

CHAPTER ONE: DISHONESTY THE ONLY POLICY

Children are often taught the precept that honesty is the best policy. It is sometimes slightly varied to say that honesty is *the only policy*.

Unhappily, in recent times, federal politicians have varied it again. They behave as though they think dishonesty is the only policy.

Both the present Senate voting system (operating in 2016 and 2019) and the immediate past system (1984 to 2014) have been dishonest in that both have pretended senators are directly chosen by the people when they are not. Australian senators are appointed by party machines even when technically “elected” in a thoroughly rigged system.

Of the six Senate electoral systems operating since Federation these recent two are the worst. Under the first four voting methods senators were directly chosen by the people and the best of those (by far) was the single transferable vote system operating at elections from 1949 to 1983, inclusive. The changes made by the Chifley Labor government in 1948-49 were the only genuine democratic reforms. The Chifley system was “proper” STV. It complied with the direct-election requirement of the Constitution in that it was genuinely candidate-based, therefore genuinely democratic. The other four (in 1919, 1934, 1984 and 2016) were “reforms” designed to improve the electoral prospects of the party in power.

Post 1948-49 proportional representation systems are described by me as “Democratic single transferable vote” (1949-83) and, pejoratively, as “Stasiocratic STV in first unconstitutional camel” (1984-2014) and “Manipulative STV in second unconstitutional camel”, the present system. For my justification of the word “unconstitutional” readers are invited to turn to my chapter *Judges Exercise Their Power*. A camel is an animal designed by a committee so that description should apply. The two unconstitutional systems were designed by committees composed of politicians bent on pursuing the short-term interests of the party machines that gave them their seats.

My *Introduction* has already explained why I think of the Hawke system as stasiocratic and the Turnbull system as manipulative. In my next chapter *A Brief History of Senate Voting* I give a more complete history

and note that the names of the first three systems are not universally agreed upon but are descriptive. No one disputes “Democratic STV” for the Chifley system. The very charitable would say its two successors have also been democratic. Those who love PR might say that. I don’t.

Malcolm Turnbull’s system is *both* stasiocratic and manipulative with its voter-manipulation being its most important feature. It was designed to benefit the Liberal Party against Labor and to benefit its machine against any “rogue” Liberal senator. But one must feel a little sorry for Turnbull. He thought he would benefit from it but found it was Scott Morrison who has been the beneficiary of its electoral largesse.

Double Dishonesty

If the immediate past system was short on honesty the present system is doubly dishonest. The ballot paper handed to voters is a disgrace – a blot on the landscape of Australian democracy. The single most regrettable aspect of that dishonesty is the simple fact that the politicians concocting the ballot paper have infected the Australian Electoral Commission with their disease – as I shall demonstrate in this chapter.

Back when Bob Hawke was prime minister I was universally described as “Australia’s leading psephologist”. My opinion mattered then. Perhaps I was taken in by the arguments used by influential Labor politicians justifying their electoral legislation. The reason for that was their description of the then political situation. It accorded with my own assessment. There was a worthy motive for the 1984-2014 system – to bring about a substantial reduction in the rate of informal voting. Senate voting became far easier for vast numbers of voters. Anyway, I *was* taken in which meant that I defended the 1984-2014 system throughout its whole life. I defended it even though I never actually liked the idea of above-the-line voting. The informal vote was cut to one-third of what it had been under the “proper” STV system, last operating in 1983.

By way of contrast I have hated the 2016 system from the start. It is nothing more than a dishonest re-contriving of the contrivances of the immediate past system, implemented in the most cynical way it would be possible to imagine. It was obviously a Liberal Party rig from the start. It was implemented by Malcolm Turnbull’s *Commonwealth Electoral Amendment Act 2016* which passed through both houses of federal

parliament in the autumn of 2016 in preparation for his double dissolution dated 9 May of that year.

For the Liberal Party it has been an outstanding success – though it has not been a success for Turnbull personally. The principal defect is with the ballot paper. In addition to the two contrivances inherited from the Hawke system it has two new contrivances, neither of which would pass any pub test. All four contrivances should be scrapped.

The new contrivances are the deceitful instructions to voters for the above-the-line vote and the deceitful instructions to voters for the below-the-line vote. Those instructions are especially shameful bearing this in mind: when, in July 2016 and in May 2019 the voter entered the booth, he/she was greeted with a big sign reading, in very large letters: **“Please read the instructions on your ballot paper.”** Below that it reads in much smaller letters: “If you make a mistake, just ask a polling official for another ballot paper.” That was fair enough when the instructions gave help to voters to cast a formal vote. It is not justifiable when reading the instructions means the voter is merely helping the big parties to make the system a de facto party machine appointment system. When the Eden-Monaro by-election came along, I expected to have no complaint. Reading the instructions properly *does reduce the informal vote for the House of Representatives* election where the ballot paper is honest. Not so for the Senate where the ballot paper is dishonest. This situation is a disgrace. The signs “Please read the instructions on your ballot paper” have been shown for many years – as long as I can remember. They were based on the idea of helping the voter. Senate so-called “reform”, however, makes them instruments for voter manipulation by dishonest politicians driven by the demands of the machines that gave them their seats.

Informal voting in Australia is very high by the standards of the world’s democracies. For such a reason it is essential that ballot papers make it crystal clear to voters that vote which counts as formal contrasted to that vote which is not counted because it is rejected as informal.

Instructions ARE Deceitful

I insist on describing the instructions as deceitful. Those who support this system quibble. They say the instructions are “incomplete”, perhaps

“misleading”, perhaps “inaccurate” or perhaps “oversimplified”. I do not dispute those words beyond saying this: to deny that they are deceitful fails the pub test and would be seen to be spin. Once the full situation is explained to ordinary voters, they understand perfectly well that the instructions are deceitful. Those who designed this ballot paper clearly intended the voter to believe that his/her vote would be rejected as informal if he/she did not vote 1, 2, 3, 4, 5 and 6 above the line or 1 to 12 below the line.

This whole question must be examined in detail – beginning with a statement of how the instructions read. For the above-the-line vote it is:

By numbering at least **6** of these boxes in the order of your choice (with number 1 as your first choice).

For the below-the-line vote it is:

“By numbering at least **12** of these boxes in the order of your choice (with number 1 as your first choice)”.

Readers need to know the unique nature of that. A single 1 above the line is a formal vote, required by law to be counted as a formal vote. Below the line 1, 2, 3, 4, 5 and 6 is a formal vote, required by law to be counted as a formal vote. There is no precedent for such a situation. What is claimed as a precedent is not valid, as explained below.

A proper instruction for the all-important above-the-line vote would read something like this:

Place the number 1 in the party box of your first preference and then, if you wish, place as many increasing whole numbers (2, 3, etc) in as many other party boxes as there are available.

Or it might read:

You may vote by placing the number 1 in the party box of your first choice. You can show more choices if you want to by placing numbers in the other boxes starting with the number 2.

If the intention had been truly to minimise informal voting, the below-the-line vote instruction should read:

Number at least 6 of these boxes in the order of your choice.

May I therefore ask the supporter of this system a question: “why do the instructions *not* read those ways?” He might give an answer. Without doubt I would regard that answer as totally unconvincing or, at best, as spin. The answer would fail the pub test dismally. Honest proposed instructions have become deceitful ones, as I must now explain at some length.

Back in the early days of Bob Hawke as prime minister there was established by the Parliament of the Commonwealth of Australia a *Joint Select Committee on Electoral Reform*. It had Labor’s Dr Richard Klugman MP as Chairman and the Liberal Party’s Steele Hall MP as Deputy Chairman. Then it had two Labor senators, two Labor members of the House of Representatives, a Liberal senator, a Democrats senator and a Country Party member of the House of Representatives. It reported in September 1983, which report was helpful to the Hawke government in its electoral reforming zeal.

The idea caught on. It resulted in a permanent body of like composition called the *Joint Standing Committee on Electoral Matters* which has produced many useful reports over the years. That was a good idea and I made many submissions leading me to be well disposed to the whole process – with one exception that has turned me off the whole idea. And the politicians have responded accordingly, subjecting most of my submissions to extreme vetting and finding excuses as to why I should not appear before them. There has been one recent exception. My submission on the Commonwealth Electoral Amendment (Ensuring Fair Representation of the Northern Territory) Bill 2020 was published in full on the JSCEM website and I spoke to it (and answered questions) by telephone conference. My interpretation? I told some of the members and senators what they wanted to hear.

There was a House of Representatives plus half-Senate election in early September 2013. Tony Abbott won the lower house election in a magnitude of win essentially the same as John Howard had achieved in March 1996. But the Senate result was very, very different. In 1996

Howard, in effect, won the Senate election with very predictable results. For example, I predicted every state correctly in 1996, and both territories.

But if Abbott's lower house win in 2013 was of the same magnitude as Howard's in 1996 his Senate result certainly was not – and my predictions were badly wrong. In my election-day article for *The Weekend Australian* page 21 for 7-8 September 2013 the headline proved correct as did my territories and Queensland predictions. The headline was "ALP-Greens Senate Majority will wither away next year". To understand that one needs to remember that there was a Labor-Greens Senate majority for two-thirds of the period when Julia Gillard was prime minister. I was correct to predict that such a majority would come to an end on 30 June 2014.

My article opened with this paragraph:

My prediction for today's general election for the House of Representatives is 94 seats for the Coalition, 54 Labor and two others, in the seats of Denison and Kennedy. That is an absolute majority of 38 seats in a House of 150. In 1996, the result was 94 seats for the Coalition, 49 Labor and five others. That was a Coalition majority of 40 seats in a house of 148.

So far, so good - until one turned to the table of Senate predictions where Queensland was the only state I predicted correctly. Yet mine were entirely conventional predictions – explaining why the Senate results on the night caused such a shock.

For the eastern states the New South Wales election of David Leyonhjelm of the Liberal Democrats, for Victoria the election of Ricky Muir of the Australian Motoring Enthusiast Party, for Tasmania the election of Jacquie Lambie of the Palmer United Party and for South Australia the election of Bob Day of Family First brought forth accusations of "gaming the system" by micro parties. Preference whisperer Glenn Druery was generally described as the villain of the piece.

Worse was to come from Western Australia. By mid-night Perth time local pundits were predicting the election of Wayne Dropulich of the Australian Sports Party. So, five Senate seats went unexpectedly to micro

parties accused of gaming the system. Something had to be done about the system! That was the cry.

When I set about doing a proper analysis, I decided that *only the election of Muir in Victoria* should have caused complaint. Dropulich was not elected in WA and the result of the re-election on Saturday 5 April 2014 is set out with the ballot paper in my *Introduction*.

This point will be elaborated in my book. The reason why Howard performed so much better in Senate seats in 1996 than Abbott did in his equivalent election win was that Howard was able to get 44 per cent of the Senate vote where Abbott received a miserable 37 per cent. I conclude, therefore, that the Senate during Abbott's term as prime minister was very representative of the vote of the Australian people.

So, how did honest proposed instructions become deceitful? The change was made for purely political reasons, not democratic ones. In May 2014 there was presented in Canberra the report resulting from the above. It was from the federal Joint Standing Committee on Electoral Matters (JSCEM). Its title was *Interim report on the inquiry into the conduct of the 2013 Federal Election: Senate voting practices*. It unanimously recommended fully optional preferential voting above the line and partial optional preferential voting below the line up to the number of vacancies to be filled. If those recommendations had been implemented the instructions to voters on ballot papers would have been as described above.

That report mentioned my name favourably on pages 30, 31, 32, 33 and 42. Nevertheless it made me incandescent with rage. It was propaganda designed to persuade readers that the Senate cross bench was chock-a-block full of micro-party senators gaming the system. The example of Muir was given as typical. See the first page and page 19. But Muir's case was not typical. All the other cross bench senators enjoyed substantial minority support among voters. While Day and Lambie *appeared* to be elected on low votes those low votes were due to their being elected from less populous states.

Nation-wide, the Palmer United Party received 751,121 votes (5.6 per cent) and won three Senate seats, the Liberal Democrats received 502,180 votes (3.8 per cent) for one senator elected, Leyonhjelm, and

Family First 149,994 votes (1.1 per cent) for one senator elected, Day. The Greens, meanwhile, received 1,234,592 votes (9.2 per cent) and had four senators elected, one each in Victoria, Tasmania, South Australia and Western Australia. Having won a seat in every state in 2010 the Greens found themselves with ten senators while Abbott was prime minister, a record. Their only real basis to complain was that they had lost the balance of power, a very proper result to a democrat like me.

Liberal Party Propaganda

The report was a blatant piece of Liberal Party propaganda but one very likely to be implemented since it appealed to the greed of the big-party machines. I immediately denounced it, seeking to persuade the Labor Party to reverse its support for the report. A former National Secretary of the ALP, Gary Gray (member for Brand, WA) and Alan Griffin (member for Bruce, Victoria) influenced the Labor members to sign the report, making it unanimous. When I asked Gray to explain how the two biggest parties could so readily agree with each other he told me: “We both want to prevent pop-up parties. They are bad for democracy.”

The change from honest proposed instructions to the present deceitful ones, as already observed, had base political motivations, not democratic ones. True. However, I claim the credit for the change for the simple reason that the change gave me a very valuable stick with which to beat this system. That stick would not have been given to me if the instructions had been honest. I did that because I had learnt from my experience with the debate about the ACT electoral system.

In that case the debate started with an initial bad proposal – but not one that was obviously bad. I used such influence as I possessed to persuade the politicians to make it worse. They did as I hoped they would. It was made so bad that it could be easily discredited. That is how the ACT gained the benefit of a good system, Bogey Musidlak’s Hare-Clark system.

In the Senate case I followed the same broad strategy. It began with a bad proposal presented for public discussion in that May 2014 report, cited above. Though a bad proposal (motivated entirely by greed) it would, nevertheless, seem to many people to be a good proposal. It

would have been very easy for politicians to persuade the public of its merits and would enjoy the support of many commentators.

With significant help from Labor senators Stephen Conroy (Victoria) and Sam Dastyari (NSW) I succeeded in persuading the Labor Party that it should oppose the very idea to which Gary Gray and Alan Griffin (and other Labor federal politicians with less influence) had given their signatures. I denounced that May 2014 report up hill and down dale as being nothing more than a tract of Liberal Party propaganda. Labor eventually made the correct decision to oppose its implementation courtesy of the Commonwealth Electoral Amendment Bill 2016.

With the Nationals I appealed to their sense of resentment against the Liberal Party. I pointed out that the Liberal Party was trying to prevent them from contesting Senate elections in Western Australia. Since 1955 they had contested WA Senate elections on a separate ticket from the Liberals. They could do that under the system operating from 1949 to 1983 and continue doing so under the system operating from 1984 to 2014. They could do this because those systems included provision for guaranteed transfers of preferences between the two Coalition parties.

Thus, the then prime minister Tony Abbott discovered that the numbers would not be there to implement a report that seemed to be unanimously supported. He did nothing about it, working on the assessment that the report was too good to be true.

Had Abbott remained prime minister the 2016 election would have been for the House of Representatives and half the Senate and would have been held in November 2016 with the Senate election again being conducted under Bob Hawke's 1984-2014 system.

Malcolm Turnbull replaced Abbott as prime minister in September 2015. For reasons I lack the space here to elaborate he decided that he must have a double dissolution election in July 2016. However, he could not afford to do that under the Senate voting system implemented in 1984. Therefore, he picked up that May 2014 report and proceeded to its implementation. However, he discovered (as Abbott had learnt) that the numbers were not there, as Labor had accepted my advice that it would be disadvantaged under the new rules. The consequence of Labor

accepting my advice brought the National Party into play. Its votes had to be secured.

Role of Nick Xenophon

It became necessary to attack Senator Nick Xenophon of South Australia. I published an article in *The Canberra Times* of Monday 28 December 2015, under the title “Put people before parties”. Xenophon responded within the week. He gave a short (error-littered) history of Senate voting and a description of his proposal. After stating that he would get rid of the group voting tickets, his key paragraph was this:

My proposal calls for voters to number at least three consecutive numbers above the line, or at least 12 below – their choice – not that of party machines or preference whisperers. This proposal is broadly based on the ACT voting system, which has proved to be robust and fair.

The National Party picked up on that. It would support Turnbull’s scheme on two conditions. The first was that the 2016 election be for 12 Senate seats in each state, meaning the Nationals would win one in Western Australia (or so they calculated, wrongly). Turnbull was happy since it meant the Nationals would support his double dissolution plans.

The second condition was more important. The Nationals would support Xenophon’s proposal but vary it by calling for at least six numbers above the line. At their request, therefore, the *Commonwealth Electoral Amendment Act 2016* would contain the instructions that were on the ballot paper at the 2016 and 2019 Senate elections. These instructions will stay in place until the legislation is next amended.

It needs to be noted, therefore, that the intention of those instructions was that the vote be informal if it failed to number 1, 2, 3, 4, 5 and 6 above the line or 1 to 12 below the line. The legislators hit a snag, however. The independent election analyst cheer squad for the Bill, Antony Green, George Williams and Kevin Bonham, were frightened by Labor’s attacks. Labor politicians were enjoying themselves hugely with this line: “We (Labor) in 1984 by our reform cut the informal Senate vote to a third of what it had been. You (Liberals) want to restore it to those earlier heights. Your reform will triple the informal vote.” It would, of

course, have done that – but the “savings” provisions came to the rescue.

Green, Williams and Bonham, therefore, advised the Liberal Party to take up the “savings” provisions suggested by Xenophon. That was done. A single 1 above the line would be counted as formal while six preferences below the line would also count as formal.

The 44th Parliament was dissolved on 9 May 2016, Malcolm Turnbull won the election on 2 July 2016 and proceeded to implement in full his industrial relations reforms which were the purpose of the double dissolution. The informal Senate vote rose from 2.9 per cent in 2013 to 3.9 per cent in 2016, a rise that delighted me but was not enough to embarrass those who own the new system, the Liberal Party, the Greens and Senator Nick Xenophon.

If a supporter of this system were to argue that the “savings” provisions were motivated by a desire to save votes from being rejected as informal would that supporter find his argument meeting any pub test? Certainly not. The overwhelming majority opinion in the pub would be that the “savings” provisions were designed simply to save the Liberal Party, the Nationals, the Greens and Xenophon from the embarrassment described above.

There is controversy about those Xenophon words: “This proposal is broadly based on the ACT voting system, which has proved to be robust and fair.” Those words enraged both Bogey and me. We were quick to reply, me with another article in *The Canberra Times*, he with a letter to the editor.

At a referendum on Saturday 15 February 1992 the people of the ACT installed the Hare-Clark system. In doing so they voted for a Hare-Clark ballot paper designed by the Commonwealth – since the ACT electoral system question was, at that stage, still under the jurisdiction of the Commonwealth Parliament. The ballot paper approved by the people assumed that the ACT system would copy that of Tasmania.

There is an interesting difference between the two ballot papers. The ACT Hare-Clark ballot paper reads at the bottom: “Remember, number at least five boxes from 1 to 5 in the order of your choice”.

The Tasmanian ballot paper, however, reads: “Your vote will not count unless you number at least 5 boxes”

In more than thirty years of conversations this was the only point of difference between Bogey and myself. Had I designed the ACT ballot paper it would have read at the bottom: “Remember, your vote will not count unless you number at least 5 boxes.”

Every detail of the ACT Hare-Clark system was designed by Bogey Musidlak. Following that referendum in 1992 the ACT Legislative Assembly debated all the details of the new system. Implementing Bogey’s recommendation and that of then ACT Attorney-General, Gary Humphries, the Assembly inserted “savings” provisions whereby a single first preference vote for a candidate would count as a formal vote.

When Bogey told me of his intention to recommend that, I told him I disagreed but also that I would not impede him in any way. Having won that referendum so handsomely, we were not going to quibble about a detail like that.

In 2016 there were elections in the Northern Territory in August and in the ACT in October. In one of the last conversations I had with Bogey I drew his attention to the instructions on the ballot paper for the NT election. They read:

Place the number 1 in the box next to the photograph of your first preference candidate and then place increasing whole numbers (2,3, etc.) in as many other boxes as you wish in order to indicate your order of preferences for the other candidates. You do not have to number every box to make your vote count.

I suggested that the ACT ballot paper should also include a similar statement so as to make clear that a single first preference constitutes a vote required by law to be counted as formal. Bogey’s reply went something like this:

That is all very well in a single member electoral district system and, for as long as we PR advocates must put up with that system

I favour such an approach. However, those words encourage voters to cast only a first preference vote. It would not matter in such a case if everyone cast a single first preference vote for the election of one member. There would simply be a first-past-the-post result. But if everyone did that in a Hare-Clark vote it would wreck the election. Consequently, voters in any proper single transferable vote system should be encouraged to use as many preferences as possible – to get the best value for their vote.

He then promised to supply me with the statistics about informal voting. Under the ACT system they were the following percentages: 6.2 in 1995, 4.3 in 1998, 3.9 in 2001, 2.7 in 2004, 3.8 in 2008, 3.5 in 2012 and 2.5 in 2016, an average of 3.8 per cent – and falling. In Tasmania, during the same period the informal vote percentages were 5.4 in 1996, 3.9 in 1998, 4.9 in 2002, 4.4 in 2006, 4.5 in 2010, 4.8 in 2014 and 4.9 in 2018, an average of 4.7 – and rising.

This illustrates the nature of Bogey's advocacy of his ACT Hare-Clark system. He knew its every detail. He could explain in genuine democratic terms all its characteristics. If anyone asked, he could give an answer to the question.

Contrast that with defenders of the Senate voting system. They would justify the deceitful above-the-line instructions on the false ground that they were intended to help minor parties. Not so! The purpose of those instructions was to guarantee that big parties can get their senators elected in the "correct" order, as determined by the party machines. They do that by voter manipulation.

Was Xenophon speaking honestly when he wrote that "this proposal is broadly based on the ACT voting system"?

Liberal Party Rig

Xenophon knew what he wanted – and it was given to him. He wanted to increase his power by increasing his number from one (himself) to three senators. In that sense he owns this system. However, the reality is that the system is a Liberal Party rig. That party approached the whole exercise with a two-fold determination. First, ensure that at future half-

Senate elections the Coalition gets a higher over-representation for itself than Labor gets. Second, clobber any Liberal senator who thinks he can win re-election from an unwinnable position by getting votes below the ballot dividing line.

When I was young my mother would quote a poem that went this way:

Deceit is a monster of such frightful mien
As to be hated needs but to be seen
But seen too oft, familiar with her face
We first endure, then pity, then embrace.

Those lines perfectly describe Australia's Senate voting system. As to be hated it needs but to be seen – and understood. It deserves to be hated. However, there are plenty of others who first endured, then pitied it, then embraced it and, finally, defended our current Senate electoral system.

Role of the Australian Electoral Commission

The above lines also describe our federal politicians, and their disease has infected the officials of the Australian Electoral Commission. The ACT Electoral Commission has never sought to conceal from voters that a single first preference vote is fully counted as formal. They have no need to. They know that the genuine purpose of the ACT "savings" provision was to reduce the informal vote to below that of Tasmania. Indeed, the ACT Electoral Commission in its official guide to voters has always written: "You should fill in at least 5 squares as there are 5 vacancies in each electorate. If you don't fill in at least 5 squares, your vote will still be counted even if you vote for only one candidate."

Officials of the AEC must surely know of the venal nature of the pretence that the purpose of the federal "savings" provisions was to reduce the informal Senate vote. Yet they talk as if such were so. At the 2016 and 2019 elections they went out of their way to enforce the will of the politicians to manipulate the public to vote as the politicians wanted. Under the guise of enforcing the statute they did everything in their power to conceal from voters the fact of voter rights the politicians did not want to be exercised.

I record here the way in which, during the 45th Parliament (2016 to 2019), the federal JSCEM did everything they could to shut me up: for the 46th Parliament elected in May 2019, by contrast, I set out to get my submission published quickly – and succeeded. Mine was the sixth submission published out of 140 on the website.

My letter to the Committee dated 22 August 2019 began with this sentence: “The worst aspect of the dishonesty of the Senate voting system is the simple fact that the politicians have had the effect of making the Australian Electoral Commission dishonest in their wake.” To justify that claim I tabled their document sent to every household. It was titled *Your official guide to the 2019 federal election: Saturday 18 May 2019*. It tells the reader: “If you choose to vote above the line, you need to **number at least 6 boxes.**” (Emphasis is in the original). My comment was: “That statement is a lie.” Does anyone seriously dispute my description? Dealing with the below-the-line vote I recorded that the guide has this:

If you choose to vote below the line, you need to **number at least 12 boxes** from 1 to 12, for individual candidates in the order of your choice. You can continue to place numbers in the order of your choice in as many boxes below the line as you like.”

Again, emphasis is in the original. I recorded then how that would read if the politicians were honest with voters. It should read:

If you choose to vote below the line, you need to number at least 6 boxes, from 1 to 6, for individual candidates in the order of your choice. You can continue to place numbers in the order of your choice in as many boxes below the line as you like. Your vote will only be rendered informal if you fail to number 6 boxes in consecutive order.

At no stage did the JSCEM ask me to appear before them to tell them things they did not want to hear.

Referring to the 2016 election I wrote above that the “informal Senate vote rose from 2.9 per cent in 2013 to 3.9 per cent in 2016, a rise that delighted me”. Bearing that in mind I mounted a new campaign for the 2019 election. Knowing that the election of two senators in the ACT is a

farce (designed to guarantee that Zed Seselja continues as the senior senator and Katy Gallagher as the junior senator) I tried to persuade ACT electors to vote informally. I posted my own informal votes on my website that can be visited at www.malcolmmackerras.com.

Very few extra Canberrans acted on my advice. So, I told friends: “if you cannot bring yourself to do that, cast a formal vote contrary to the instructions on the ballot paper. If you cannot bring yourself to do that, vote below the line.”

Whether my campaign made the slightest difference I cannot say. All I know is that there *was* yet another increase in the ACT informal Senate vote and yet another increase in the vote below the line. Whether there was any change in the formal vote contrary to the instructions on the ballot paper has not been revealed. A very good computer operator could do such a calculation, but I lack the IT skills needed for such a task.

My other campaign was useful, however. I asked friends, neighbours and relatives to question polling officials on this point. A neighbour down the street, a conservative Catholic who always votes for the Liberal Party, as does her husband, voted at the Campbell Public School polling place. The official gave her the ballot papers as well as the “education” spiel required by the AEC. It went something like this:

For the Senate you need to number one to at least six above the line but you can go beyond that if you like. Below the line you must number from one to at least 12 but you can go beyond that if you like.

To such a spiel Angela reported she had been told on good authority that she need only give a single first preference above the line and it would count as a formal vote. The official said: “you are not supposed to do that”. Angela: “I don’t care what I’m supposed to do. I want to vote for Zed Seselja and the Liberal Party and I don’t want to vote for any of the other rubbish on this ballot paper if I don’t have to. Have I been informed correctly?” The official conceded she had been informed correctly. She voted accordingly.

A very conservative Sydney friend went to Paddington Town Hall to vote. The official did for him what the Campbell official did for Angela. He

asked whether he had been informed correctly that a vote for eight candidates below the line was formal. The official replied: “We are not supposed to tell you so, but that vote would be counted as formal.” He gave his first preference to Senator Jim Molan, his second, third, fourth, fifth and sixth preferences to the other Coalition candidates and then marked two more squares. They were 7 for Sophie York of Australian Conservatives and 8 for Riccardo Bosi, also of Australian Conservatives. His vote was one of the 137,325 for Molan who, of course, was defeated. Molan was the only senator to get any benefit from that vote. The other five Coalition candidates were not incumbents and the Australian Conservatives never had any hope. As noted in my *Introduction* Molan was later given a consolation prize as an appointed senator and now has a term expiring on 30 June 2022.

A Labor-supporting Sydney friend went to the Balmain Town Hall polling place where he received the same spiel as was given to the others. After a similar conversation the official gave him an immediate affirmative reply. “That vote would be fully counted as formal with your first preference deemed to be for Tony Sheldon, second for Tim Ayres, third for Jason Yat-Sen Lee, fourth for Simonne Pengelly, fifth for Aruna Chandrala and sixth for Charlie Sheahan” was the answer.

But five other friends/relatives were given the wrong answer. In each case my friend/relative was told quite firmly: “That vote would not be counted because it would be rejected as informal. Just read the instructions. They make it quite clear such a vote would not be valid.” The voters were then pointed to the sign in the booth: “**Please read the instructions on your ballot paper.**” In each case the voter did what the politicians wanted – they all voted 1, 2, 3, 4, 5 and 6 above the ballot dividing line. Their votes helped the big party machines to get their senators elected in the “correct” order.

Eden-Monaro By-election

As a result of the retirement through ill-health of the popular Labor member, Mike Kelly, there was a by-election for Eden-Monaro (NSW) on Saturday 4 July 2020. The Labor candidate, Kristy McBain, won the seat with a final vote after preferences of 47,835 compared with 47,100 votes for the Liberal candidate, Fiona Kotvojs, a Labor majority of 735 votes.

In my capacity as the Politics Expert of the Switzer Programme I had an article published in *Switzer Daily* on Tuesday 7 July titled “Three Cheers for the Australian Electoral Commission”. The photo to accompany the article was of a smiling Kristy McBain standing in front of an AEC sign. The editorial description of the article was: “The Australian Electoral Commission does an excellent job when politicians allow it to administer a voting system that’s decent and honest.” Here is part of that article:

Living in Canberra I am in an enclave within Eden-Monaro. Consequently, at no cost to myself, I could visit pre poll voting centres and polling places on the day. I could also have conversations with officers of the Australian Electoral Commission who live in Canberra. I did all those things in my passionate pursuit of electoral reform, as I now explain.

For some thirty years (if my memory serves me correctly) voters have seen a conspicuous sign as they enter the booth. It has read: “Please read the instructions on your ballot paper. If you make a mistake, just ask a polling official for another ballot paper. Your vote is a valuable thing.” That was all well and good for as long as both House of Representatives and Senate voting systems were honest. But in the autumn of 2016 the federal politicians replaced the honest Senate voting system prevailing from December 1984 to April 2014 by the present dishonest system prevailing at the July 2016 and May 2019 Senate elections.

I started to lecture AEC officials to the effect that those signs should be taken down and kept in storage until the federal politicians implemented a decent Senate system, one with an honest ballot paper. When that reform is implemented those signs should be restored because the idea behind them can help each voter to cast a vote that counts.

After describing the instructions in some detail, I went on:

My lectures to AEC officials took the form of asserting that the purpose of those instructions was to deceive voters into voting in ways the politicians wanted them to vote, not in the way each elector himself/herself wanted to vote. In other words, the

purpose of those instructions was to cause the voter to believe that any vote not going 1, 2, 3, 4, 5 and 6 above the line (or 1 to 12 below the line) would not count because it would be placed in the pile of informal votes. Since there is a requirement in law that a single first preference above the line counts as a formal vote for that party those instructions are best described as “deceitful”.

Now, I would not have objected to those signs going up again for this Eden-Monaro by-election – because the House of Representatives voting system is honest. However, it was a wonderful opportunity for me to make a nuisance of myself. On Wednesday 1 July I visited several pre poll voting centres and discovered something interesting at the pre poll voting centre at the Indoor Sports Centre, 1a Yass Road, Queanbeyan, the first I visited. I learnt that those signs would not be used at this Eden-Monaro by-election. Instead, outside the actual place of voting there would be a large sign modelled on the last page (page 6) of the official AEC document “Your official guide to the Eden-Monaro by-election including COVID-19 safety measures, Saturday 4 July 2020”. The sign, based thereon, would read “House of Representatives: How to vote in a federal by-election”.

That brings me to another reason why I was determined to make a pest of myself. I objected furiously to the official document “Your official guide to the 2019 federal election, Saturday 18 May 2019”. It was sent to every voter. Page 3 is a tissue of lies about the Senate voting system.

Those readers of my articles who dislike me will think me incredibly arrogant when I say this – but I have set myself up as an unofficial marker at this by-election of the performance of the AEC. Everyone, however, will be pleased to know that I give the AEC a high distinction mark for the following reasons:

First, I am impressed at the sheer speed and efficiency of the counting of votes enabling Kristy McBain to claim victory on Sunday 5 July. Second, I am impressed by the signs “How to make your vote count”. Third, a friend of mine who votes in Eden-Monaro gave me the official guide as soon as it arrived in his letter box. I now explain what I did.

The AEC officer with whom I deal the most is Bernadette O'Meara, Director of the Communications Section. I wrote to her asking that she convey my congratulations to the Electoral Commissioner, Tom Rogers. She replied on Friday 26 June: "As you can appreciate a great deal of consideration was put into developing the content of the guide – to ensure that we continued to cover the important electoral participation messages, including formality information; and for the first time also include the important health protection measures. I would be very happy to provide you with extra hard copies of this guide if this was of any interest to you."

After my discovery about the posters O'Meara wrote to me on 3 July: "I can confirm that I am able to send you copies of this poster for your research purposes, including for display in your personal offices. Please note that we would appreciate that they are used for this purpose only – and not for any public display. I will put them in the mail along with copies of the official guide when I am in the office next week."

So, what does all the above go to show? Simple really. It shows what an excellent job the AEC can do when the politicians give it to administer a voting system that is decent and honest – one with a voter-friendly ballot paper in a genuinely democratic system.

O'Meara was as good as her word. The parcel arrived on Saturday 11 July. The following Monday, 13 July, I sent her an email thanking her and sending her the above article which I felt sure she would read. I went on:

On the wall in my university office I have pinned up the "How to vote in a federal by-election" poster and (but below it) the poster reading: "Please read the instructions on your ballot paper. If you make a mistake just ask a polling official for another ballot paper. Your vote is a valuable thing." I want to express some opinions about those posters. I am sure you would accept my word when I say that I would dearly hope, following the next federal election, to be able to write another article with another heading "Three cheers for the Australian Electoral Commission". However, I could

only do that if the AEC would do the following things in the public interest and, especially, in the interest of voters.

First, the poster “Please read the instructions. . .” should NOT be used. The AEC did not think it should be used for the Eden-Monaro by-election. I would be very angry if, having made that decision for a by-election, that poster were used at the next general election.

Second, the poster “House of Representatives: How to vote. . .” should be used again throughout Australia and should be placed in equivalent places as was the case for this by-election. The words “in a federal by-election” would, of course, be deleted so the poster would simply read “House of Representatives: How to vote”.

Third, if COVID-19 is still around then that poster on that subject should be placed to the right of the “How to vote” poster for the House of Representatives, as was the case for this by-election.

Fourth, to the right of the two posters used for this by-election should appear a poster with “Senate” on the top and “How to vote” below it. That poster should be of the same size as the others and of the same general design but should do no more than show the Senate instructions.

Fifth, polling officials should be told to give a truthful answer if asked questions about vote formality. In other words, if a question is asked about the Senate vote the official should confirm that, as required by law, a single first preference above the line counts as a formal vote for that party – and six preferences below the line are also required by law to be counted as a formal vote.

Sixth, polling officials should not tell voters how to vote at the Senate election. They did that in 2016 and again in 2019. I found the spiels they gave to be quite offensive.

Seventh, the next general election pamphlet equivalent to “Your official guide to the 2019 federal election, Saturday 18 May 2019”

should see changes made to the third page. Thus, the statement “you need to number at least 6 boxes” should be replaced by “you should number at least 6 boxes.” I would still dislike that, of course. But that statement would not be a lie.

I did not receive a reply.

Labor Disappoints

I think I helped the Labor Party when I persuaded it to oppose the Commonwealth Electoral Amendment Bill 2016. Unfortunately, Labor proved to be as inconsistent and as guileless as ever. During the 44th Parliament (the Abbott-Turnbull term) they listened to me. Not so during the 45th Parliament (the Turnbull-Morrison term). There were three significant figures who were willing to have a serious conversation but none of the Labor members of the JSCEM responded to my wish to engage them with my views. Consequently, I was very disappointed (but not surprised) when the Labor members of the JSCEM put their signatures to pages 12, 13, 14, 15 and 16 of the next report. Entitled *Report on the conduct of the 2016 federal election and matters related thereto* it was published in November 2018. The pages in question are headed “Reform for the Senate” and leave no doubt that every member of the Committee believed the propaganda that the 2016 changes really were genuine democratic reforms.

I had hoped, alas, Labor members would be proud of the fact that they had opposed the Liberal Party’s rigging of the system.

Those pages really are the most appalling propaganda. Take this sentence on page 12: “Voters appear to have responded positively to this change” followed by a dishonest example but omitting to note that there was one survey conducted after the 2016 election in which twice as many voters said: “it was more difficult to vote under the new system” as said “it was easier to vote under the new system.”

On page 16 there is this statement: “Although there were some criticisms of the Senate voting reforms submitted to the inquiry, on the whole, the reforms were positively regarded by the majority of electoral experts who made submissions to this inquiry.”

This is the way I would have written that paragraph: “A majority of electoral experts who made submissions to this inquiry thought the new system to be an improvement on the old but only Antony Green and Kevin Bonham thought the new system to be a good one. The rest of the apparently favourable submissions thought the new system to be merely not quite as bad as the old. There were four submissions strident in their hostility to the new system.”

In respect of my last sentence I would have put the footnote the Committee gave to their comment “although there were some criticisms” that footnote being “See: Malcolm Mackerras, *Submission 139*; Chris Curtis, *Submission 45*; Ross Drynan, *Submission 143*; Family Voice Australia, *Submission 27*.”

After making two highly technical (and non-controversial) recommendations the conclusion on page 16 reads this way:

Further, in reviewing the evidence, the Committee expresses its support for the Senate voting system, including retention of the ‘savings provision’ for a single 1 above the line. The savings provision may prove to be unnecessary for elections after the public is used to voting in the new system and this should be kept under review. . .

My first reaction to that was to think how necessary it is for those who understand this system to denounce it, keep on denouncing it and encourage voters to cast informal votes. An alternative would be to cast formal votes contrary to the instructions on the ballot paper. Clearly the bigger the informal vote the better. If the voter cannot bring herself to cast an informal vote, she should cast a formal vote contrary to the instructions on the ballot paper.

My second reaction was one of immense disappointment with Labor. They opposed this system for which they should be proud. Instead they collapsed under the decibels of the Liberal Party’s propaganda machine and signed up to the words above. Why? My speculation is that they thought the new system was better for Labor than it really is, understandable I suppose as there were elements of the 2016 results suggesting the system to be fairer than it really is.

My third reaction was to decide to keep my powder dry and wait for the inevitable. I thought to myself: the results in 2019 will leave no doubt that the system really is just a Liberal Party rig and then I shall approach Labor politicians to try again to persuade them.

Sure enough, that is what happened. So, I sought to have morning coffee with my local Labor senator, Katy Gallagher, at her favourite coffee house in the suburb of Lyneham where she lives. As a result of two hours of conversation I left pleased that I had made my points well and that she fully understood me.

I then decided to have another conversation with Labor's Shadow Special Minister of State, Senator Don Farrell. That conversation went well. I was especially pleased when I received a letter from him dated 11 October 2019. After beginning with "Dear Malcolm" it reads:

Thank you for taking the time to meet with me at Parliament House recently. I very much appreciated hearing your insights and suggestions for electoral reform.

I have been in touch with Senators Carol Brown and Louise Pratt about arranging a time for them to meet with you, and I understand that their offices will be contacting you shortly if they haven't already.

Once again, thank you for your time. If I can be of any further assistance please don't hesitate to contact my adviser, Tania Drewer, on (08) 8231 8400 or at tania.drewer@aph.gov.au.

As things turned out, I heard from Pratt but not Brown. I had a productive conversation with Pratt and await further developments. The Pratt conversation took place in her Parliament House office on the afternoon of Tuesday 15 October 2019 and details are given in my *Introduction*. She supports my reforms.

Conclusion

The Australian Senate ballot paper is a disgrace but, regrettably, it is the kind of ballot paper one comes to expect would be concocted by a bunch of political manipulators for whom dishonesty is the only policy.

In the meantime, it is important that this system becomes discredited. It is my duty to do that – and to educate the Australian people as to what they get when the process of reform is entirely driven by politicians, big party machines and their cheer squads. They have given to voters four contrivances none of which can be justified by any democratic principle. Those contrivances are instruments of voter manipulation. The politicians should hang their heads in shame. They have legislated from the sewer of Australian politics.