

CHAPTER SEVEN: EXTREME VETTING

The expression “extreme vetting” was coined by Donald Trump. By it he meant that he was determined to stop Muslims from migrating to the United States. However, he acknowledged that he could not do that completely so he would subject any Muslim to “extreme vetting”. In recent times I have used the expression to describe the regime of nomination for federal parliamentary seats imposed by successive decisions (1992 to 2018) of the Australian High Court. Although most media commentary on the 2017 and 2018 decisions would have people believe that a black letter law judgment had been handed down, I see it otherwise. What we saw in 2017 and 2018 was 25 years of judicial law-making in relation to section 44 of the Constitution. The result is a process of extreme vetting of federal candidates imposed by the High Court. For more details see Chapter 11, *Judges Exercise their Power*.

My Expurgated and Redacted Submissions

As originally drafted the purpose of this chapter was to explain my treatment at the hands of the federal Joint Standing Committee on Electoral Matters in the period from early October 2016 to late February 2017. I was subjected to extreme vetting by federal politicians who did not want to listen to what I have to say. After a lengthy period of what I considered to be unjustified extreme vetting a submission of mine was published on the website of the federal JSCEM at number 139. I then sought to appear before them, and they engaged in every tactic to stop me from telling them of my thoughts. The date of publication was Friday 17 February 2017.

Those pages came to four thousand words but then I thought to myself: “readers would not be interested in my problems with politicians – it won’t make this book more readable.” So, the purpose of this chapter now is to include those sections of the original draft that may be of general interest – and should be recorded in the public interest.

One of the reasons they gave to justify their extreme vetting was that I had reported conversations without getting the approval of the other party. I had conversations with two former prime ministers from the Liberal Party, John Howard and Tony Abbott. When I asked each man for approval Howard was quick to agree that in two conversations with him, he described my views as being “very logical”. Abbott, however, did not respond. In the public interest I now record that conversation. It took place in his Parliament House office on the afternoon of Tuesday 16 August 2016. Here it is.

It began by my laying out on his table my copy of the report I then regarded as the most disreputable in my memory – even though it was well regarded by others. On the top of the front cover it reads: “The Parliament of the Commonwealth of Australia”. In the middle it reads *Interim report on the inquiry into the conduct of the 2013 Federal Election: Senate voting practices*. Below that it reads: “Joint Standing Committee on Electoral Matters” and on the extreme bottom left hand corner it reads “May 2014, Canberra”. I now record five paragraphs of my original submission that never made their way into the final published submission:

My conversation with Abbott lasted for one hour and took place at his office at Parliament House in Canberra. I began by laying out on his table my copy of JSCEM May 2014 and I said to him: “You were the prime minister when that report was published. Would you mind telling me what your thinking was when you received it?” He told me his first thought was: “This is altogether too good to be true” and his second thought was: “Be careful what you wish for.” It was published, it should be noted, before the new cross-bench senators, David Leyonhjelm, Ricky Muir, Glenn Lazarus, Bob Day, Dio Wang and Jacquie Lambie had taken their seats. He told me he decided he would work with these powerful cross-bench

senators and not rock any of their boats without good reason. When I smiled at him in a friendly way he said: "So, you are commending me for my masterful inactivity, are you?" I gave an affirmative answer to that question.

What impressed me about him was that he displayed a genuine interest in learning about the details of my reform proposal and the reasoning behind it. He really wanted to get the details of it right, but two points arose from that conversation which were by the by in nature.

First, he told me how he had voted for the Senate at the general election. He voted below the line 1 to 12. He told me no more than that, but I think I have little difficulty in guessing. Since the records tell us that Retired Major General Jim Molan AO DSC received 10,182 first preference votes I feel sure Abbott's was one of them. Abbott then voted for the other Coalition candidates 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 in his personal order of preference. Since Molan was in the unwinnable 7th position he had no chance, but I think I can see in this why the Liberal Party might not want a decent system. We saw how the Tasmanian Liberal Party had little difficulty in defeating Richard Colbeck but how they would not even have tried had a decent system been in place. In a Mainland state one would not think a future Molan would be able to beat the system, but democracy might be a dangerous thing for a party like the Liberal Party – or even for Labor's machine! My surmise is that the last thing the apparatchiks who people the federal parliament would want is to have a situation in which senators are directly chosen by the people. For them it is far better to rig the system simultaneously against the Ricky Muirs of this world and also to rig it against the Richard Colbecks.

The other interesting subject that arose was raised by me. I told him I thought the time would soon come when another increase in the size of the Parliament would be justified. I referred to his own state of New South Wales which now has 47 seats, but which also had 47 seats in the first years of the second Menzies government, 1950, 1951, 1952, 1953, 1954 and 1955. He said: "What are the relative sizes of the total for the two?" I said there were 121 full voting members under Menzies in those years and 150 now. He did not realise the extent to which the NSW share of the total Australian population had shrunk so I told him the extra 29 seats had been given 12 to Queensland, 8 to Western Australia, 4 to Victoria, two each to the ACT and the Northern Territory and one to South Australia. He asked me: "What were the relative quotas for the 1948 and 2016 NSW redistributions?" I told him that the quota for the 1948 redistribution of NSW into 47 electoral divisions was 40,016 electors while for the February 2016 equivalent it was 103,481.

The point I made to Abbott is the same I make to many people. The Proportional Representation Society of Australia tells us that odd numbers of senators are better to elect than even ones. Thus, the day will come when a government (probably a Labor government) will think there should be 14 senators for each state which would create district magnitude 7 half-Senate elections instead of the present 6. That would have the effect of creating some 24 more members of the House of Representatives which could easily be justified. He told me he would think about that. Indeed, he would think about all of the things I said to him.

So, there was no great commitment to my ideas but Abbott, in effect, told me he thought the May 2014 JSCEM report had recommended a rig in favour of the Liberal Party. That is why it was, for him,

too good to be true. Like Howard and in fact many Liberal Party people, he thought my views were very logical.

The above is what I actually wrote early in 2017 but was not published on the JSCEM website. At the time I did not know that, consequent upon the extraordinary combination of several flukes, both Molan and Colbeck would become senators in 2018, Molan for the first time, Colbeck for the second. Had I been asked early in 2017 to guess the probability of that combination occurring I might have said “perhaps one chance in five hundred”.

The date of the e-mail I received from the JSCEM was Friday 17 February 2017. It was signed by Julia Agostino, the Committee Secretary. I rang her on Monday 20 February with a request as follows: “When Antony Green, Kevin Bonham, Michael Maley and George Williams had their submissions published they were invited to appear before the Committee to argue their cases in person. Now that my submission has been published, I ask that I be given the same opportunity.” She replied: “The schedule of Canberra hearings is now complete so your request cannot be granted.”

In my semi-retirement one of the things I decided to do was volunteer to be a guide at Old Parliament House. So, every second Friday morning I take about ten members of the public on my tour. It just so happened that one Friday late in 2017 at about lunchtime I bumped into then Greens senator for New South Wales Lee Rhiannon. I asked her: “what brings you to Old Parliament House?” She replied: “we have just finished a meeting of the Joint Standing Committee on Electoral Matters.” That told me what I had already guessed. The schedule of Canberra hearings had not been completed – but the politicians did not want to hear the truths I would have told them.

I have already described Green, Bonham, Maley and Williams as “stasiocratic propagandists”. I now feel I must add another name to the list. On the 10th page of my original draft of this chapter I refer to him in detail as I now describe below. His name is Dr Damon Muller. Like Green, Bonham, Maley and Williams he supports the present Senate voting system that I hate.

Dr Damon Muller and the AEC

In late January 2018 the Parliamentary Library issued a 41-page Research Paper in the Research Paper Series, 2017-18. It was by Dr Damon Muller and titled *The new Senate voting system and the 2016 election*. It is meticulous in its research, appears to cover every angle of the subject, everything is footnoted and, as far as I can tell, the document is entirely honest. The problem is the bias it shows. I do not object to the fact my name is nowhere mentioned. Perhaps it was because Muller perceived me as being on the losing side of the battle. Anyway, it is better not to be mentioned than to be disparaged. The Labor Party is disparaged, as is Bob Day. I deal with Labor first because I am very proud of the fact that Labor opposed the Commonwealth Electoral Amendment Bill 2016 as I strongly urged it to do. Labor should also be very proud of the further fact that its opposition made the Bill contentious where the stasiocrats had persuaded the media that this was a simple, sensible reform to which there should be no reasonable objection.

The point is that this new system came in three iterations. The first was the proposal in the May 2014 document *Interim report on the inquiry into the conduct of the 2013 Federal Election: Senate voting practices* that is mentioned above in connection with my conversation with Tony Abbott. That was the document which I lay out on his table and he described as “altogether too good to be true”. Labor went along with that document – but later regretted doing so. They then had a problem explaining any reversal of position. Labor did, however, make a number of sensible criticisms of that proposal the effect of which was to cause a second iteration to be considered. Under the second iteration there was included this instruction on the ballot paper: “Above the line – by numbering at

least 6 of these boxes in the order of your choice (with number 1 as your first choice)". At that time those words were intended to mean what they said. Consequently, Labor asserted that, if those words actually meant what they said (namely that your vote would be informal if you did not number 1, 2, 3, 4, 5 and 6 above the line or 1 to 12 below the line) then there would be a substantial increase in the informal vote. That would, indeed, have happened. So, the supporters of the Bill set about working on the "savings" provisions. Once those were in place the stasiocratic propagandists started to predict that the informal vote would actually be reduced. Surely, if logic had prevailed it would have been reduced!

It has to be admitted that Dr Muller does describe these "savings" provisions accurately and in considerable detail. Those descriptions appear on pages 8, 13, 15 and 16. It is also true that on page 4 he refers to "the haste with which it was introduced" when referring to the Commonwealth Electoral Amendment Bill 2016. Consequently, I must admit that the bias of the document is not total. It comes rather in its tone and its selection of who should be favourably quoted. Not surprisingly the stasiocratic propagandists are favourably quoted. He does not use that description, of course. They are expert independent electoral analysts in his eyes.

The last seventeen pages of the document are statistics, graphs and related material. The last page of the narrative is page 24. The five paragraphs quoted below come from the sections "Public response to the changes" (the first four paragraphs) and "Conclusion" (fifth paragraph below). Here they are in full:

A survey conducted by Essential Research in mid-July 2016 asked respondents whether they thought that the changes to the system made Senate voting easier or more difficult. A total of 19 per cent of respondents reported that the changes made it easier to vote, and 37 per cent said it was more difficult. Older respondents and those who had not yet completed year 12 were more likely to think it made voting more difficult, and there was not a large difference in perceptions between supporters of different parties.

Asked if the reforms led to a more democratic outcome in the Senate, 20 per cent said it did make it more democratic, 15 per cent said less democratic, 39 per cent said it made no difference, and 26 per cent did not know.

Essential Research had conducted an earlier poll on Senate reform in late February 2016. Essential found that just over half of respondents (53 per cent) approved of the changes, with a majority of both Coalition and Labor voters approving, while 16 per cent of respondents disapproved of the changes.

In the final analysis, the relatively low informality rate and high rate of compliance with the minimum number of preferences above the line suggest that the public did not reject the changes to the voting system . . .

By any reasonable measure, the recent reforms to the Senate voting system have successfully achieved the parliament's objectives. Voters appear to have attended to the AEC's advertising campaign and polling and ballot paper instructions to allocate six preferences above the line, straightforwardly abandoning the habit of thirty years of Senate voting. While informal voting did increase compared to the 2013 Senate election, the increase was mild in the context of such a major change introduced at such short notice. On the whole, it did not appear the rate of informal voting was a result of the ballot paper changes . . .

Now for my reaction to those polls. They strike me as being dismal findings from the point of view of the new system's defenders. The circumstances of the 1984 reform meant that in 2016 the stasiocrats were able to claim the new voting system would make it easier to vote *below the line*, affecting quite a small number of voters. That is true, yet twice as many of *all* voters thought it made voting more difficult as thought it made voting easier. Essentially the public had no opinion on whether the outcome was, or was not, more democratic. Back in February 2016 the public, responding to massive media propaganda, approved the changes but by mid-July that approval had waned significantly.

As for the rest it shows no more than that the AEC propaganda campaign was successful. The AEC and their stasiocratic cheer squad were careful to ensure that voters believed the instructions. A genuinely independent AEC would not have allowed itself to be a propaganda arm of the political manipulators, the politicians. Voters should have been informed of the fact that a single first preference above the line is required by law to be counted as a formal vote. In short, the AEC went along with the dishonesty of the politicians – and made that dishonesty appear like legitimate information.

Muller has written: "By any reasonable measure, the recent reforms to the Senate voting system have successfully achieved the parliament's objectives." Indeed, they have. The politicians have gotten away with deceiving the public with their instructions on ballot papers. That is a big success for them. They have gotten away – incredibly enough – with being able to sell the idea of the noble politician who deceived the voter for the voter's own good. The deceitful instructions on ballot papers have been sold as an exercise in democracy because their purpose (according to the stasiocrats) is to stop Senate votes from being lost by becoming informal.

This is my assertion to which neither Muller nor the stasiocratic propagandists have an answer: the purpose of the "savings" provision was not to save votes from being rejected as informal. The purpose was to save the cheer squad for the new system from the *embarrassment of causing a massive increase in the informal vote*. They were quite willing to accept the "mild increase" referred to by Muller.

Muller refers to the success of AEC propaganda in getting the public to abandon thirty years of voting practice. That too has been a success, but it reminds me of the quotation from chief stasiocrat Antony Green which I quoted in my *Introduction*. It comes from his blog of 22 June 2015 and is this:

Some have proposed to abolish the division of the ballot paper and return to making voters express preferences for candidates. The problem that advocates of this approach must face is that 98 per cent of voters have chosen to vote above the line. It would be an enormous education task to return voters to voting for candidates.

That is NOT the problem, of course! Our problem is the power of the party machines, the excessive influence of the stasiocrats, the willingness of the High Court to constitutionalise the patently unconstitutional and the unwillingness of the High Court ever to uphold the democratic values of the Constitution. Those matters are further discussed in my Chapter 11, *Judges Exercise their Power*.

Educating the public to understand the decent, genuinely democratic system designed by me would be a walk in the park. It would require no propaganda. All it would need would be a description of the requirements of the Constitution as properly read. It would be accompanied by descriptions of the dishonesty of above-the-line Senate voting systems and an assertion that mine is the first REAL REFORM since 1949. The Labor government that proposes it could make mincemeat of Liberal Party propaganda defending the present system. Even Liberal Party propaganda denouncing the increase

of 12 senators and 24 members of the House of Representatives would fall on deaf public ears. The Liberal Party would discredit itself by opposing something it knows in its heart of hearts is a genuine democratic reform, one it has itself espoused in the past.

From Labor's point of view, it is worthwhile to compare and contrast the experience of this present Liberal Party-Greens system at the 2016 election with that of the Hawke system at the 1984 election. On that occasion the informal Senate vote fell dramatically. Furthermore, the popularity of the new system caught on. State by state, above-the-line voting was adopted with South Australia the first – in 1985. South Australia was followed by New South Wales and Western Australia, with Victoria last on board in 2006. Only the ACT bucked the trend with its adoption of Hare-Clark in 1995. By contrast not a single state has adopted Turnbull's system so far. I intend to do everything in my power to ensure that no state ever copies this horrible Senate voting system – and I expect to succeed!

The feature of Muller's paper I find most offensive is the tone of rejoicing at the success of deceit. Here we had deceitful instructions and Muller rejoices at their success – as illustrated by his comment that voters had straightforwardly abandoned the habit of thirty years of Senate voting. Green had asserted it couldn't be done for a democratic reform – but he helped do it for a suitably stasiocratic system designed by him!

The purpose of the instructions is to deceive voters into believing that any failure to number 1, 2, 3, 4, 5 and 6 above the line wastes the vote which becomes informal. They manipulate the voter into voting in ways wanted by the machines of big political parties. The AEC should not support such a system. That is why I have waged a campaign with the AEC about the signs appearing in the voting booths, as I now explain.

For some thirty years the booths have carried signs urging: "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 well and good while *both* ballot papers were honest. However, when the honest Hawke Senate voting system was replaced by the dishonest Turnbull Senate voting system, I lectured the AEC to the effect that those signs should be taken down. I failed in the short term.

However, I can give readers news which I think to be good. There was a by-election for Eden-Monaro for which polling day was Saturday 4 July 2020. That was my opportunity. However, great minds think alike. The AEC clearly recognised the opportunity also. Those signs were not used. Instead big signs were placed just outside polling places which were very helpful for House of Representatives voting. My hope is that the next federal election see a repeat of the Eden-Monaro by-election – by which I mean that the AEC should repeat the Eden-Monaro experience of being helpful for House of Representatives voting while pretending that there is no Senate election held on the same day. The AEC should help voters make the people's vote count. It should NOT help the machines of big political parties to manipulate the people's vote.

I'm afraid I cannot resist having a last shot at Dr Damon Muller. I find it interesting he correctly records that Friday 18 March 2016 saw the parliamentary passage of the new system and that the Royal Assent was given on Monday 21 March. Yet he does not record that Monday 21 March saw the prorogation of Parliament. He did not see the connection between the two events on the same day! The prorogation was the single most important fact about that date. It was symbolic of the simple fact that the *Commonwealth Electoral Amendment Act 2016* saw the most cynical introduction of a new voting system that could possibly be imagined. In my chapter 9, *Cunning*

Malcolm, there will be a description as to why I label that Monday as “Turnbull’s Day of Trickery” and as a “Black Day for Australian Democracy”.

Logic is a Poor guide Compared with Custom

This chapter is one-third the length of the original draft. So, its main purpose now is not to tell readers about the way in which I have been treated by the politicians. Although the JSCEM published my submissions in both the 45th (Turnbull) and 46th (Morrison) Parliaments in both cases they were subjected to extreme vetting and in both cases I expressed a desire to appear before the Committee, my wishes always denied. They publish divergent views, but they allow to appear only those willing to tell them what they want to hear.

The purpose of this chapter, therefore, has become to record such information from my submissions as I think necessary to elaborate my case. In that connection I mention again that in the two conversations I had with John Howard he described my views as being “very logical”. In the second his full statement was: “Your views are very logical, Malcolm, but logic is a poor guide compared with custom.”

I wondered where he must have obtained those words – and eventually discovered. In this section, therefore, I record the way in which Winston Churchill put on display his hostility to the whole idea of proportional representation. It came in an excerpt from *The Second World War*, Volume 5, Chapter 9, “Closing the Ring”. It reads as follows – but note that the words in bold constitute a case of emphasis added:

Finally, on October 28 (1943) there was the rebuilding of the House of Commons to consider. One unlucky bomb had blown to fragments the chamber in which I had passed so much of my life. I was determined to have it rebuilt at the earliest moment that our struggle would allow. I had the power at this moment to shape things in a way that would last. Supported by my colleagues, mostly old parliamentarians, and with Mr Attlee’s cordial aid, I sought to re-establish for what may well be a long period the two great principles on which the British House of Commons stands in its physical aspect. The first is that it must be oblong, and not semicircular, and the second is that it must only be big enough to give seats to about two-thirds of its members. As this argument has long surprised foreigners, I record it here.

There are two main characteristics of the House of Commons which will command the approval and the support of reflective and experienced members. The first is that its shape should be oblong and not semicircular. Here is a very potent factor in our political life. The semicircular assembly, which appeals to political theorists, enables every individual or every group to move around the centre, adopting various shapes of pink according as the weather changes. I am a convinced supporter of the party system in preference to the group system. I have seen many earnest and ardent parliaments destroyed by the group system. The party system is much favoured by the oblong form of the chamber. It is easy for an individual to move through those insensible gradations from left to right, but the crossing of the floor is one which requires serious attention. I am well informed on this matter for I have accomplished that difficult process, not only once, but twice. **LOGIC IS A POOR GUIDE COMPARED WITH CUSTOM.** Logic, which has created in so many countries semicircular assemblies with buildings that give every member not only a seat to sit in, but often a desk to write at, with a lid to bang, has proved fatal to parliamentary government as we know it here in its home in the land of its birth.

The second characteristic of a chamber formed on the lines of the House of Commons is that it should NOT be big enough to contain all its members at once without overcrowding, and that there should be no question of every member having a separate seat reserved for him. The reason for this has long been a puzzle to uninstructed outsiders, and has frequently excited the curiosity and even the criticism of new members. Yet it is not so difficult to understand if you look at it from a practical point of view. If the House is big enough to contain all its members nine-tenths of its debates will be conducted in the depressing atmosphere of an almost empty or half-empty chamber. The essence of good House of Commons speaking is the conversational style, the facility for quick, informal interruptions and interchange. Harangues from a rostrum would be a sad substitute for the conversational style in which so much of our business is done. But the conversational style requires a small space, and there should be on great occasions a sense of crowd and urgency. There should be a sense of the importance of much that is said, and a sense that great matters are being decided, then and there, by the House . . . This anyhow was settled as I wished.

In my submission I pointed out that modern language would replace Churchill's contrast between "party system" and "group system" by the contrast between the "two-party system" and the "multi-party system", with Winston Churchill and John Howard strongly supporting the former. Anyway, the critical sentence is: "Logic is a poor guide compared with custom". That is so true. Its truth is precisely why I would do whatever it takes to ensure that above-the-line Senate voting does not become customary. It should be seen historically as a short-term device to solve the informal vote problem of the 1949 to 1983 Chifley system of the single transferable vote. That is why the 1984 to 2014 system was defensible while the present is not. Reformers genuinely interested in democracy must not allow above-the-line voting the defence of being customary.

ABOVE-THE-LINE VOTING MUST ONLY EVER BE PERMITTED IN CASES OF HIGH DISTRICT MAGNITUDE.

DECEITFUL INSTRUCTIONS ON BALLOT PAPERS MUST ALWAYS BE CONDEMNED.

My Statement on 1 March 2016

During both the 45th Parliament (the Turnbull-Morrison term) and the 46th Parliament (Morrison's term as an "elected prime minister") my submissions were subjected to extreme vetting by the JSCEM and the Committee refused to listen to me, notwithstanding my expressed desire to be heard. That means the 44th Parliament (the Abbott-Turnbull term) was the last during which I was treated with the respect I think I deserve. For that reason, I place on the record my opening statement at the public hearing on the morning of Tuesday 1 March 2016 considering the Commonwealth Electoral Amendment Bill 2016. It reads:

Section 7 of the Australian Constitution commands that: "The Senate shall be composed of senators for each State, directly chosen by the people of the State, voting as one electorate". Section 24 deals with the House of Representatives. Members there are also commanded to be "directly chosen by the people." These provisions mean that the electoral system for all our federal politicians must be candidate-based. The Commonwealth Electoral Amendment Bill, as it now stands, is breathtaking in its contempt for the Australian Constitution. It is a bad bill. It should be withdrawn and re-drafted to bring it fully back to comply with the Constitution.

All three contrivances introduced in 1984 must be scrapped. Any suggestion that the contrivances should be cherry-picked merely to suit the convenience of three big political parties, one big independent senator, or the Australian Electoral Commission must be resisted. If any of the above is not implemented, it would be the duty of a senator to take the matter to the High Court, the day after the Governor-General signed assent. I am confident such would happen. If that challenge fails, I would be devastated. I would no longer be able to say that our senators are directly elected by the people.

Who would I blame? In the first place I would blame the arrogance of Dr Evatt and the Labor Party in 1948. In the second place, I would blame the bloody-mindedness of the Liberal Party in 1974, 1975 and 1983. In the third place, I would blame the filthy 2016 deal between the current Liberal Party, led by the unelected dud prime minister, Malcolm Turnbull, and the Greens, a party noted for its moral vanity.

For the past two years I have been urging the Labor Party to withdraw from the effective big party conspiracy represented by the Joint Standing Committee on Electoral Matters report of May 2014. I am pleased they have now done that. So, two cheers for Bill Shorten and his caucus. I wish I could say “three cheers for Labor” but I cannot.

To my friend Gary Gray: I thank him for giving me his “how to vote Labor in Brand” leaflet which I have tendered to the Committee today. I regret his decision to spit the dummy in his speech last Wednesday. I have tendered to the Committee a Tasmanian state ballot paper that shows what a half-Senate ballot paper would look like, in principle, under a decent reform. Such a Senate ballot paper would say on the top: “Number the boxes from 1 to (here insert the number of candidates) in the order of your choice”. On the bottom of the ballot paper it would say: “Your vote will not count unless you number at least 6 boxes”. I illustrate a “how to vote Labor” leaflet by showing on one side – in colour – the actual flyers handed out in the Division of Brand. On the other side I show what it might look like under a decent reform. If asked, I shall explain to the Committee how I constructed the black-and-white side of the flyer . . .

I look forward to the inevitable High Court challenge with both fear and delight. My fear is that the High Court will use the precedent of *McKenzie* to give the okay to a rotten piece of legislation. My delight is at the prospect of the Court striking down this enactment and telling the grubby politicians how to enact a decent reform. Think of that. The politicians really would be able to sell the reform as legitimate in that circumstance: “We did this because the High Court told us to” would replace the current spin of: “A parliamentary committee unanimously told us to do this . . . and we waited two years before we decided to rush it through.”

The reference to Gary Gray spitting the dummy is to the fact that he had made a speech in which he said he was personally in favour of the legislation, but the caucus had decided to vote against it. He was bound by the caucus so he would vote against it. He was the shadow minister of state at the time, a position from which he immediately resigned. He was replaced by Mark Dreyfus.

My Comment on the 2019 Election

On 29 July 2019 the Minister for Finance, Senator Mathias Cormann, asked the JSCEM to inquire into all aspects of the conduct of the 2019 federal election. Consequently, early in August the JSCEM advertised asking for submissions. I replied immediately with a seven-page letter to the Secretary of the Committee, Lynley Ducker. Soon thereafter I received a telephone call from Phillipa Blackwood,

the Committee's researcher. She told me my submission could only be published if I cut it by two-thirds. I knew I had to comply. Out of 159 submissions (the last being published in January 2020) mine was the 6th published, being preceded by "Name Withheld", Peter Bayley, Professor George Williams AO, Bede Harris and Catherine Sullivan. My letter dated 22 August 2019, addressed to Lynley Ducker, reads as follows:

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 this claim I cite the third page of the document "Your official guide to the 2019 federal election: Saturday 18 May 2019". This document was sent to every household. I invite Committee members to read the third page closely. An original of the document is enclosed.

Dealing with above-the-line voting for the Senate it tells the reader: "If you choose to vote above the line, you need to number at least 6 boxes." (Note that the words "number at least 6 boxes" are in bold letters.) That statement is a lie. A single first preference is a formal vote, so you do not need to do that. Why, therefore, are you not told the truth? The answer is that the federal politicians want you to believe your vote is informal if you do not do as they instruct. Their reasons for concealing the truth from voters are as cynical as could possibly be imagined. The instructions are deceitful.

By the way I would not object to that if it were to read: "If you choose to vote above the line, and if you wish to follow the instructions on your ballot paper, you would then need to number at least 6 boxes."

Another possibility would be to replace "you need to number at least 6 boxes" by "you should number at least 6 boxes". I would still dislike that, of course. But that statement would not be a lie.

Dealing with the below-the-line vote 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 other boxes below the line as you like."

Note that the words "number at least 12 boxes" are in bold letters.

If politicians were honest with voters that would read this way:

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.

Does anyone seriously dispute my claim that the Senate voting system is both dishonest and manipulative? What is needed is an honest system designed by me. My model ballot papers provide that. The voter would then be offered a voter-friendly ballot paper in which it is made quite clear that which vote is counted as formal and that which vote is not counted because it is informal. The present ballot paper is very voter unfriendly and very, very, party-machine friendly. It is precisely what would be expected from party machines that seek to manipulate voters who have the wool pulled over their eyes.

My use of the expression “designed by me” may sound conceited. For such a reason I should point out that the IDEA behind my reform proposals was generated by Dame Enid Lyons (on behalf of the Liberal Party) in February 1948. Unfortunately, because the Labor Government of the day did not understand what it was doing, she failed in the short term. When her party gained office, it decided her ideas were not acceptable because they would make the Senate voting system too fair.

I made it clear that I wanted the Committee to hear me but received no response. The Committee members were not interested in listening to views they did not want to hear. Hence their extreme vetting of my submissions and refusal to listen to me at any time in the 45th and 46th Parliaments. So, the last time they listened to me was at the tail end of the 44th Parliament in my statement of 1 March 2016, quoted above. Note: I was only allowed to appear then because the Labor members insisted that I be invited.

Believing Labor members would be more sympathetic to my views than the Liberals I made a special effort to see if they would press the Committee that I be heard in 2020. However, I gave up on them too after my meeting with Milton Dick, Labor member for Oxley. When I told him of my view that the Senate voting system is “rigged” he agreed, but said he thought it should be rigged in such a way as would prevent a senator to get re-elected who was dumped to an unwinnable position on a party ticket. In other words, he expressed a liking for the present system.

On the afternoon of Thursday, 7 May 2020 I received an e-mail from Michele Bourke of his office that began “Dear Malcolm”, went on as below and finished with “Kind regards, Michele”:

I trust this finds you well. My sincere apologies for the delay in communicating with you. Milton has asked me to thank you for the opportunity to meet in Parliament on 3 March 2020. In addition, Milton has received your correspondence following that meeting and has asked me to advise that he has noted the issues raised.

So, how should I react to that? My first reaction was that this letter is not as warm as that I received from Senator Don Farrell reported under the heading “Labor Disappoints” in my first chapter *Dishonesty the Only Policy*. Nevertheless, it does suggest an open mind and willingness to engage. It also enables me to describe the conversation he acknowledges took place.

Is the Senate voting system rigged? My take has always been that the present system is a partisan rig put in place by the Liberal Party spider with help from the Nick Xenophon fly, the Greens fly and the Nationals fly. Obviously, the Liberal Party would deny that. Why should Labor deny it? No benefit whatsoever has flowed to Labor from it, but substantial benefits have flowed to the Liberal Party! A minor benefit has flowed to the Greens from the Liberal Party’s reform. In the very short term substantial benefits flowed to Nick Xenophon from it – but then he blew it.

This is my speculation. Labor is biding its time. This is my dream: when there is next a Labor federal government it will instruct the JSCEM that it should not subject my submissions to the extreme vetting shown during the 45th Parliament and the 46th Parliament. It will also instruct the Committee that it hear me. I shall then lecture the politicians that their duty to Australian democracy is to increase their own numbers – 12 more senators, and about 24 more members of the House of Representatives. Why? So that a decent Senate voting system can be given to the Australian people, one that can be explained properly by someone who is not a politician or propagandist of any kind.

Only two Labor federal politicians have expressed hostility to my reform proposals. They are Julie Collins who, before becoming federal member for Franklin, was the State Secretary of Labor’s

Tasmanian branch, and Milton Dick who, before becoming federal member for Oxley, was the State Secretary of Labor's Queensland branch.

Dick was the State Secretary during the 2004 and 2007 federal campaigns. I can see why he placed great value on Labor's ability to enforce the order of its Senate ticket. But if that enforcement is a benefit to Labor is not the benefit to the Coalition so much greater? The reality is that Labor has less to lose from a democratic Senate voting system than the Coalition.

Would Dick want to admit publicly that he thinks the Senate voting system *should be rigged*? He *does* think it should be rigged – and so does Collins. Both told me so. In any event there is no need for me to prove that it is specifically a Liberal Party rig. More important is the fact that it is rigged against the Constitution because it effectively deletes the words “directly chosen by the people” from section 7 while leaving the same words in place in section 24.

I rest my case. The politicians have subjected my submissions to extreme vetting and have picked on me in the process. However, I can get back at them. Hence the need for this book. The time has come to stop the politicians rigging the system against the people. The four contrivances should be deleted from the ballot paper. Their purpose is not democratic. It is manipulative. The contrivances are elaborate instruments of voter-manipulation.