherwise you can get a situation in which a majority of votes does not create a majority of seats –

Nathan LAMBERT: Yes, got it.

Malcolm MACKERRAS: It is not a particularly important point –

Nathan LAMBERT: So if went to 89 and 39 or something –

Malcolm MACKERRAS: but for what it is worth I am proposing the number of Senators elected at a half-Senate election should increase from six to seven. In the case of Western Australia, they actually increased it from 36 to 37, and it seems to me that was a sensible thing to do. I think while it is not a particularly important question whether it be 36 or 37 or whatever, I just think it would be desirable to have an odd number. But I also think it would be desirable to create three more seats in the Legislative Assembly, increasing it from 88 to 91. And you could get the people to vote for that by selling them the argument that we are not asking for more politicians, we are simply asking that minor parties should be allowed to win seats without the need to game the system, without the need to employ the Glenn Druerys of the world; that is all we are asking. I cannot see any reason why any political party would oppose it, would advocate a no vote. I really think it would be carried very, very, very easily.

The CHAIR: Thank you. Just being conscious of time, Mr Mackerras, we will have to leave it there. Thank you very much for your submission – a very detailed submission – and thank you for appearing today to give evidence. If you have got anything else to impart to the committee, please do not hesitate to send it through.

Malcolm MACKERRAS: I do not think I have anything further to say beyond what I have said.

The CHAIR: Beautiful. All right, fantastic.

Malcolm MACKERRAS: I think my position is terribly clear. As I say, I admire the work of Glenn Druery. This is where I differ from all these other people. They all condemn him and say all that sort of business. Well, I say the machines of big political parties, by insisting on above-the-line voting, have created that circumstance, which was done for their own benefit, and he thought of ways of helping minor parties to do that. And I think the way to provide minor party representation is to increase what they call district magnitude – in the case of Victoria that would mean increasing district magnitude from five to 37; in Western Australia the district magnitude was increased from six to 37 and in New South Wales it was increased to 21 – so minor parties can win seats without the need to game the system.

The CHAIR: Understood, but we do have to leave it there, sorry, because of time. Thank you very much, and thank you for appearing today.

Malcolm MACKERRAS: Thanks very much.

Witness withdrew.