

Recent Controversies regarding the Senate Electoral System

By Malcolm Mackerras

The September 2013 half-Senate election turned in results which were unusually controversial. Looking back on those results I would say that the left-right distribution of Senate seats was about right and that the new Senate was a fair reflection of voter intent. However, I admit that the correct left/right distribution is essentially a case of cancellation of deviations. Apart from the territories (which are never the subject of complaint!) only the result in Queensland was not the subject of complaint. The rest of Australia I read as follows:

The process of “preference harvesting” cost the Liberal Party two Senate seats, one each in Victoria and Tasmania. However, the Abbott government was compensated by two supporters who gamed the system and were thus elected. They were David Leyonhjelm (Liberal Democrat, NSW) and Bob Day (Family First, SA). The parties of the left were done out of three senators, Labor’s Louise Pratt and Don Farrell and Cate Faehrmann of The Greens, but were compensated with three senators who won seats in very unusual circumstances, Scott Ludlam, Sarah Hanson-Young and Jacquie Lambie. The parties of the centre were done out of one senator, Stirling Griff, Nick Xenophon’s running mate, but were compensated by one senator who gamed his way into the Senate, Ricky Muir.

In October 2013 I had published under the auspices of the Public Policy Institute of the Australian Catholic University a paper titled “In Defence of the Present Senate Electoral System”. It became my submission to the Joint Standing Committee on Electoral Matters of the federal parliament when they began their inquiry into the conduct of the 2013 election. Essentially I recommended the retention of all three contrivances in the system but argued that the below-the-line requirement be eased to make it more voter-friendly. I need not give details here beyond saying that I described the system as “the second single transferable vote

system” and declared it was the fairest and most successful of all the Senate systems to date.

In my defence of the results I mentioned Ricky Muir and defended his election in Victoria. Likewise I defended the election of David Leyonhjelm in New South Wales. I pointed out that he won a seat from Labor. Therefore the Liberal Party had no ground to complain. For South Australia I explained how the result there was quite fair. Overall, I asserted, the new Senate was very representative of the people.

There was one mistake I made in that paper. At the time it appeared that the order of election for the six senators for Western Australia was David Johnston (Liberal), Joe Bullock (Labor), Michaelia Cash (Liberal), Linda Reynolds (Liberal), Zhenya Wang (Palmer United Party) and Louise Pratt (Labor). In the end, however, there was a re-election on 5 April 2014 at which Scott Ludlam of The Greens replaced Pratt as the senator representing left-wing opinion. It did not affect my left/right distribution. Both those results were clearly very fair.

I appeared before the Joint Standing Committee on Electoral Matters on Friday 7 February 2014 and was questioned. In my appearance I tendered Senate ballot papers and also a copy of the McKenzie judgment. In their Final Report in April 2015 the Joint Standing Committee on Electoral Matters recorded on page 178 as the first exhibit: “Mr Malcolm Mackerras, *Sample Senate ballot papers for New South Wales and Northern Territory federal election 2013*” but no mention of the McKenzie judgment. I formed the strong impression that the Committee did not want to know the view that the Senate system had been unconstitutional since 1984.

On Wednesday 28 May 2014 I had an article published in *The Australian* on the commentary page 12 headed “Winning System Lost as Senate gate slams shut” to which the editor added “Vested interests are driving change in the way upper house members are elected”. It reads as follows:

In September last year there was a half-Senate election held simultaneously with the lower house general election. In the

House of Representatives, Labor lost 17 seats, of which 14 went to Liberals and three to Nationals. In the Senate election, Labor lost six seats, one per state. Not a single one of those losses went to the Coalition. Indeed, the Liberal Party lost a Senate seat in Victoria, which explains why the Coalition now has 34 senators, but will have only 33 next month.

The Senate vote was an absolute debacle for both the Labor and Liberal parties. On paper, Labor's fall was the greater. Its vote had been 4,469,734 (35.1 per cent) in August 2010, but fell to 4,038,591 (30.1 per cent) last year. However, Labor never claimed it had won the election overall. Psychologically, therefore, the Senate vote was more humiliating for the Coalition. It increased its absolute vote in 2013, but its percentage fell, so I consider the Coalition over the longer term. In 2004, it won 45.1 per cent of the Senate vote, which gave the Howard government a Senate majority. Its subsequent Senate percentages were 39.9 in 2007, 38.6 in 2010 and 37.7 last year.

The Coalition had 37 senators in the first Howard term and 39 in the fourth. Poor Tony Abbott will have only 33! Both Labor and Liberal seat losses are a true reflection of their lost votes which tells us much about the fairness of the Senate electoral system. Under the force of this voter rejection, the Labor-Liberal complaint has been to say: "The voters let us down." If the above constitutes my take on these results, what is the official spin? It is not hard to find. Just go to the federal parliament's Joint Standing Committee on Electoral Matters and its *Interim Report on the Inquiry into the Conduct of the 2013 Federal Election: Senate Voting Practices*, which was delivered on the morning of Friday, May 9.

The opening sentence of the foreword reads thus: "The 2013 federal election will long be remembered as a time when our system of Senate voting let voters down." I dissent. I think what will long be remembered are the facts that I outlined a few paragraphs ago. However, there will be some in the political class who remember the election for the official

reason. A bit below the above quote from the foreword we have the view that the system “delivered, in some cases, outcomes that distorted the will of the voter”.

My reaction to that is to ask for names. So I continue to read. Then on page 19 there is this: “Despite this very small percentage of first-preference votes, Senator-elect Muir was elected to the Senate for Victoria in the final vacancy.” In fact there were a dozen senators elected with a smaller percentage of first-preference votes than Ricky Muir of the Australian Motoring Enthusiast party. However, their preference harvesting was within party groups (very normal and thought to be ethical) whereas Muir was harvesting the votes of other parties. So I can now give a precis of the report. It takes the form of an address to Muir from the rest of the parliament: “You should not be here. To make that quite clear we intend to enact a radical reform of the system. Your type will never again be allowed to enter the Senate.”

On page 2 of the report we have this: “The final composition of the Senate should reflect the informed decisions of the electorate and it is clear that the Senate from 1 July 2014 will not do that, it will reflect deal-making and preference-swapping”. My take is to assert that 36 senators will be sworn in next month of whom 35 clearly reflect the informed decisions of the electorate. We can agree to disagree about Muir.

This report is a scholarly work and I encourage people to read it. However, do not be misled by its unanimity. First, three parties only were represented, Labor, Liberal and Greens. Had there been a Nationals member or had John Madigan or Clive Palmer been a member there would have been a dissenting report. Second, the three parties represent declining voter support. I have already given the Labor and Liberal figures so let me give the Greens. They received 13.1 per cent in 2010 and had six senators elected. Then they received 8.6 per cent in 2013 and had four senators elected.

Since there is now a unity ticket of three big parties to implement reform, we can safely say there will be changes along the lines unanimously recommended. So let me say something about the present system and the next one. I call the present system “the fifth Senate electoral system and the second Single Transferable Vote system”. I call the next system “the sixth Senate electoral system and the third STV system.”

History will record that the present system operated for 30 years, from 1984 to 2014 inclusive, over 12 elections. It was a remarkably successful system, not only being popular but also being noted for the consistent fairness of the results it produced.

So why was it abandoned? Essentially, it was wrecked by micro parties gaming the system. The guilty men were Glenn Druery and Ricky Muir. The politics of the time played into the hands of the three big parties – who remoulded the situation nearer to their hearts’ desire. When the new system starts in 2016, I shall be looking for features of that election that justify further reform.

Due to the difficulties I had with the then editor of the opinion page of *The Australian* newspaper, Rebecca Weisser, I was not able to get a further article published on this subject in that paper until January 2016. It is quoted below. In the interim four articles of propaganda by my opponents were published on this subject. On each occasion I tried to reply but my article produced a stony silence from Rebecca. I read that as a rejection.

Consequently, I turned to *The Canberra Times* where the readership was more likely to appreciate the kind of detailed argument in which I engaged. Interspersed with other articles on all sorts of different subjects were these contributions to this debate which, in my opinion, do not merit publishing here. For the most part their headings are self-explanatory.

The first article was a commentary on the Senate re-election in Western Australia which had taken place on 5 April 2014. It was not my only commentary on that event. My earliest post-election comment was on the website for the SWITZER pay television programme of which I am the politics expert. It was published on 9 April and it celebrated the success of the re-election with the title "Senate election the best exercise in democracy". The later article in *The Canberra Times* was published on 2 May when every vote had been counted. It was titled "WA re-election shows signs of life after left's debacle". One month later I had published a follow-up article in the paper titled "New Senate is a fair reflection of voter intent". It was published on Thursday 5 June 2014.

Some one year later, after I was having no success with *The Australian*, I launched into a further attack on that interim report in *The Canberra Times*. The article was published on 11 May 2015 and was titled "A cynical fix that won't last" to which the editor added: "Electoral reform report lies in the rubbish bin". Those were good short descriptions of my article. Since I repeated my points in later articles in the same newspaper I do not include that May 2015 article here.

The next stage of my campaign came in a front page article in the important *Times 2* portion of *The Canberra Times* for Wednesday 9 December 2015. The front page portion of the article was headed "Party list unconstitutional" to which the editor gave this description: "Calls for Senate party-list systems designed to benefit the big parties were predictable - and misguided". The article continued over to page 4 where the heading was "Senate must come into line with Victorian system". The full article reads as follows:

Readers of my articles probably associate my name with making political predictions - my name is not normally associated with advocacy. However, those of you who have read my six most recent articles here (May 2014 to October 2015) may have thought that my thinking has become dominated by an obsession. That obsession has caused me to visit the parliaments of New South Wales, Victoria and the

Commonwealth with remarkable frequency. The purpose of those visits has been to lobby politicians about my obsession. The visits will continue until I have achieved my objective.

To federal politicians and to those state politicians in Victoria my message has been simple: Don't allow the NSW disease to be imported into your parliaments. The well-known term "NSW disease" has different meanings to different people. I now describe what it means to me. In respect of the 2003, 2007, 2011 and 2015 NSW state elections, the method of electing the Legislative Council has been proportional representation by means of party list. For every other house of parliament where PR applies, the system is pedantically described as "proportional representation by means of the single transferable vote", or PR-STV for short.

In September 2013, 40 senators were elected, one of whom came from a micro-party which gamed the system to get their candidate (Ricky Muir in Victoria) elected a senator. In November 2014, 40 members were elected to the Victorian Legislative Council. Five of the 40 were candidates (three men and two women) from micro-parties which successfully gamed the system in like manner. So, in what way does the Victorian upper house system differ from the federal to produce five odd results where the federal produced only one (out of 40 in both cases)? Actually the situation is somewhat counterintuitive, as I explain below.

My reaction to these pieces of election news was to say to myself: "My rivals in psephology will press the politicians from the big parties to install party-list systems designed to benefit the machines of their big parties. I must thwart them." Sure enough, in 2014 we had a report from the Joint Standing Committee on Electoral Matters doing exactly as I had privately predicted. They determined, unanimously: gaming the system by micro-parties must be stopped by legislating for a Senate party-list system suitably loaded in favour of big parties. In *The Canberra Times* I expressed my hostility to that report on Monday, May 11, 2015, in my article titled "A

cynical fix that won't last" to which the editor added this brief description: "Electoral reform report belongs in the rubbish bin."

So why does the idea of party-list systems excite my hostility? Simple really: 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". Therefore a party-list system is unconstitutional because the constitution commands that all our federal electoral systems must be candidate-based. To that my critics say: "Rubbish. The present Senate method is a party-list system and its constitutional validity was upheld by the High Court in 1984". To that my retort is to say: "If I cannot rely on the High Court then I must lobby the politicians to do the right thing, namely convert the present camel of a system into a proper STV system."

I mentioned above the difference between the Senate and Victorian systems. Actually there is only one difference, a more voter-friendly ballot paper. In September 2013, Victorian voters were given this below-the-line option for the Senate: "OR by placing the numbers 1 to 97 in these squares in the order of your preference". In November 2014, this was the option: "OR place the numbers 1 to at least 5 in these squares to indicate your choice." Intuition would predict a big rise in the number of below-the-line votes. They did rise – from 90,215 (2.7 per cent) in September 2013, to 208,875 in November 2014, but this latter figure was still only 6.1 per cent of the formal Legislative Council vote. Given that Victoria chanced to be the only state to elect a micro-party senator it is worth noting that the Victorian "preference whisperers" had a success rate of one in six in the Senate but five in 40 for the state upper house.

So what will happen? I advocate and predict the following. Some time next autumn the Federal Parliament will do the easy and right thing and bring the Senate system into line with the Victorian. Queanbeyans will have this below-the-line

option: “OR place the numbers one to at least six in these squares” and we Canberrans shall need go only one and two below the line.

The parliament we elect in September next year will have enough time to do the job which really needs to be done – convert the present half-STV system into a *proper* STV system. Victoria will follow suit. As this might excessively alienate the Senate cross-bench, I recommend and predict something further – an increase in the size of the Federal Parliament. It will go from 76 senators to 88, and from 150 House of Representatives members to 175. In the long run the crossbench senators would have no ground to cry “unfair” when seven senators are elected from each state. And the Capital Territory will be able to get back its third lower house seat.

Very soon after the publication of that article I decided to do something rather daring. My friends warned me strongly against it: “You must not attack Saint Nicholas” they warned. However, I decided to go ahead – and I am very glad I did. I decided to launch a personal attack on Senator Nick Xenophon. It came in exactly the same form as my “party list unconstitutional” article. On the front page of the *Times 2* portion of *The Canberra Times* for Monday 28 December 2015 there appeared my article “Put people before parties” to which the editor added: “Maintaining constitutional integrity with Senate reform is now in the hands of Labor and the Liberals.” The article concluded on page 4 under the heading “Senate reform needs to put people before parties”. The full article reads as follows:

Recently, *The Canberra Times* did me a great favour. About two months ago I sent an article to this paper. It was titled “Party list unconstitutional” and it was published on December 9 in *Times 2*. Perfect timing. When a Victorian crossbench senator rang me the following day all I really needed to do was refer him to that article. However, he did not object when I subjected him to a lecture because I told him everything he wanted to hear.

There is another reason why the timing was perfect. Two days before its publication there was an item on the ABC radio program *PM*. It was a very good illustration of why I have become obsessive in my hostility towards Senator Nick Xenophon and ABC analyst Antony Green. Mind you, both men are very good at their jobs and work hard. Splendid fellows! It is their influence which needs cutting down to size, their propaganda which so irritates me.

The segment in question was joined by two other ABC personalities, Tim Palmer and Natalie Whiting, of whom I offer no criticism. Referring to the options for reform of the Senate electoral system, Whiting said: "Nick Xenophon has put forward his own plans for reform", to which Xenophon briefly described his latest plan. To the Xenophon spiel Whiting said: "Those reforms would directly benefit your party, one would think, considering yours would be a recognisable name outside of those two major parties." To that Xenophon gave a reply so sickening I refuse to put it in print.

My objection to both Xenophon and Green is to the way they feed off each other. They dish out the same propaganda (in which, by the way, they are joined by one political party, the Greens) creating the impression that theirs is some standard, reasonable opinion. I now call the pair "the Xenophon-Green axis" or "the axis" for short. The reality is that, among cross-bench federal politicians, Xenophon is outnumbered 11 to one. I cannot be so precise about Green. I know, however, that he is heavily outnumbered among expert psephologists.

The case that really sticks in my craw is the election of senators for South Australia in September 2013. Xenophon asserts that under a "democratic" system, Sarah Hanson-Young and Bob Day would not now be senators because their places would have been taken by Stirling Griff and Don Farrell, they being the No. 2 candidates from the Xenophon and Labor parties. And Green chimes in to support

Xenophon. Since Green, on their reckoning, is the only independent electoral expert in the country, they think their case rests. Griff and Farrell were cheated out of their rightful place as senators.

Incredibly enough, the Greens support the reform wanted by the axis. They have no time for Australia's 19th century Constitution (drawn up entirely by men) with its old-fashioned democratic values which take the form of commanding that all our senators be elected in a candidate-based electoral system. So, why were Hanson-Young and Day elected, and was there anything wrong with their election?

To give my answers to those questions I imagine the election having been conducted under the Hare-Clark system which, as Canberrans well know, is the very best form of the single transferable vote. I can see no reason to doubt that Hanson-Young and Day would have been elected under Hare-Clark. So, why the squeals from Xenophon? Why has Green given credibility to those squeals? In my opinion the answer is simple: Xenophon is the greatest gamer of systems ever elected to any Australian Parliament. In 2013, however, his game was called out. There were influential people in other parties who thought Hanson-Young and Day more deserving of Senate seats than Farrell and Griff. It riles the axis to have that result described sensibly. It deprives them of their ability to argue that their reform (and only their reform) deserves consideration.

The axis wants to retain the party boxes because they turn the system into a party-list system. I won't have a bar of that. I want a candidate-based system as commanded by section 7 of the Australian Constitution. I do not have any particular objection to the group voting tickets (the feature of the system the axis wants to eliminate) yet I am willing to see them go, but only if the party boxes are also eliminated, along with the ballot line, that being the technically correct term for the heavy black line which runs through the ballot paper.

The normal instinct of ordinary people tells them that Xenophon is just any old grubby politician. Therefore the problem is Green, who gives intellectual credibility to the kind of disreputable proposals Xenophon is likely to conjure up. Worse still, Green has these massive audiences for his election-night commentaries. So, let me take Green apart intellectually with two quotes from his blog post of June 22 this year. The first 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.”

By “some have proposed” he means the Proportional Representation Society of Australia, Crispin Hull and me. The sentence on what we propose is a correct description but his two comments are rubbish. He knows as well as we do that the 98 per cent statistic has been created by a system in which the below-the-line requirement is so unreasonable that voters are intimidated into voting above the line.

Then we have this from Green later in the same post, describing the reform the axis wants: “Under the proposed system, the only preferences that would count are those filled in by voters themselves, the same as for House elections.” Wrong! The system wanted by the axis (and the Greens) would still have party boxes so the ballot paper would still invite electors to give their votes to party machines.

Finally, section 7 of our Constitution for the Senate and section 24 for the House of Representatives both command that our federal politicians be “directly chosen by the people”. That commandment has always been obeyed for lower house elections. However, for the upper house since 1984, senators have not been directly elected. They should be.

A sensible description of the current system is this: the people go to the polls and fill in ballot papers which are counted and the counts distribute numbers of party-machine appointments between the parties according to the concept of proportional representation. The Xenophon party and the Greens want to keep it that way and entrench it by a cynical fix. The Nationals want to keep the system as it is.

It is now up to the Labor and Liberal parties (both of which have a vested interest in joining with Xenophon and the Greens) to decide whether to have some constitutional principles or whether to allow their greed to get the better of their common sense.

My decision to attack Xenophon was motivated by a desire to force him to reply – to flush him out, so to speak. In that I succeeded. His article “Let’s empower Senate voters to make it fair” appeared on page 5 of the comment section on New Year’s Day in 2016. He gave a 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.

I sent an article in replying to Xenophon which is printed below. However, before it could be published two letters to the editor were printed supporting me. The first was from Paul Bowler of Holder and the second was from Bogey Musidlak, convener, Proportional Representation Society of Australia (ACT branch). Musidlak’s letter reads as follows:

Senator Nick Xenophon had most of his Senate electoral history wrong and is dreaming if he thinks his revised convoluted proposal is “broadly based” on the ACT’s Hare-

Clark arrangements, under which the absence of party boxes is entrenched, and voters' wishes are respected even if they number fewer candidates than there are vacancies.

Compulsory indication of all Senate preferences was first enacted in 1934, replacing the previous arbitrary minimum of twice the number of vacancies plus one, under which informal rates usually exceeded 8 per cent. The 1983 changes complicating the ballot paper did not have bipartisan support. The Coalition voted against party boxes. The Australian Democrats demanded being allowed to lodge two group voting tickets as part of their price for allowing Labor's proposals through. They also introduced the remarkable below-the-line dispensation that at least 90 per cent of the squares be marked with no more than three departures from sequential numbering. While Senate informality dropped markedly in 1984, House of Representatives informality trebled at that election because many electors misunderstood advertising about new arrangements that applied only to Senate voting.

After the 2013 elections, Senator Xenophon introduced legislation to treat marking a single party box as formal, or six preferences below the line as enough. Now he suddenly wants a minimum of three party boxes or 12 first two or three during the scrutiny? We could expect an explosion in the number of candidates if 12 preferences were demanded for a formal vote. As above-the-line and below-the-line requirements would have to be co-ordinated in some way, smaller groups and parties would endorse at least four candidates and perhaps even as many as 12, rather than the current usual two. Electoral officials would have to waste most of their advertising budget explaining the arbitrary new formality requirements, quite different from those applying for the House of Representatives, instead of concentrating on alerting electors that they are giving a simple instruction about the order in which continuing candidates can have access to any part of their vote that still has not been used.

The onus is on Senator Xenophon to explain why he wants to make an uncomplicated ballot paper more cluttered rather than adopting the ACT's simple Hare-Clark approach to layout and formality or that of the Menzies opposition in 1948. He has yet to advance any credible arguments about why his proposed additional complexity in formality requirements is in electors' interests when the abolition of party boxes would make their and electoral officials' jobs so much more straightforward.

The heading to the above letter was simply "Abolish party boxes". The heading to my next article was "History of Senate voting vigorously debated". The article reads as follows:

I welcome the article by Senator Nick Xenophon but I cannot allow all his errors to go uncorrected. I have no objection to his first ten paragraphs. His 11th paragraph reads, referring to 1983: "The newly elected Hawke government tackled Senate voting reform and, with bipartisan support, it implemented the system we have today."

That is wrong. The Hawke government lacked a Senate majority and there were two parts to its major reform. The first part was implemented with the support of the Nationals, the second part with that of the Democrats. The Liberal Party in 1983 turned on a spectacular display of bloody-mindedness, matched only by Labor's arrogance in 1948, when the first single transferable vote system was introduced. These displays were couched in terms of "principle" with both parties doing U-turns. An important idea denounced in 1948 became a "principle" in 1983 and vice versa. It was a good idea rejected in both cases. It was that electors be asked merely to number 1, 2, 3, 4, 5 and beyond if the voter so desired.

It was obvious to me in 1983 that this system (the present one, able to gain parliamentary majorities in 1983) would not last because it was clearly unconstitutional. From the very beginning I disliked three of its four features. I disliked the

party boxes and the ballot line, that being the correct technical term for the thick black line that runs through the ballot paper. Above all, at the time and ever since, I have railed against the wholly unreasonable nature of the below-the-line vote option. However, because its motive was good, I was willing to support it and defend it. The motive was to reduce the Senate informal vote.

In 1984, I noticed that a certain Cyril John McKenzie, an ungrouped candidate in Queensland, challenged the new system in the High Court. Faced with the alternative of throwing out a system for which the motive was good, Chief Justice Sir Harry Gibbs agreed, very reluctantly, to constitutionalise the patently unconstitutional. The actual date of the McKenzie judgment was November 27, 1984. The election was on the following Saturday, December 1, 1984. Now that the Senate electoral system has become politically discredited the McKenzie case should be re-litigated before the full High Court. That would enable the justices to tell the politicians how to legislate a decent reform. Obviously a parliament in which the likes of Xenophon have so much power cannot be trusted to do the job properly.

Over the next 30-plus years (1984 onwards) I noticed the extraordinary ability of this awful system to get the will of the people right in 99.7 per cent of cases. "Can that be pure luck?" I asked myself. "No," I decided. The reason why the system worked so well was that its one desirable feature (the group voting tickets) had outweighed its three bad features, the ballot line, the party boxes and the unreasonable below-the-line requirement to number every box.

On the night of the 2013 federal election I noticed Antony Green dishing out his usual propaganda (what his ABC colleagues call "editorials") which comprehensively misled viewers. However, Green did get one detail right. It was odd that Ricky Muir should take a seat from Victorian Liberal senator Helen Kroger. To be fair to him Green was the first to notice that such would happen.

Reverting to Xenophon's article, he writes: "This proposal (Xenophon's) is broadly based on the ACT voting system, which has proved to be robust and fair." Wrong! Wrong! Wrong! He could get away with such a dishonest statement in South Australia but Canberrans are too smart. They know that his proposed reform is the antithesis of the Tasmanian-ACT Hare-Clark system. Canberrans know that their system is candidate-based, which is what the Senate system should be. Supporters of Hare-Clark know it is based on proper democratic principles. They know how to explain it in every detail. By contrast, Xenophon cannot explain his cynical changes of position any more than can the Labor and Liberal parties. I can explain Xenophon. Every time he changes his position the change can be explained in terms of self-interested political calculation. I lack the space to give details here.

All this brings me back to the whole point of my earlier article. I knew enough about Xenophon to know that he is immune to reason, so I appealed to our two big parties: discover genuine principle for once. Let all these cynical politicians recognise that there is a principle. It is section 7 of the Constitution which reads: "The Senate shall be composed of senators for each State, directly chosen by the people of the State, voting as one electorate." Having read those words I ask you to implement that principle. In this request I am supported by the Proportional Representation Society of Australia and respected *The Canberra Times* correspondent Crispin Hull.

I acknowledge that the implementation of that principle may at times involve minor inconvenience to the machines of our two big parties. Let them live with that so they can get some respect from the public. If our two big parties cannot bring themselves to do that I suggest they at least give voters in the states a below-the-line option, say 1,2,3,4,5 and 6 and beyond that if the voter so desires. Unlike Xenophon I can explain that number in terms of principle. There are six senators

elected at each half-Senate election. As for Xenophon I wonder whether I should have accused him of dishonesty, as I did above. Perhaps Xenophon's is more a case of invincible ignorance.

Thereafter this controversy went strongly my way. In his regular Saturday column in *The Canberra Times* for 23 January Crispin Hull had an article titled "Time for voting challenge". Here I quote the beginning and end of that article:

A delightful ding-dong has been going on this month between South Australian independent senator Nick Xenophon and the noted psephologist Malcolm Mackerras that has led Mackerras to call for a re-run of the 1984 High Court case that declared the present mad Senate voting system constitutionally valid. At first blush, it would seem a Quixotic gesture, but here are a few thoughts as to why the idea has merit, if you could get the money for good representation. The 1984 case was self-represented, which is another reason to question it. Cyril John McKenzie, an independent Queensland candidate for the 1984 Senate election, ran it himself. . . .

In any event, a High Court challenge to the present system would gee up the politicians to do something about it and the threat of it may persuade them that these poisonous party lists are too constitutionally risky. They might even opt for optional preferential voting so voters only have to vote for six preferences and as many thereafter as they want. But, as is often the case, it takes the force of a court for a politician to put principle above self-interest.

This particular controversy ended with a letter by Robert Adams of Ainslie on 27 January and another article on 9 February, this time by William Bourke - both supporting me. The Adams letter begins with these words: "We are indebted to Malcolm Mackerras and Crispin Hull for two recent erudite, informative and quantified articles about the present Senate method of preferential voting."

In the meantime the position of editor of the opinion page of *The Australian* changed from Rebecca Weisser to Matthew Spencer. Consequently, I found that my sixth attempt to get an article on to the opinion page of the national daily was successful. The article was published on Monday 11 January 2016 and titled "Senate reform's opening gambit", to which the editor added "It's time to dispense with the 1984 Hawke government's three ballot contrivances". The article reads as follows:

Virtually everyone is agreed that there must be a reform of the Senate. It has been obvious since the Senate debacle of the September 2013 federal election. However, not everyone is agreed on the details of the needed reform.

More than two years ago it was clear to me what would happen. Consequently, when the joint standing committee on electoral matters of the federal parliament decided to have an inquiry I was quick off the mark to get my submission in. Having been making submissions of this kind over the past 60 years, I have learnt some tricks of the trade. It is like a game of contract bridge. One's opening bid is not necessarily the contract wanted at the end of the bidding. There are times when it is best to have a hidden agenda. I formed a clear idea of what others would say and, combined with my knowledge of the politicians on the committee, an equally clear idea of what the committee would recommend when it reported.

To understand this issue one needs to know that in 1984 the Hawke government, wanting to produce a much-needed reduction in Senate informal votes, inserted three contrivances into the system. What Hawke did was not his first preference, but that first preference (described below) had no chance of passing the parliament given the politics of the time.

The first post-1984 contrivance is known technically as "the ballot line". It is that thick black line which runs through the Senate ballot paper. The second contrivance - these are the

party boxes which the voter finds above the ballot line. The third contrivance is the system of group voting tickets.

I knew the way these party politicians, drawn from the three biggest Senate parties, would approach the subject. They would be interested merely to do the bidding of their party machines. Consequently, their thinking would go like this: "The ballot line is convenient to our party machines - let's keep it. The party boxes are convenient to our party machines - let's keep them." But, they would say, "The group voting tickets are inconvenient to our party machines. They enabled Ricky Muir to take a Victorian Senate seat from then Liberal senator Helen Kroger through preference harvesting. We must put an end to such wicked practices".

Their "Interim report on the inquiry into the conduct of the 2013 Federal Election: Senate voting practices" was handed down early in May 2014. It recommended exactly what I had expected. The two contrivances convenient to the big-party machines were recommended to stay. The one contrivance inconvenient to those machines was recommended to go - with the maximum denunciation that the morally vain could shout to a gullible audience.

Of those three big parties (Greens, Labor, Liberal) it would not surprise readers to know that The Greens were then and continue to be the loudest in their display of moral vanity. The other two have had enough sense to shut up.

I was quick off the mark to denounce that report - I did it first in this newspaper in May 2014 - and I have been campaigning against that report ever since. Back then I was the sole voice for common sense among commentators. I now have plenty of supporters.

Let me now explain why there has been no reform - and the Abbott government comes out of this very well indeed. Mr Abbott's critics say his government's inaction was prompted by fear of offending crossbench senators. Perhaps - but I

insist there was a better explanation. The Abbott government knew this was a dud report and actually hoped my campaign would succeed.

So I now predict there will be implemented exactly the reforms I recommend. There was one good recommendation in that report. It will be implemented. Consequently, your below-the-line option for your Senate vote this year will be merely 1, 2, 3, 4, 5 and 6 and more squares for candidates if you want to number them. (In 2013 your option was 1 to 110 in NSW, 1 to 97 in Victoria etc.)

That is my short-term reform to which my critics will say: "Such a limited reform would be useless. Gaming the system by micro-parties would continue." To that I would say: "My hidden agenda is that during the next term or two or three we should give the most serious thought to the idea of getting rid of all three contrivances."

We would then have a candidate-based Senate electoral system just as we have always had a candidate-based electoral system for the House of Representatives. This would be taking the Senate electoral system back to the Constitution. Section 7 for the Senate and section 24 for the House of Representatives both have our Constitution commanding that all our federal politicians be "directly chosen by the people". So - our Constitution commands that all our systems be candidate-based.

Finally, let me note that such a long-term reform would be exactly what the Hawke government wanted in 1983. Denied the obvious reform by other politicians the Labor ones fell back to their second preference - the present system.

Late in the morning of Monday 22 February 2016 there was made the announcement of the government's position. Within an hour of that announcement Catherine McGrath from SBS television rang and wanted me to appear that night. I did appear for 15 seconds which were entirely taken up with my assertion that if

this Bill were passed through the parliament there would be a High Court challenge issued the day after the royal assent was given by the Governor-General.

However, I thought to do another thing which I discussed with Catherine during private conversation. That thing was a description of how Ricky Muir was elected. Here it is. The quota for Victoria was 483,076. The first preference vote for Muir was 17,083 but he received 472,569 votes in preferences, giving him 489,652. The first preference vote for Kroger was 1,456 but she received 436,438 votes in preferences so she finished up with 437,894.

There would be people whose response to that would be to say: "There are lies, damned lies and statistics". Very well, you can say that but I insist the Single Transferable Vote is a candidate-based electoral system. We have STV because our Constitution has laid down this commandment in its section 7: "The Senate shall be composed of senators for each State, directly chosen by the people of the State, voting as one electorate."

Let me make this final admission: pretty well all of the above was written before I could study the Bill in detail. The truth is I do not need to study its detail: I know it is an abomination. I know the old saying "Fools rush in where angels fear to tread". I know that the angel Tony Abbott would not touch that JSCEM report with a barge pole. But he lost the office of prime minister last September. His successor, the fool Malcolm Turnbull, has rushed in, believing he can do a Faustian deal with Xenophon (the arch villain of the piece) and The Greens. Turnbull is too clever by half.

As I long ago predicted would happen the Labor party has come to its senses and will now mount a vigorous campaign against this Bill. I shall disagree with much of what they say but I do not doubt that they are right. They are good propagandists. In the filibusters we shall see the Labor members of the House of Representatives tear shreds off Adam Bandt who will feel the pressure of blow back. The same will happen to the ten senators from The greens. It could not happen to a nicer bunch of people!

Very recently I had lunch with Bob Day and David Leyonhjelm as a result of which I have no doubt that Day will launch a High Court challenge if the parliament is so stupid as to pass this legislation. I told both of them I thought they were good propagandists (Leyonhjelm more so than Day) and I also told them that I would disagree with much of what they would say but I know that both of them are right about this.

