



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

(Roundtable)

Reference: Conduct of the 2007 federal election and matters related thereto

THURSDAY, 16 APRIL 2009

CANBERRA

BY AUTHORITY OF THE PARLIAMENT

INTERNET

Hansard transcripts of public hearings are made available on the internet when authorised by the committee.

The internet address is:

<http://www.aph.gov.au/hansard>

To search the parliamentary database, go to:

<http://parlinfoweb.aph.gov.au>

**JOINT STANDING
COMMITTEE ON ELECTORAL MATTERS**

Thursday, 16 April 2009

Members: Mr Melham (*Chair*), Mr Morrison (*Deputy Chair*), Senators Birmingham, Bob Brown, Carol Brown, Hutchins and Ronaldson and Mr Danby, Mr Bruce Scott and Mr Sullivan

Members in attendance: Senator Bob Brown, Mr Melham, Mr Morrison, Mr Bruce Scott and Mr Sullivan

Terms of reference for the inquiry:

To inquire into and report on:

The conduct of the 2007 federal election and matters related thereto, including the Commonwealth Electoral (Above-the-Line Voting) Amendment Bill 2008, with particular reference to:

- a. the level of donations, income and expenditure received by political parties, associated entities and third parties at recent local, state and federal elections;
- b. the extent to which political fundraising and expenditure by third parties is conducted in concert with registered political parties;
- c. the take up, by whom and by what groups, of current provisions for tax deductibility for political donations as well as other groups with tax deductibility that involve themselves in the political process without disclosing that tax deductible funds are being used;
- d. the provisions of the Act that relate to disclosure and the activities of associated entities, and third parties not covered by the disclosure provisions;
- e. the appropriateness of current levels of public funding provided for political parties and candidates contesting federal elections;
- f. the availability and efficacy of 'free time' provided to political parties in relation to federal elections in print and electronic media at local, state and national levels;
- g. the public funding of candidates whose eligibility is questionable before, during and after an election with the view to ensuring public confidence in the public funding system;
- h. the relationship between public funding and campaign expenditure; and
- i. the harmonisation of state and federal laws that relate to political donations, gifts and expenditure.

WITNESSES

BRENT, Mr Peter, Researcher, Democratic Audit of Australia..... 1
COSTAR, Prof. Brian John, Coordinator, Democratic Audit of Australia..... 1
JONES, Ms Anne, Chief Executive Officer, ASH Australia Pty Ltd 1
MARR, Mr Alec, Executive Director, The Wilderness Society Inc. 1
MOOR, Ms Deirdre, Manager, Policy and Programs, Public Interest Advocacy Centre Ltd..... 1
MURRAY, Mr Andrew, Private capacity..... 1
OGLE, Dr Gregory, Legal Coordinator, The Wilderness Society Inc. 1
SUTTON, Mr John, National Secretary, Construction, Forestry, Mining and Energy Union 1
WILLIAMS, Prof. George, Private capacity 1

Committee met at 9.33 am

BRENT, Mr Peter, Researcher, Democratic Audit of Australia

COSTAR, Prof. Brian John, Coordinator, Democratic Audit of Australia

JONES, Ms Anne, Chief Executive Officer, ASH Australia Pty Ltd

MARR, Mr Alec, Executive Director, The Wilderness Society Inc.

MOOR, Ms Deirdre, Manager, Policy and Programs, Public Interest Advocacy Centre Ltd

MURRAY, Mr Andrew, Private capacity

OGLE, Dr Gregory, Legal Coordinator, The Wilderness Society Inc.

SUTTON, Mr John, National Secretary, Construction, Forestry, Mining and Energy Union

WILLIAMS, Prof. George, Private capacity

CHAIR (Mr Melham)—I welcome the participants to this roundtable on submissions to the government's green paper on electoral reform. Shortly I will ask each participant to make a brief opening statement.

It is widely acknowledged that current arrangements have serious shortcomings, contributing to spiralling costs of electioneering that, in turn, create a campaigning 'arms race' for political parties and candidates. They are not my words; they are the minister's words. The main objective of the roundtable today is to encourage further discussion by participants on their own proposals for reform and to comment on proposals that others have made.

Funding and disclosure is a complex area with significant inter-relationships between different regulatory instruments. It is intended that we cover three main areas in our discussions today. The first will cover models that incorporate caps, limits, bans and public funding. The second aims to cover some alternative regulatory approaches, such as advertising, specific donor regulation and disclosure regimes. The third seeks to examine the potential for developing harmonised funding and disclosure arrangements for Commonwealth, state and possibly local government elections.

It is expected that there will be sufficient time at the end of the program for the committee and participants to draw out some of the main messages and issues for the government to consider in its response to issues raised in submissions. The committee will be encouraging free-flowing discussion. However, in the interests of maintaining some order I would ask participants to direct any remarks to the committee or to other witnesses through the Chair. On that point, I would like to see an interchange from witness to witness. This is not just going to be members of parliament asking witnesses in the usual sense. The reason I asked for a roundtable was to enable interested parties to flesh out evidence from one another and not just have questions asked from members of parliament, so I can anticipate that we might get some good discussion arising out of that. If it is possible, I do hope to have another roundtable at a later stage with the main relevant political

parties, but I have excluded them from the process at this stage so that people such as you could be heard. Thank you again for your participation here today. Although the committee does not require you to give evidence on oath, I should advise you that these hearings are legal proceedings of the parliament and therefore have the same standing as proceedings of the respective houses. I would like to invite each participant to make a short opening statement, if you wish to do so.

Dr Ogle—The Wilderness Society is one of Australia's biggest environmental advocacy organisations and, as such, some of our activity comes within the current definitions of 'electoral matter'. Our goal out of this process is to ensure the rights of environment groups and the broader community to participate in processes and public debate at election time. That right has been constrained of late by attacks on tax status and concerns about appropriate taxation regimes. It is also regulated through the disclosure provisions, which from our point of view, simply do not work. The definitions are not clear and it creates a compliance nightmare for us and other organisations like ours.

Ms Jones—I would like to say something about the history of our concerns. ASH Australia is a national advocacy health group. Originally, over 10 years ago, we were concerned about the tobacco industry donations, but we soon realised the way the financing of our political party system works, which is far from best practice, it was very easy for third parties to be established and for all sorts of ways of channelling and funding secret monies for political purposes to obtain influence. Today, I have noticed from reading some of the submissions that there is a fair bit of agreement around the table for some of the principles, which is mainly greater transparency and accountability, looking at ways of capping both the supply and the demand side of the political process, and greater enforcement. They are the main principles that we are concerned about and we look forward to the discussion today.

Ms Moor—The Public Interest Advocacy Centre is a non-profit law and policy organisation that works to pursue the public interest. Our concern is that we feel the current system of electoral funding has led to a certain amount of distortion and inequity. We are very supportive of the principles behind the reforms discussed in the green paper and are keen to see that a model that values transparency and equity is adopted.

Mr Murray—As a former member of the committee for some 12 years, I want to begin by offering my respects to the committee, and I am glad to be here. I retain a great interest in this area and I must again express my gratitude to the minister for putting out the green paper. I think it is a very necessary step forward for Australia to reconsider this area.

The starting point that I would stress would be the establishment of principles that all parties agree to, because unless you have people signing up to those principles, if you retain disagreement between particularly the major parties but amongst political participants you will not get a settled regime. I think the establishment of principles that people can agree to is an important one, and of course the green paper outlines that.

The second thing is that the reform needs to be comprehensive, which is a point made by other participants, and it needs to be a single system, which is really a new approach. As you know, we have nine systems. The issues of simplicity are constantly raised. The issues of efficiency have at last emerged. We have tended not to talk too much about efficiency, but that is there. Of course,

issues of equity need to be resolved and I have tried to attend to those in my own submission on the green paper.

As you know from my submission, I am a believer that there should be public funding in all nine jurisdictions and that there should only be minor private donations. In the absence of that, there should certainly be caps on private donations and there should be capped expenditure. The unique features of my own submission, I would suggest, are to add dimensions that are not in the green paper. The first of those I would particularise as seeing politics within the framework of the not-for-profit sector's problem with general disclosure, accounting standards, reporting and all that sort of thing. I point in my submission to the work done by the Senate committee recently on that matter, and you have to see the extra reporting required for the political sector in the context of what reporting is required generally for what is known as the third, or not-for-profit, sector.

The other fairly unique introduction into this discussion is my view that electoral matters can be divided neatly into four main parts or categories and only one of those is genuinely federal and should be administered by the nine jurisdictions, and that is electoral systems. All others, which are the conduct of elections, the regulation of political participants, and funding and exposure, can be national with a single system for all nine jurisdictions. The last addition I have to the debate is really seeing funding and disclosure as having four parts, not one. I notice other submitters have gone in that same direction. Those four parts would be obviously donations, government advertising, incumbency entitlements and annual funding, which is a feature of New South Wales, for instance.

Mr Sutton—The CFMEU has been a major donor in elections for a long time. We do not relish the idea of spending workers' resources on the public electoral process and we particularly do not relish the idea of those amounts climbing because of the campaigning arms race that the minister rightly speaks about. We believe there has to be a better way rather than this race towards US style expenditure in public elections. The better way that we talk about in our paper is looking at some of the models that exist around the world. In particular, we favour the UK model, which is called a ban and ration approach. That, of course, was the essence of the legislation that Labor in the Hawke-Keating years introduced into the parliament, which was subsequently knocked over by the High Court. We think that whole process should be revisited and in fact we can learn from some of the concerns that were raised in the High Court. They can be addressed and we should seek to institute a more rational process to this key area of public policy.

Prof. Williams—What I would like to do in my opening remarks in an area of obvious complexity with many different proposals being put forward is, again, return to an issue of principle or, as I would put it, some general goals that I personally support and really reflect the submissions that I put to the committee. The goals are based upon principles such as a level playing field, non-partisan system and a range of other things that we take for granted.

The things I would like to see the system reflect are the fact that we can increase transparency. We need to increase disclosure as the first goal. I think that is critical both to enable Australians to cast an informed vote and also to maintain confidence in the system. The second goal ought to be that we need to seriously reduce the demand for money within the system to deal with the arms race problem that has been spoken about so powerfully by people from all sides of politics.

We need to do that not only because of the distorting effect that money has upon elections but also because of the possibility for undue influence and the potential for corruption that this parliament recognised some decades ago when it introduced earlier reforms.

The third goal that I would put on the table is to reduce the complexity of the system, and also the compliance costs. I mean not only the costs for participants in the system but the Electoral Commission itself. One of the grave problems I see in the system is that for some players it has enormous compliance costs without corresponding benefits in terms of improving the system that we have.

When I assess the current system against those three goals that I put on the table I think if we look at it through the eyes of 1983 it was a good system for more than a quarter of a century ago. It was a modern, good system that reflected international practice. But according to 2009 standards, the current system is frankly second rate. It is second rate especially when you compare it against the reforms undertaken in other nations, such as New Zealand, Canada and the like. There have been great leaps forward in those other places looking at issues such as expenditure, donations and so on, and Australia simply has not grasped the need to deal with those same issues. It means that our current system has some very large holes and also some major deficiencies when it comes to how the system regulates political finance.

Therefore, my view is that if we take those three goals, or indeed other goals that people would want to put on the table, the system does need comprehensive reform. It needs a holistic approach. Certainly, I acknowledge the strength of all of the parties' submissions in recognising the need for reform and I would hope that this is an area where there is a possibility for cross-party action, because I do recognise that it is not possible to move forward in this area unless there is general agreement that the system does need improvement and agreement on the general goals that need to be put forward to improve the system in the longer term.

Prof. Costar—The Democratic Audit would submit that there are two major black spots in the current Australian electoral system, one of which your committee heard about on St Patrick's Day this year, and that is the decrepit state of the roll, in the sense that there are far too many people who are eligible to be on the roll that are not on it. The second major black spot is the one we are addressing today, and that is what we call the funding and disclosure regime. I agree with Professor Williams. In fact, I would go even further; I think we are probably third rate now.

The history probably explains it. Remember that, right back to the Franchise Act and the Electoral Act of 1902, which became the Commonwealth Electoral Act 1918 and that we are still essentially working off, it really never recognised parties. It talked about candidates, set expenditure limits on them and they were adjusted a couple of times as we went through. They were honoured in the breach rather than the observance because they were, quite frankly, ridiculously low.

I can remember in the late sixties when somebody did a calculation that the amount of money that a candidate standing for the House of Representatives could spend would not pay for his or her how-to-vote cards let alone anything else. Then, of course, we had the fiasco of the 1979 Tasmanian election, where everybody started suing each other over breaches of their disclosure laws. One election was overturned. The Fraser government then decided this was a bit of a problem so it abolished all the regulations in the act, and it was a free for all. Then, as Professor

Williams said, in 1983 we got what for then was not a bad system, but we have now lagged badly on this.

I will finish on this point. Many of the countries, notably Canada, which has one of the tightest regulations now, has so because it suffered a serious scandal, what was known as the ad scam scandal. I do not think we want to experience a scandal before we renovate section 20 of the Commonwealth Electoral Act, so I welcome the green paper and agree with Professor Williams that we need some bipartisanship to renovate it.

Mr Brent—I defer mainly to what Professor Costar has just said. I would also like to reiterate something that Mr Murray mentioned about a national regime, and I would strongly advocate a national body or a standalone body. The money you save from getting rid of the duplication nine times of these finance and disclosure enforcement you can devote to arming this body with quite strong teeth.

The second thing is something that has not been mentioned, regularity of disclosure. I do not see that it is particularly onerous any time someone makes a donation or receives a donation to have to report it within one week, and about every week this body uploads all this data to the internet, where journalists can once a week, every Tuesday or whatever, have a look and see who has given money to whom and write stories about it. Apart from that I would concur with what Professor Costar said.

CHAIR—Thank you for those introductory remarks. We will now move to topic 1, which will examine caps, limits, bans and public subsidies. The green paper outlined in chapter 9 a range of possible models that address both demand and supply side issues, including expenditure restraint, donation restraint, systemic caps and a complete donation ban, and increased public subsidisation. A number of comparable democracies have different forms of these arrangements in place. If Australia is to move in this direction, it is important that we are aware of what has worked and what can be improved.

Some of the issues to be covered in this session include what combination of approaches should be considered, to what extent should third-party participants be regulated under models that incorporate caps, limits and bans, and how can constitutional considerations be addressed in progressing reform. At this stage I would again like to ask participants who have any comments on these issues to commence the discussion and to identify yourselves for Hansard.

Prof. Costar—There is a good case for having a cap on donations. The current situation is unacceptable, particularly when you add in the loophole that you can donate basically to nine jurisdictions. You can donate almost \$100,000 and not declare it. I think that is over the fence. I do not see any problem with bringing it back. The Canadians have done it. This might get me into disagreement with some of our colleagues here. I do not support identifying particular types of donors and banning them. I do not think property developers should be banned. I do not think cigarette companies should be banned. I do not think gambling entities should be banned, as they are in Victoria. I think that is a piece of politics rather than a piece of electoral administration. I certainly do not support this notion that people who hold contracts or who might hold contracts with the government are to be banned, because how do you enforce that? It seems to me that is unenforceable.

I must say that on the question of expenditure limitations, in an ideal world, which we do not live in, I would not worry about expenditure limitations. In an earlier life I had a mixed career as an Australian Rules junior football coach. The analogy that I use is, if you have a pretty hotshot full forward who is going to kick a lot of goals it is not a good policy to rely on the fullback to stop him. The best thing to do is to cut the ball off up the ground. I think that is the way to go generally with this. If the ball is money then do not worry about how much money the party full forward is going to kick; put in place regulations and systems whereby they do not need to spend that large amount of money and/or they cannot spend it. That probably is the way to go, but at the moment, to use the much used analogy about the arms race, the expenditure levels are so high that perhaps you will have to introduce some expenditure limits. You might want possibly to sunset clause them. I am not too sure about how you might do that. In conclusion—and I would like to talk about this later on when it comes up—I think many of us would agree with former Electoral Commissioner Professor Colin Hughes that disclosure is everything and everything else is bells and whistles.

CHAIR—The Deputy Chair wants to ask a question.

Mr MORRISON—This is a general question to all of the members here today. Thank you for your participation. I am interested to know what you think is fundamentally driving what you might call the sins of the system. As someone who has actually been a director of a political party, it is ludicrous for anyone to think that the thing that political parties like doing is going out and raising money. They do not do it for the fun of it and they do not do it for any other reason other than to raise money to fund election campaigns. I take your analogy of the full forward, but I put this to you: you only raise the money because you can spend as much as you can spend, and if you cannot spend so much then the need to raise so much money disappears. I am interested to know what people's views are about what is actually driving the system that we have now. At the moment whoever spends the most wins.

Prof. Costar—They do not.

Mr Murray—In the category that you are dealing with first it is probably best to start with expenditure and just concentrate on that, because then you get a firm grip on what it is all about. The question of the Deputy Chair is a good one. Two things apply primarily in the expenditure area and drive the interest in restraint. The first is knowledge by all political participants that the practice of politics is becoming very expensive and difficult to sustain. Because we value a pluralistic competitive political system, we have to bear in mind that the more expensive politics becomes the less possible it is for minor players or single issue participants or people with a particular cause to enter into the game; it becomes a money game. That is the first thing. An expenditure restraint has a public good attached to it. If you restrain public expenditure on politics you can actually induce a more competitive, participative and affordable system. That is driving both the political professionals and those who are interested in it.

The second area is that the open-ended approach to expenditure at the moment can lead to corruption. I do not necessarily mean corruption of individuals. I mean corruption of entities. Politicians are driven to tout themselves and find all sorts of ways of raising money in an environment where it is often very difficult to acquire, which requires giving promises or engaging in circumstances that I think are morally uncomfortable. I do not think politicians and political parties enjoy actually having to tout and sometimes even prostitute themselves, to use a

strong word, for money. I think expenditure restraints are driven by those two respective drivers. The question is then, of course, where and how do you apply the expenditure, which is the practical issue. You have to look to international leadership or experience in these matters and you have to look at our own sense of how much money should be spent. My own view is if you capped it at the 2007 levels it would probably be a reasonable index, because that seems to be about the maximum that you should go to.

CHAIR—At this stage I would like to put an example on the table. I am interested in people's views on it. In my first campaign for Banks in 1990 I estimate that we spent about \$20,000. I was a replacement candidate and it was my first campaign. In the 2004 election, when circumstances were a lot different as a result of redistributions and the particular climate, the then State Director of the Liberal Party thought he could probably take the seat from Labor. My estimate is that all up the Labor campaign cost about \$200,000 to defend the seat, none of which was given by the state Labor Party but was raised locally and, to be frank, obviously using entitlements.

Mr MORRISON—So, we met one objective.

CHAIR—It is not a problem. A win is a win. The point I make is: how do you identify in terms of caps and a whole range of other things? I have raised this before. There are sometimes 30 or 40 seats in play, but sometimes different seats come into play. Does that expenditure cap occur to the political party for the whole of the state or for the whole of the nation and then they determine their priorities or whatever? How are we going to have these expenditure restraints? I am not a candidate of the machine in New South Wales. I might be a candidate of the party, but I do my own thing without them. It was a different climate and a different cost. The cost at the last election was substantially less because the Libs walked away and, in effect, was concentrating on other seats.

Mr SULLIVAN—If there are limitations on expenditure, the parties will prioritise where that expenditure is made. We may decide, for example, not to campaign in Mr Scott's seat in Queensland, but by not giving his people the information that we would like to put out from my party, how does that enhance the democratic process? If we are limited to how much we can spend we will target it much more directly at seats that are in play rather than safe seats that we hold or safe seats that we do not hold, the other party will do the same thing and we are denying people in those areas information. I do not think that enhances democracy.

CHAIR—That is why I want to know how a system like that might work. The Liberal Party, the Labor Party and the Greens will have different priorities. You cannot determine that the Labor Party will only spend so much in particular seats. Does this have to be done on a seat-by-seat basis so the cap is uniform? I am interested in that.

Mr Brent—My understanding is the most costly items in electoral campaigning are electronic advertising and direct mail. I do not know how effective direct mail is.

CHAIR—Very.

Mr Brent—At least knock out one of those, possibly electronic advertising. If you get rid of that and you still have a cap, that frees up more money to spend on important things like saving

the Chair's seat. I do not know about direct mail. You could knock out or at least severely limit electronic advertising, which was unsuccessful in the early nineties; apparently there are other ways to go about it which Professor Williams knows about. The way to look at it is to look at the items that make up this total amount that the parties spend.

Senator BOB BROWN—Direct mail is very effective, as we have just heard, but there has developed quite enormous public funding of direct mailing because of the \$125,000 annual allocation to incumbent MPs in the Lower House, which can be rolled over so that you get up to a quarter of a million dollars.

CHAIR—It is \$100,000 for printing that cannot be rolled over, but there is postage on top of that.

Senator BOB BROWN—Postage is a huge amount, which is not open to any competitor in that seat. We have de facto public funding but on an exclusive basis going to incumbents, which is very troubling. You put together 80 or 100 seats by \$100,000 and you have a big war chest that is not taken into account in the discussions that we are having at the moment. There is a discussion here: do we have public funding or are we going to have private funding? If we are going to have a mix of the two we must recognise there has already been legislation passed to allow public funding for incumbents that excludes newcomers, which is very unfair for the newcomers into the system.

Prof. Costar—One way to solve that problem might be to bring these party databases, Feedback and Electrac, under the Freedom of Information Act, which they are not at the moment. For example, I now refuse to sign petitions because I do not want to get bombarded with direct mail. As you know, those databases, which the parties have constructed, are not subject to the Freedom of Information Act by explicit legislation. I find that unacceptable. Parties should not be holding almost personal files on people. Whether I support the orange-bellied parrot or not—

Senator BOB BROWN—I hope so.

Prof. Costar—Trumped-up corella, as former Premier Kennett described it. I think those databases should be open.

Prof. Williams—I would like to come back to the question of how the expenditure caps might work, because there are two things that need to be reconciled there. Firstly, every candidate ought to be able to spend a reasonable amount of money to communicate with voters. Secondly, parties ought to be able to take strategic decisions as to where they put more resources in order to fight a larger campaign. For that reason, a system may well look at two caps. One would be a relatively small cap for every candidate and a much larger cap for parties, whereby parties can direct their resources as they wish.

For example, New Zealand has a much larger cap for parties. That maintains flexibility and maintains caps, but still meets those dual goals. It would be possible to just have one party cap and not have a candidate cap. You could deal with it that way as well and that certainly would be adequate. To be realistic, it is not even worth while talking about expenditure caps unless you deal with the demand side of the equation as well. Frankly, it is not really possible, as a matter of

law, to design something that is so watertight that you cannot get around it through third parties or some other mechanism.

I think if you want to deal with expenditure caps, as I think you should, what you do need to do is deal with the demand side. This gets to the Deputy Chair's question as to why there is such demand for money. It obviously does get to the point that quite apart from direct mail and the public funding that is available there one of the most effective forms of campaigning is through the electronic media, which is one of the most expensive forms as well, and I would advocate that this committee should look again at the restrictions that were placed upon that form of campaigning in the early 1990s. They were struck down by the High Court. Personally, I have no doubt that you could design a scheme that would survive a High Court challenge. You only have to look at the number of nations that have such restrictions with far more significant limitations upon free speech restrictions—Canada and other nations. There is no doubt it can be done, and we should again look at that issue because we can design a scheme that may well deal with some of those demand side issues in a fair way. The key to get past the High Court is this time it must be fair upon all participants and on third parties.

Mr MORRISON—There are two questions here. One is: should there be a cap to regulate demand for funds? I think we are picking up the theme. The second point, which the Chair has raised, goes to the issues you are just discussing. I put this to you, and that is that the nature of how communications is changing makes it incredibly difficult to prescribe in regulation what is in and what is out. For example, does electronic media include text messaging? Does it include email? Does it include any number of the other things that are going to happen in the next three years that no-one has even thought of yet? If we start trying to pick and choose whether it is direct mail, electronic advertising, the internet, television or radio—or does that include digital radio on the internet or not; does it include all of this—and if we start picking various forms of communications I can guarantee you that people will find ways around the type of cap that you are talking about. If you say, 'There is a cap. You can spend no more than that. You can spend it on whatever you choose to spend it on, but you can't exceed that cap', you will have something that is more simple and more enforceable. If you start getting very prescriptive around this, you will have the problem that people have made in their own submissions, which is, 'We introduced public funding to ensure that people did not spend more and more and now it's so ineffective because there's no cap.' I think you would find the same thing. You would find other ways of communicating that fall outside the regulations, and the problem would continue. I would encourage people to think about things that might sound good in principle, but they also need to be enforceable and practical, otherwise we will be sitting around this table in 10 years with the same problem.

Mr Brent—As to the argument for a cap, an argument can be made against it in the same way. If you put in a cap people are going to get around that via third parties and so on.

Mr MORRISON—I would argue that third parties should be exposed to caps as well in the same way they are in Canada. They should be registered.

Mr Brent—The union should be included in the Labor Party's total.

Mr MORRISON—Why wouldn't the union's one not be included in their own. In Canada, Mr Sutton, if he wanted to be involved, could do either of two things. He could donate to the

Labor Party. He could donate to the Liberal Party, too, but I do not think that is going to happen. He could donate to the Labor Party or he could register to get involved as a third party and run his own campaign and he would be subject to the same disclosure laws and the same caps as anyone else as a third party. That seems to be working in Canada. I do not know whether people have a different view.

Mr Brent—That sounds like a way of getting around it. You have half a dozen bodies that support one party and they all have their own caps.

Mr MORRISON—The caps are low in Canada.

Mr Brent—Yes, but you are then multiplying it by six.

Mr MORRISON—The point is that is happening now and there are no caps.

CHAIR—What you are saying, in effect, is there should be an overall cap so that if the union movement donates it cannot go beyond a particular point for a political party?

Mr Brent—There is the argument against banning particular forms of advertising, which of course has definitional problems in the way the world is changing, and you are going to have more of them. Whatever approach we adopt there are arguments like that against it.

Mr SULLIVAN—Last evening I entertained myself momentarily by watching *The Gruen Factor* on ABC, which raised the particular point about advertising. The case they used was the case of Australian personality Magda Szubanski, who is now the brand spokesperson for a particular weight loss program and does a lot of non-paid advertising appearances on television. The agreement of all of those advertising people on that show was that is, in fact, advertising. We have a brand called the Labor Party and we have about 30 brand spokesmen. The Liberal Party has a brand and has a number of brand spokespeople. The Greens have a brand spokesperson who gets quite a lot of coverage in the media. Do we limit that kind of advertising as well if we are talking about a limit on expenditure on electronic advertising? Do we have to cost out the value of a 15-second appearance on a news program and say that is advertising, because in fact it is? All of the parties work very hard to get that 15-second grab on the news bulletin, because the news bulletin is probably far more influential than an advertisement that is paid for.

Prof. Costar—Indeed. Mr Morrison and I had a chat about this last time we were before the committee. His question is: why are parties spending so much money? The reason is that they think that dollars spent equals votes gained. Why do they think that? It is because they are told that. Who tells them that? The political class and the commercial class tell them. Public relations firms tell them. Owners of TV and radio licences tell them, and so on. But it is wrong. There is no evidence. I think I said this last time. I am yet to see an article in a political science journal that links expenditure or ‘quality’ of advertising to election outcomes. There is no evidence of such. Expending money can cost you votes. The Liberal Party lost votes at the 2007 election by trying to defend WorkChoices. They should have kept quiet about it. The Crosby Textor research showed them that; for whatever reason WorkChoices was a toxic issue. The less said about it the fewer votes they would have lost. Let us not have this thing about, ‘You’ve got to spend a lot of money to win votes.’ You do not.

Mr MORRISON—I need to respond to that. It is not because television companies, corporates, the chattering classes or whatever tell political parties this. I have looked at enough quantitative research over a very long period. There is good advertising and bad advertising. There are good messages and bad messages. You spend a lot of money on a bad message and you are going to get a bad outcome. I can guarantee you that the weight of spend that goes into well targeted, effective communications has a pronounced effect on public opinion. If it was not true not only would political parties not do it but the advertising world would not exist. Pepsi and Coke do not do it for fun. They do it because it wins them market share. Politics is no different. The weight of money that goes into targeted and well executed communications has a very pronounced impact on public opinion. That is why they do it. We would not do it if it had no effect.

Prof. Costar—I am trying to save you money. Who generates this quantitative data? Where does the quantitative data come from?

Mr MORRISON—This is based on very sound qualitative and quantitative research.

Prof. Costar—Generated by whom for whom?

CHAIR—The issue is on the table. We will come back to that.

Mr MORRISON—I do not doubt it and my political opponents do not doubt it, either.

Prof. Costar—It is self-interested data.

Mr MORRISON—No, it is not. It is scientific data that has proved itself over decades.

Prof. Costar—Could we see it?

Mr MORRISON—I am sorry, you cannot.

Mr BRUCE SCOTT—It costs you money.

Prof. Costar—That is exactly my point. You get what you pay for.

Mr MORRISON—The researchers do not get a share of the advertising spend.

Prof. Costar—They are in the business of generating data. I want to see the data.

CHAIR—The opposing points of view are on the table. I do not know that we can take it any further. Mr Murray.

Mr Murray—Coming back to the issue of restraining expenditure with a cap, unless the majors agree to it, it is not going to happen. Basically that is where it rests. It seems to me the signals we are getting in the community are that there is greater and greater interest because of the affordability issue. My submission essentially agrees with the proposition put by Mr Morrison earlier. What has always happened is that political parties prioritise their expenditure, whether it is by medium or by seat. It has always happened like that. If you have a safe seat you

are not going to spend the same amount of money as in a marginal seat, and if you think direct mail is going to give you more return than any other form of advertising that is where you will spend it as a medium. They have always prioritised, which deals with Mr Sullivan's point.

You want a system that maximises flexibility and choice by those political participants but keeps it simple and efficient. Essentially my submission argues—and just using a round figure; I am not suggesting this would be the cap, but the maths make it easy—if, for instance, the cap was \$100,000 a Lower House seat per political party, Labor contested 150 of them, so it would have \$15 million to deal with. If the Greens contested 80 of them, it would have \$8 million it could deal with. By the way, a very important point is this issue of flexibility, choice and simplicity.

You then come back to the important point that Senator Brown has made, which sits at the heart of a feeling of a kind of injustice and inequity—the incumbency versus non-incumbency issue. Frankly, you have to be practical about it. You can never, ever do away with the advantages of incumbency. The Prime Minister has greater advantages in the media than does the Leader of the Opposition. That is just the world. You cannot deal with that intangible stuff and you should not try to. You should not try to cost it.

CHAIR—What about when the writs are issued, though?

Mr Murray—What you should deal with is those things that you can cost, which is the point that Senator Brown made, and that is the amount of money available in an election year for normal servicing of an electorate which is in fact used to re-elect the incumbent—the usage of your postage and your printing entitlement. My own view is the only way you could deal with that is to make that part of the cap, if you wished to, and if you were going to do that the only sensible way to deal with it would be on a deeming provision. For instance, assume it is \$100,000 a year. You can say you will deem \$70,000 or \$60,000 of that to be the election component and the other \$30,000 or \$40,000 to be your normal servicing of your electorate, which has to happen.

CHAIR—What if you have an opt out provision? There might be those members of parliament who do not want to spend that amount of money.

Mr Murray—The fact is that it is a readily available figure. It is not hard at the end of the election period for a return to be put in from DOFA that says, 'This is what each member has spent this year on printing and postage', and if Mr Morrison has spent only \$30,000 his cap is unaffected. If he spent \$100,000, the deeming provision would kick in. In my view, that is the only way you can deal with it. If you try to cost anything else, the intangible effects of incumbency and the very impactful effect of incumbency, then you are just going to get into an impossible mire.

Mr MORRISON—New Zealanders have a similar system in terms of how they apply their caps. What if you were to say any expenditure undertaken on entitlement at one or two dates, from the issue of the writs or from a period of, say, six months before the election, would be included in the cap? That is another way of doing it. It is a hard dollar figure that you know.

Mr Murray—As long as it is simple, it is fair and it recognises the realities that whatever happens an incumbent will always have an advantage over a non-incumbent. You cannot avoid that.

Mr BRUCE SCOTT—Mr Murray, I am going to put a rural perspective on some of the things you are saying. Communicating in the mass media of the cities, whilst there is a lot of chatter around, you can almost walk your mail out. You have a real issue when you start to look at members' entitlements of postage. You can walk it out and use a contractor for a very small sum. In a rural committee, if you take my own electorate of 600,000 square kilometres, you do not go walking to deliver the mail. You would have to have a look at the issue of equity. Maybe it is the size of an electorate. I do not know.

CHAIR—Is size not taken into account on entitlements? Couldn't you use those criteria?

Mr BRUCE SCOTT—Everyone gets \$100,000 for printing. The other criteria is that you get 50c or 55c per—

CHAIR—Some members get other entitlements such as second offices, and their postage is a bit different.

Mr BRUCE SCOTT—The postage is based on numbers on the electoral roll.

CHAIR—An electorate office. What else do you get?

Mr BRUCE SCOTT—I am debating that issue of equity.

CHAIR—You could probably gazette seats.

Mr BRUCE SCOTT—I am just saying that a member in a large rural electorate will use their postage as a member of parliament for parliamentary business, anyway. People do not walk into my office every day, whether I have got one or two, and ask to see me. I have to communicate by phone or email, using my postage entitlement to send information out—by direct mail—to these people. You just do not do it. They just do not come to you all the time in the little town that you may be in. You do your electorate rounds once a year.

Mr Murray—My point is that you either accept an expenditure cap that excludes incumbency and therefore leaves that sore unattended or you find a practical deeming method. To work it cannot be individual. To work it has to be a general rule.

Mr BRUCE SCOTT—In terms of the members' entitlement, if we look at the results of recent elections, state and federal—and we just had a Queensland one and a federal one—there are incumbents who lost their seat. Why did they lose their seat? There was a mood for change in these marginal seats, if we want to put it that way. It did not matter whether they had \$100,000 of postage as a sitting member or \$100,000 for printing and \$50,000 for postage, they were going to be gone anyway. It was not their capacity to use their entitlement. My perspective is the capacity to advertise at a party level and target mail into a seat that is a target seat. That is really the issue. I would like to say one other thing.

CHAIR—Just very quickly, because I would like to finish this; there is a bit more to do.

Mr BRUCE SCOTT—How do we deal with third parties? I know unions put money into campaigns, but so does the National Farmers' Federation. At the last federal election they put money into an advertising campaign on communications, so it is not just unions. There are other organisations—the Pharmacy Guild and so on—that have, from time to time, put money in. There are third-party issues across both sides of the political spectrum. For the Greens it might be the Wilderness Society. Those are issues that are part of any cap that we have to consider—the third party element of a cap.

Prof. Costar—On the equality issue, the whole issue is complex and we are trying to go for principle. I remember some years ago there was a conference on party funding run in the United States titled 'Will Anything Work?' It was fairly desperate. On the question of equality, yes, representing large rural, diverse divisions is difficult, but there are advantages, too. Mr Scott would have how many local newspapers in his electorate and how many local radio stations that like to hear from their local member? There is a question of: what is advertising? Whereas a person representing an urban electorate probably has a couple of throwaways owned by networks so they are basically the same, do not want to report politics and people read them in a fairly desultory way. I remember the late Mr Andren used to make this point, that it was very easy for him to get media coverage because he had lots of local radio stations. I think he even had a couple of local TV stations and local newspapers. We have to balance these things out.

Mr BRUCE SCOTT—My papers will not run any political comment about local issues.

CHAIR—That is why you have a printing allowance. In terms of Kalgoorlie, that is why it is always hard for opponents to knock over incumbents. The one thing that regional seats do have, if you look at the statistics, is incumbency; it is very hard to penetrate those community groups. The local community papers tend to support the sitting member. And that is apart from the fact that the Nats are getting belted by certain Independents. Who has not spoken on this issue? Have you spoken, Mr Sutton?

Mr Sutton—No. I reaffirm or reiterate the thrust of our submission, which Professor Williams has spoken quite well about. The only major objection I hear or countervailing point is from Mr Morrison, who makes the point about evolving technology. We would say that you have to start somewhere. The best place to start is on the biggest spend at the moment. By far and away the biggest spend at the moment, the hungry monster that has to be fed on an ever-increasing scale is electronic advertising. I can see that in the medium term the definition of 'electronic advertising' because of technological change will mean that we will have to evolve and make adjustments. I do know in the here and now, in the short to medium term, we can do something about that hungry monster and should do something about it. That is where we should look to what they are doing overseas. We think the approach in Britain, although all of those places, including New Zealand, Canada and so on, all have something to recommend them, that is, the ban and ration approach of the UK is the one that we think deals with this specific problem best. We do not go on to all the other issues about what is spent in each electorate and what goes into post boxes and so on. We do know the single biggest spend is with the media proprietors. That is something that government can do something about and should do something about. Yes, we will have to be capable, and I think we are capable, of evolving as the technology evolves.

Mr MORRISON—What I do not understand is what the challenge or difficulty is in applying the expenditure cap across all forms. Everyone knows what they are spending. Everyone has detailed budgets of what they are spending in campaigns, from campaign offices, paper and photocopy equipment, through to what their ad spend buy is. I do not understand the argument as to why you would only seek to constrain one form of expenditure and not others when the real sin of the system is the demand for so much money to spend across-the-board. While media buy is a big part of the campaign budget, I can assure you that the other hungry animal in this process is printing and direct mail, and that is what is probably growing most significantly over the last few years in terms of campaigns I have been involved with. There are all different elements of the campaign mix that are growing in different ways and different speeds, depending on what media and communications professionals think is the best way to get a message across. I have not heard the argument today as to why that should be targeted as opposed to any others, when everything is the problem as opposed to just one.

Prof. Costar—Mr Morrison is quite correct. If you were to put tough restrictions of whatever sort, whether it is expenditure or donation on the political parties and do not regulate what we might call third parties, what you will get is that the money will go into the third parties and you will have a much worse political system than we have now. As we mentioned in our report very briefly, you will get the Swift Boat phenomenon. You will get an organisation that rises up at a particular time, for some reason is very well financed, tells untruths about Senator Kerry's military service and then disappears. Who holds them accountable? Nobody! Whereas the political parties, unions and all other organisations that are ongoing are accountable and they are the groups that you have to bring inside the tent.

Mr Brent—Mr Morrison is arguing against banning particular forms of expenditure.

Mr MORRISON—I am arguing for a cap on expenditure across-the-board.

Prof. Williams—The answer is that there are two separate issues. Firstly, I do believe there should be a cap across-the-board and it should apply to any form of campaign expenditure. The second issue is, quite apart from that cap, is there any form of expenditure that itself should be limited or banned to reduce demand for that, to perhaps reduce demand to get around the cap in some way or to identify a particular form of expenditure that should not dominate the process in the way that it should? Perhaps there is something negative about the preponderance on electronic advertising. That was certainly one of the issues that the parliament debated back in the early 1990s.

I think the argument for targeting electronic advertising is that, unless you target that, the cap system may not work, because the demand is so high you will get around it in some way, and also because there is something distinctive about that form of advertising that the preponderance can have a negative impact upon the quality of campaigning. I would not say that that argument necessarily only relates to electronic advertising, even if you accept it, and I recognise that you could dispute it.

I would say that if you were to look at this in a principled way you would look at each of the major areas where the most money is spent and identify whether any of those areas should be targeted or regulated in order to produce both a level playing field within the system but also a system whereby you start changing the culture of political participants because you do not have

the demand in the first place that might lead you to want to get around the cap that applies holistically.

Mr MORRISON—Is that in the context of a broader cap?

Prof. Williams—Yes.

Mr MORRISON—You would have an overall cap?

Prof. Williams—That is correct.

Mr MORRISON—You are then arguing that judgements can be made about whether the mix should be somehow regulated?

Prof. Williams—I would not want to be too prescriptive, either, because I think that candidates and parties should have the ability to make their decisions pretty broadly. I would say that I would advocate firstly a cap that you can expend this amount per political party and this amount per candidate. Secondly, I would say that it is appropriate to look at banning forms of electronic advertising, which you may describe very broadly. You might take the European approach and say, ‘We give free time to both third parties and also to political participants.’ You get to use that medium, but you do so in a more regulated way that means that you spend your money on other things, and the cap is much more manageable. Public funding also gets much closer to actually satisfying the demand of participants without needing to raise the amounts of money through donations.

Ms Jones—Just to answer that, thanks to the tobacco industry we do have a lot of evidence showing that partial advertising bans actually do not work. They can increase other forms of advertising. I think what we do need when we are talking about across-the-board, which I agree with—and third parties being included in that—is that the definitions are going to be extremely important in terms of any legislation. I think most people will remember that only a couple of weeks ago there was a fair bit of disquiet in the community over the revelation that a quarter of MPs are travelling overseas funded by third parties with very little accountability. It would not take much imagination to see the influence that many third parties could try to obtain by sending an MP on a business class trip around the world to visit, for example, tobacco companies. I do not want to imply that I am only interested in tobacco companies. I really do believe that the system is long overdue for reform and that we would have a better democratic system if we had this reform and many of the issues today were in place that we have discussed.

In summary, I wanted to say that the definitions are important. They need to be comprehensive. We do not want to fall into the trap of partial bans only. We need to consider the definition of a gift or a donation, and we need greater accountability about these third-party funded around the world trips that members of parliament are being offered because I believe that is part of the problem that we are currently facing.

Ms Moor—PIAC’s view is that there should definitely be a limit on expenditure and that it should be an across-the-board limit rather than picking on different pieces. I am sympathetic to what Professor Williams has said about the increasing costs of electronic advertising, but I do think that, as Mr Morrison said, the ways and means of communicating with the public change

continually and that any way of putting specifics in there needs to refer back to principles, and the principles need to be, as far as possible, levelling the playing field and providing access to new parties and to smaller parties as well as to the major parties. I do agree with what Senator Brown said about the benefits of incumbency. It is something that PIAC has urged to be included in the second green paper, because it was not dealt with particularly in the first.

I would agree with Mr Murray's comments earlier about how the Prime Minister will always get more airtime than the Leader of the Opposition, and I am not proposing that aspect of it be regulated, but simply that the benefits not just of the political allowances or the electoral allowances but also the question of government advertising more generally needs to be considered as well.

Dr Ogle—Philosophically I am attracted to the idea of caps for all the reasons that have been said, but from our perspective I just want to flag a couple of issues. One is the concern that Professor Costar raised that if you cap things we do not want to end up with just front groups, because that actually closes down the space for the ongoing legitimate community groups and others to occupy it. It is a disclosure regime or an expenditure cap so it is spread to third parties. That is fine, except that it is very difficult if you are an environment group or a health advocacy group—or another third party—to actually distinguish this. Certainly the Electoral Act currently does not distinguish what is an electoral activity and what is your day-to-day activity of raising particular issues. It is not clear how much of our budget would be electoral expenditure. We spend all of our time trying to raise issues about the environment and various aspects of it. It is not clear when we are making that expenditure or even at the end of the year, so we would need a much clearer and probably a much narrower definition.

Mr Marr—There is a real problem with the way things are currently configured from an NGO point of view, because we are usually involved in campaigns where a short campaign would be two years and often they go for 10 years. Tasmania's forests have been going for 25 years. That gives you a sense of some of the timelines we work on. At the moment it is very unclear what constitutes involvement in election campaigns the way things are currently configured. The simple solution for some advocacy groups is that, as soon as the election is called, they just do not do anything until the thing is over. But as we all know, often the opportunity to solve long-running problems happens in the lead-up and during election campaigns. We want to see real clarity that does not constrain the ability for the broader community to participate in the democratic process, which we do not have at the moment.

Mr Brent—I would like to respond quickly to a couple of things that Mr Morrison said quite a while ago. Firstly, as to the comment that the side that spends the most money wins and also the top-quality research that you have under your desk, there is a cause and effect thing here, and the side that is going to win gets lots of money. You might then look after the last federal election and say, 'The Labor Party spent so much money', but that was because throughout the year there were Newspolls coming out saying 58 to 42 and the money just pours in. That is not evidence that spending more money is that effective.

Mr MORRISON—What I would say to that is that most of my comments are based on my experience at a state level. One of the reasons I have such a keen interest in this topic federally is that I do not think that we have yet got to the position where that maxim holds true at a federal level. I do think it has absolutely become true at a state level over the last eight years or so.

Mr Brent—Are you really saying that in the 1999 New South Wales election or in 2003 that if only you had more money you would have won?

Mr MORRISON—I am saying that in 2003 and 2007 the gap between the expenditure of the two parties blew out to an historical level, and it has got bigger and bigger. When you have TARP rates running in election campaigns, which literally take up every single available slot in regional, state-wide and metropolitan media, you cannot tell me that does not have an enormous impact. The paid media impact in those campaigns was significant.

Am I saying the Liberal Party would have won those two elections; I do not know. Lynton Crosby used to have a line which says, 'Money won't buy you an election, but not having enough can certainly help you lose one.' It is the same about a good election strategy in terms of your communications and so on. All I am saying is that money has become far more influential in campaign outcomes than it has ever been, particularly at a state level, and my concern is that is going to become true here at a federal level, unless we do something about it along the lines that we are discussing. It is certainly true in the United States, and we do not want to go there.

Prof. Costar—I would like to add to Dr Brent. His comment was that parties that are going to win elections attract more money than parties that are going to lose them. I would extend that and inverse the standard view that parties that run good campaigns win elections. I think the evidence is that parties that are going to win elections run good campaigns, not the other way around.

Mr MORRISON—Not always.

Prof. Costar—Almost always.

Mr Marr—I would like to follow up on Dr Brent's point. I think he has identified a very important dynamic here that sits at the heart of a lot of the discussion that has been going on, that is that one of the reasons why lots of money pours into the party that looks like they are going to win government is that a lot of the people who put that money in believe that they are going to buy influence and access as a result of it. I think that is a dynamic that we should all be worried about, because that is exactly what sits at the heart of the US electoral system as it is. You get access based on whether your sector was first, second or 25th in terms of donating to the party that was elected.

CHAIR—Before I go to Mr Marr I would recall for participants that my understanding of the US election is Obama raised something in the order of \$760 million because he was outside public funding and his opponent raised in the order of some \$360 million, but the gap was only 13 million votes. They have optional attendance at elections; we have compulsory attendance. There is no doubt that those figures were pretty stark. Whereas in previous elections, where they had all opted into the public system, the candidates had roughly the same amount of expenditure.

Mr Marr—The dynamic that sits in Australia as much as anywhere else in the world is that when it becomes clear from polling that one party is likely to go into government suddenly their friends multiply and suddenly they have got lots of money to run election campaigns.

Mr Murray—Before we leave expenditure we have got to deal with the very vexed question of third parties. It is really a very difficult area to look at. I look at it from two perspectives. I look at it from the perspectives of accountability and of expenditure caps. The first issue is easier to deal with than the second, and there are some international precedents. When you look at the third parties they are in three sectors. There is the business sector, the union sector and the not-for-profits generally.

Unions and businesses are extremely well regulated. The Workplace Relations Act and the Corporations Act have very rigorous accounting standards, reporting requirements, auditing requirements and all those sorts of things. The third sector, the not-for-profit sector, is extremely poorly regulated. I have been on this bandwagon for a long time. In the library there is a 60-page study of mine in 2006 and of course there is the recent Senate inquiry into it, and now there is a Productivity Commission inquiry into it.

If you look at the accountability issue, the only two things that need to be done for businesses and unions, is to follow the UK requirement, that is that members of registered organisations or of mutuals and shareholders should approve the political donation policies or the affiliation desires of those organisations, whether it is a corporation wanting to join the National Party as an affiliate member or a union wanting to be affiliated to the Labor Party, providing the members agree, which I would suggest it be held once every electoral cycle, by a majority vote, then that is fine. That is probably the only additional accountability mechanism necessary, and the Brits have done that very well.

What the British have also done is attended to the issue of the third sector, the not-for-profit sector. They have a charities commission and they are trying to enhance reporting. What we have is nine jurisdictions, unincorporated associations and different standards in each state and territory, so you do not get the same reporting requirements, the same accounting standards requirements, the same auditing requirements and so on, so in an election up pops a new third party to activate an issue and you really cannot get a grip on it in the way that you can on a union or a corporation.

That is one of the issues your committee needs to attend to. I cover it briefly in my paper, but there is much more material that is available elsewhere. If you simply lifted the accountability of the third sector you would go quite a long way to improving third party transparency, which is what you want. I do not think there is anyone from whichever side of politics or the community that does not want greater transparency in those issues. However, when you come to expenditure restraint on those third parties, you enter into really difficult issues. I defer to the professor here on the constitutional side, but I think you would have real difficulties in saying to the unions that they could not barrack against WorkChoices, the corporations could not barrack for WorkChoices, or the Wilderness Society could not barrack for a particular climate change policy and so on. You would have a real problem. My own view, at this stage of development, is that you are better off concentrating on the accountability side, which you can do much more about, and just be careful how far you go on third party restraints in terms of expenditure.

Ms Moor—I would agree with Mr Murray, in part. I think that it would be very difficult, as my friends from the Wilderness Society have said, to put in a regime that effectively tackled all third parties in an electoral period. I do perhaps disagree somewhat on the regulation of the third sector. I actually think that part of the challenge of third sector regulation is the huge diversity

within the sector. I would say that many not-for-profits, particularly the ones that get to the size where they are employing staff, are actually quite transparent in their disclosure in terms of published annual accounts and those sorts of things. I do think that political parties are different from most non-government organisations, or most other third sector actors of significant size in that regard, and I would agree with the comments in Mr Murray's submissions that there is a level of disclosure from political parties that would benefit the transparency of the electoral process.

Mr Murray—I should make a point, because it is an important one, that reporting in the third sector depends on the entity. For instance, if you are constituted under the Corporations Law then you are obviously subject to that. It is often, when it is not of that type, it is voluntary. The best practice not-for-profit is excellent, but the problem is that it is voluntary. My concern is to put in minimum standards, at least, to make sure that everybody does it.

Mr BRUCE SCOTT—With the third party element of what they spend, why would you not include the amount that they spend in the political party's cap?

Mr Murray—You might. I am just saying to you that it is much more difficult.

Mr BRUCE SCOTT—Would it not make sense if it is a cap of \$100,000 per constituency or whatever for any political party based on the number of candidates that they have?

Mr Murray—It is why I turned to Professor Williams as I was talking. I am not a lawyer and certainly not a constitutional lawyer, but I am firmly of the view that it is possible constitutionally to impose expenditure caps on political participants. I do not see that there is a problem.

Prof. Williams—I do not think there is any doubt about it. You can certainly do it. It has just got to be fair and non-discriminatory.

Mr Murray—I would seek guidance on whether you can do it on third parties.

Prof. Williams—I think you could do it on third parties. Again, the problem that the High Court identified in 1992 was that it was not a cap on third parties, it was a complete ban and it privileged certain parts of the sector over others. I think you can apply the same principles to third parties, so long as they are not discriminatory between the participants, the political process and those third parties.

Mr BRUCE SCOTT—The third party would be the business community, the unions or any other non-profit organisation. That is what we are talking about.

Mr SULLIVAN—Professor Costar said two things here today that are not necessarily original, which he will agree when he hears them. 'Disclosure is everything.'

CHAIR—You are not accusing him of plagiarism?

Mr SULLIVAN—No. He actually quoted the source of 'disclosure is everything' and 'will anything work?' The answer truly is nothing will because we are all fairly clever practitioners

and we will find a way around whatever cap or restriction is placed on us by doing something different. If we cap expenditure on electronic advertising, political parties will not say, 'Beauty! That is money we do not have to raise.' They will continue to raise the money and find another way to spend it where there is no cap.

The issues raised by Mr Murray about union members being required to vote on their union's political policy strategy affiliation I have to say as a member of the Labor Party I find offensive, because it goes to the very structure of the party to which I belong. The union's position in relation to the Labor Party is known to their members and union membership is not compulsory. In regard to that, I think it is quite open. If you are going to join a union such as Mr Sutton's, you would know that it is affiliated to the ALP and in certain instances it has given campaign donations to an opposing party.

The chairman raised the issue of the money raised by President Obama which was raised in \$10, \$20 and \$50 amounts from individuals, not from major contributors, so putting a cap on his expenditure is actually putting a cap on mum's and dad's ability to run in. Your Rights At Work campaign, the most significant recent memory third-party campaign in Australian politics, I understand was raised by voluntary contributions sought by the unions from their members to fund that campaign. There is also GetUp! They send them to me. They sent an email seeking a donation from me to run an advertisement against our government. That is cheeky.

Prof. Williams—Did you donate?

Mr SULLIVAN—I did not donate, but the ad ran. The question that I have for each of the people around this table is an important one, because we seem to be heading towards a view that everybody believes that there should be a cap on expenditure. If that cap were in place and a party or a candidate were unable to respond to something that happened towards the end of the campaign that resulted in them losing their seat or their party losing government, how would each of you feel about that with your conscience?

CHAIR—They can raise that issue if they want in the post morning tea discussion. I am going to continue this session after morning tea once Dr Ogle makes his contribution.

Dr Ogle—I just wanted to put on record that we would have a strong objection to any suggestion that a third party contribution should be included as part of a political party cap, simply because the third parties are independent of parties; the Wilderness Society not being affiliated to any party. We would advocate for all parties to adopt policies. That is probably the case with 99 per cent of non-government organisations. So, as players in a democratic process, if we are going to talk about caps there should be a cap in our own right rather than as a sector or as anything else.

CHAIR—Mr Morrison wants to ask a question but, before he does, would that extend to those groups that advocate a vote in a particular way? Would you not put them in a particular category? If someone is advocating the removal of a government or the removal of particular candidates because of policies, why would they not be able to be categorised? That is different to having a policy position but you are not advocating a vote one way or the other.

Dr Ogle—Even there it is not as clear, because it would seem that there are groups who are legitimately and single-mindedly focused on their particular issue and the best way that they can see their issue being advanced is by the removal of a particular politician or government, provided that fits with the tax requirements or anything else which I am not commenting on here, but that would seem to me that that still should not come in to a political party cap because that is still different from an independent voice from the party. It is not expenditure controlled by the party. That is different from a front group effectively set up for an election. How you regulate to distinguish between those two is the very difficult thing, and I do not have a clear answer on that. As a point of principle, even an organisation that wants to advocate a particular vote, if it is generally independent, should not be part of the cap.

Mr MORRISON—Just to pick up the point that you make so I understand it, I hear you saying that you, yourselves, would not want to see any expenditure that you undertook within a defined period included, which is how it works in the Canadian system, where there is a defined period in which expenditure would be calculated and would be relevant. You would not want to see that expenditure included in say the Greens' cap, for example, on what they can spend, that what the Wilderness Society has spent all goes into what the Greens' overall cap is. What I do not hear you saying is that there should be a cap on third parties in their own right and if the Wilderness Society intends to undertake communications in a period of time leading up to an election then that is your right but, if we were to take the Canadian system, you would register, be subject to a cap amount of how much you would spend and you would also be required to disclose any of the donations that were made to you to undertake that activity. It is not suggesting that it is with any particular political party, but it is regulated. You cannot go out there and spend \$20 billion. It might be \$20,000 or \$50,000 or whatever the figure is, which is a different debate. Do you have any objections to third parties, in their own right, being regulated?

Dr Ogle—Historically, the Wilderness Society is probably over disclosed in terms of what we—

CHAIR—The Wilderness Society is not what we have in mind. Senator Brown has in mind an organisation the same as I have. For instance, the Exclusive Brethren.

Mr Marr—Yes. I do not know why they spring to lots of people's minds, including ours. Just to follow up on what Dr Ogle was saying, we do not have any objection to proper, transparent regulation of third parties—no problem at all.

Mr MORRISON—Caps?

Mr Marr—No problem.

Mr MORRISON—You just do not want it included in a political party.

Mr Marr—No, because our commitment is to the environment. Despite our love and appreciation for things that the Greens, Senator Brown and various other members of parliament do, our commitment is to the environment and we have offended every political party, including the Greens, at different times.

Mr MORRISON—I can confirm that.

Mr Marr—Absolutely, and that includes the Democrats. On occasion, you end up doing things that may benefit a political party to the disadvantage of others. That is a policy choice that they make.

Mr MORRISON—If the Wilderness Society, for argument's sake, decided that it was going to donate \$10,000 to a political party—

Mr Marr—We would never do that.

Mr MORRISON—No, but let us just say that as an example. We can use another. Let us say the New South Wales Right to Life organisation decided to make a donation to the Labor Party.

Mr Marr—It would absolutely be included. There is no question.

Mr MORRISON—Let us say it is \$10,000. Do you think that \$10,000 should not only be disclosed by the Labor Party but also should go towards what the New South Wales Right to Life's allowable expenditure should be as a third party?

Mr Marr—Definitely, in those circumstances.

Mr MORRISON—So that way you are not getting a double whammy?

Mr Marr—No, not at all. I do not have a problem with that. But let me be very clear here for the record. The Wilderness Society does not, never has and never will donate money to political parties.

Mr MORRISON—I am not suggesting that.

Mr Marr—Thanks to the performance of the last federal government, which did six tax audits of our organisation and went through everything line by line, that has been confirmed. In the instance where a third party might want to do that, then I absolutely agree with you. It should be transparent and it should be included.

Senator BOB BROWN—I think the same way. There are political parties, third parties and then there are individuals, and a capping system is required there, too.

Mr Murray—I have one addition. The important point that should be made here is that the issue of third parties is manageable when you are dealing with reputable organisations. With respect, the Wilderness Society is one, as is the CFMEU and so is a major corporation. Those third parties—

Senator Bob Brown interjecting—

Mr Murray—Yes.

CHAIR—I do not know if they are reputable.

Mr Murray—They are a long-term established advocacy group and your individual opinion about them does not matter. What you have to concern yourself with in an election is those that suddenly mushroom up for a specific purpose. That is why you have to have very clear accountability requirements—what reporting, what auditing and what disclosure.

Mr Brent—How do you include them? How do you see if they are just a front for one of the parties? Do you make that judgement and include their expenditure in the party?

Mr Murray—That is always going to be subjective, but providing the accountability rule is common for all organisations it does not matter whether they are a front or not.

Mr Brent—Why is that? We want to limit the amount that party A spends so we do not want them to go over that limit by setting up a half a dozen fronts. We do want to include some of these.

Mr Murray—You are going to cap that expenditure.

Mr Brent—The cap is times six or whatever.

Mr Murray—Let us take corporations. That is a very important point you raise. There are hundreds of thousands of corporations, incorporated and unincorporated. Each one of those, in theory, could mushroom up as a third party. What are you going to do about that? The only thing you can do about that is to put a cap on them individually.

Mr Brent—That seems quite pointless to me. Then this cap is not going to work at all.

CHAIR—Do you have a definition like an associated entity?

Mr Murray—Yes.

Mr MORRISON—If you have a set of penalties that apply to people who set up front organisations, and it can be demonstrated they set up a front organisation, then a penalty should apply. If there is a clear association, coordination of expenditure and similar directorships, all of these things can be pursued and you have a penalty system.

Mr Murray—That is right.

Mr MORRISON—The rules are not going to work in every case. That is why I advocated before with the AEC's enforcement that resources are a real issue.

CHAIR—We do have to be careful, otherwise we might end up with a Rex Connor Labor Party again, throwing money towards the Labor Party and not subject to what is a global clamp. I think that is what is being suggested here, that you can defeat the cap by setting up some of these organisations. Senator Brown, then Ms Moor and then morning tea.

Senator BOB BROWN—The important question is whether spending by non-registered organisations, that is organisations that are not business organisations registered or corporations or associations, should be able to enter into the fray at all, but individuals ought to be able to and

be capped because they are identifiable. It is where you get a group of individuals getting together to set up a front organisation to have a go at or to support a political candidate or party that the problems arise. They do it on the run to an election. They are not registered, not identifiable, and they disappear after the election.

CHAIR—We just had those ads recently on East Timor.

Mr MORRISON—In Canada they would be prosecuted for doing that, because they are just not allowed. If you want to participate as a third party then you have got to register. If you do not, you are busted.

Ms Moor—One of the issues that Mr Morrison raised when first talking about the third parties was whether individual donors who are donating to a third party such as the Wilderness Society for their political activity should be subject to disclosure. I think that is quite problematic in practical terms, because the vast majority of individuals who give to a not-for-profit organisation do so to support the general purposes and the general objects of an organisation rather than to specifically support one campaign or another. When the political advocacy that an organisation does is fundamental to the reasons for which it was set up, that is fundamental to its core business, then it would be very difficult to work out what donors are required to be disclosed and what are not. You need to balance the privacy of the individual donors with the greater public good.

Mr MORRISON—That is an excellent point. I forget in which submission this was raised, so someone might want to inform me. There was one suggestion made in a submission that any political activities of a third party for which they would be registered and disclosing along the lines of the model that we have been discussing, should be coming out of a specific purpose fund established by that organisation for that purpose. If you have established a separate fund, then that fund has to be filled by funds and that is going to come from somewhere. You would have been raising money for that fund from individuals who shared your view, as opposed to, as you say, the funds that have been rightly raised by an organisation for the more general purposes of that organisation being siphoned off for political activities. If a third party wants to get involved in politics, that is fine, but they have to disclose where they are getting the money from to be involved in politics and it has to be a fund that is quarantined from their more general activities.

Ms Moor—My concern with that is I am not sure how practical that would be. If an organisation is rung up by the media for comment on the subject of something that is before the public or is part of politics, will suddenly not being registered become part of the debate?

Mr MORRISON—No. I am only talking about paid engagement in politics.

Ms Moor—If you were saying if they were running an advertisement about an issue?

Mr MORRISON—Yes, or sending a direct mail letter, or setting up a particular website during the campaign to focus on those issues. Running, what is effectively, a paid political campaign. I would pick up Mr Sullivan's point from before. I do not think that anyone is suggesting that the cap should apply to what effectively would be called earned media.

CHAIR—I will just close at that moment. We will resume that after morning tea.

Proceedings suspended from 11.12 am to 11.35 am

CHAIR—I will resume this roundtable hearing. I propose to continue with the topics that we have been talking about. We will roll session 2 and topic 3 into that.

Senator BOB BROWN—Advertising regulations is in the second group of issues and it is tied very much to the fact that if you are capped in spending then you are capped in your ability to advertise and you have to make your own decisions as to how you are going to advertise. Earlier in the session somebody military service being misrepresented, and I am keen to flag the issue of truth in advertising. I know this is difficult and I know the High Court would look at it very carefully. However, it is important. There was self-regulation by the commercial TV networks until the start of this decade. They at least checked the facts on advertisement. If you said a factory closed down and X number of workers would lose their jobs, then you had to be able to verify that fact. If you said so and so was the cousin of somebody else in an advertisement, you had to be able to verify that fact. It was not up to the defendant to do so. But that has been dropped and there is nothing in the Electoral Act that says you have to tell the truth. The only thing you cannot do is mislead a voter in how they should place their vote.

There are two things here. One is the flow of information, because information is power. I agree, in general, that you do not spend money if you are not going to get a result. The second thing is that voters have a right not to be misled on their way to the ballot box. There is an increasing tendency, I think, for voters to be misled, particularly in that last week of election campaigns. It is very tempting for players to bring out a king hit, true or not, against opponents, and that needs to be capped as well. Again, an independent regulator with fast turnaround, as happened with the Federation of Australian Commercial Television Stations, FACTS, which had a group looking at this 10 years ago; there should be an element in the Electoral Act which says that it is not permissible to misrepresent or to lie.

In Tasmania you cannot use the name of an opponent in election campaigns. That is prohibited under the Electoral Act. In South Australia you have to be able to at least verify what you are saying. There is nothing under the federal legislation which says there is any restraint at all. It was presidential candidate Kerry's military record in the United States that arguably lost him an election on a falsehood. We are seeing a growing tendency on this and it is not beyond our wit and wisdom to have an entity, either the Electoral Office or a specific independent entity attached to the Electoral Office that can look at advertising and make sure it is true.

Prof. Costar—The Victorian electoral matters committee has just received a reference which came out of the VEC's report on the Kororoit by-election in which it was said that a vote for a particular candidate was, in fact, a vote for another party. It has gone there as a reference. It will be interesting to watch what goes on. I am sympathetic to the general point that Senator Brown makes. I see that there are a number of problems. Professor Williams will correct me if I have the article wrong. I think it is Article 10 of the 1689 Bill of Rights which establishes parliamentary privilege and makes what goes on in parliament non-justiciable. If a person in parliament made a statement just before an election campaign and that was later quoted there is nothing you can do about it.

CHAIR—I do not know if that is quite right.

Mr MORRISON—That is not true.

CHAIR—You need to produce the weekly *Hansard* for it to retain its privilege and distribute that to every member.

Mr Murray—No. If you republish a defamation you are justiciable at law. If somebody makes a defamatory comment in parliament and you restate that defamation you are—

CHAIR—Privilege does not attach to that subsequent publication.

Mr MORRISON—It attaches to the reporting.

Prof. Williams—Yes.

Mr MORRISON—But not to the repeating of it.

Prof. Costar—That is what I am saying. You can report it, but you cannot repeat it.

Mr MORRISON—That is the difference.

Prof. Costar—There was an election in the deep south in the US with a very heated campaign where candidate A said of candidate B, after a whole list of calumnies that he alleged—but this was the one that clinched it—'And, ladies and gentlemen, my opponent's son is a thespian on the New York stage', and they all fell about in horror at what possible degradations this could mean. You can watch truth in political advertising. As you know, we had it here for six months in 1987 and it was repealed because it was unworkable. I think it is an issue, but I do not know how you would get around it.

Senator BOB BROWN—Many years after that we did have the Federation of Australian Commercial Television Stations at least testing basic facts. If you are going to get into disputable matters, you will end up in great trouble, but there ought to at least be a limitation which requires you to be able to justify facts, figures, the use of names, relationships and so on. There is always a problem. At least parliament does not sit while an election campaign is taking place so new calumnies cannot be used.

CHAIR—Not in the last week, unless it is a state parliament.

Prof. Williams—The problem is not limited just to advertising. The normal media coverage where statements can be made on the news or elsewhere that can raise exactly the same issue. I certainly agree with the view that the restrictions that exist are too narrow in only relating to misleading as to how you cast your vote, preferences and things like that. I think it should be broader than that, but I would not make it much broader.

Senator BOB BROWN—I agree.

Prof. Williams—The label of truth in advertising gets it wrong, in the sense that we should not be aiming to acquire truth because in the end that is not the problem. There is too much that is at doubt, and in fact there must be room for very robust opinion, including to which party

might lead to an increase in interest rates and all sorts of things that cannot be demonstrably shown to be true or false. However, there should be a test that, if it can be identified that a candidate or person has made a statement that is clearly false and is a lie, that is the sort of thing that should be removed. As part of that, it is appropriate to have a simple verification measure where factual material is included in advertisements or the like. That is a much lower threshold, but I would be happy with that. Anything above that would just be part of the hurly-burly of politics and I do not think any regulation should be involved there.

Senator BOB BROWN—I agree with that, too. I think it is a really important matter.

Mr Sutton—Just on this point, for those of us who are not lawyers here, I presume that if somebody says something at whatever stage of the campaign that is manifestly wrong you can presumably rush off to the court that afternoon and get an injunction to stop it.

Prof. Williams—Not at the moment. It is only if it is defamatory. There is no proscription against lying and there is no offence for misleading in political campaigns. Under the Trade Practices Act for commercial speech there is, but it does not apply in political campaigns. I suppose the question is: should there be a standard there that would enable you to get an injunction because you cannot do it at the moment.

Mr Murray—I have pursued this issue for well over a decade in the parliament because essentially I saw the South Australian legislation as working to the extent that it restrained falsehoods. It did not prevent them, or stop them, but it restrained them. The difficulty we always face with these matters is that an election period is short and to get restitution or something sorted out takes a long time. Justice, by its nature, has to be considered and careful. The most egregious example recently is of Pauline Hanson and the photographs. For her to have final resolution of that matter through the law will take a long time to exercise.

CHAIR—Surely no-one is suggesting that sort of stuff should be banned during a political period

Mr Murray—No. What I am indicating is that even where something is clearly capable of being resolved at law, it can only be resolved long after an election has occurred. What you are suggesting is always going to be only a partial help because if somebody is really determined to hurt a candidate they might well do so and be prepared to suffer the consequences later, particularly if they have got deep pockets such as a major media outlet.

CHAIR—I am interested as to whether there is something incremental that we can add to the Electoral Act that takes us forward with some certainty.

Mr Murray—The South Australian legislation is your example.

Senator BOB BROWN—Can Mr Murray remind us what the South Australian legislation does?

Mr Murray—I forget the exact phrasing, but it essentially says that untruthful assertions are prohibited on a similar basis to commercial law with respect to misleading statements.

Senator BOB BROWN—How is that enforced?

Mr Murray—There have been two cases, to my knowledge, through the courts which I think were successful. It really just acts as a dampener on outrageous—

CHAIR—How long has it been in existence?

Mr Murray—Well over 15 years. The federal trial was short. It ended in 1985, by memory. Certainly it is a restraining device. I must say that so far most serious political participants have behaved pretty well. You do not find many examples of outrageous statements in elections.

CHAIR—If you say it is a restraining device, then I take it that if words were put into the Electoral Act then that also could be used in terms of injunctive relief?

Mr Murray—Yes. There is injunctive relief, but the problem with anything to do with law of this kind is that if you have published a photograph or made a statement the injunction is after the harm has been caused.

Mr MORRISON—This was the same under the FACTS scheme that was there. What happens is that when you introduce these things there is another massive area of expense in the electoral campaigning process because effectively lawyers, injunctions and all these sorts of things then become part of the campaign process.

Mr Murray—That is not the case in South Australia, and that is the point of the South Australian legislation. It has been affordable and reasonable. It has not produced great compliance cost or anything else. Notionally, you would expect your statement to be correct, but experience shows that has not been the case.

CHAIR—Does the South Australian legislation allow for an overturning of the election?

Mr Murray—No.

Prof. Williams—Not on that basis. In fact, the problem with the South Australian legislation is that it is a bit overbroad in the way that it is drafted, but it has been interpreted pretty narrowly by the courts. The only way you could have something like this would be to limit it to something like preventing known falsehoods that do not raise the expense and other issues that prevent candidates and parties running an ad or saying something they know is false to gain an electoral or political advantage with an injunction mechanism and the possibility of punishment afterwards.

CHAIR—I am interested in whether there is some mechanism that might advance the Commonwealth here.

Mr BRUCE SCOTT—You say candidates rather than, say, the case of Pauline Hanson. Senator Brown raises a very good issue. That photograph that ran for days and days in a state campaign was worth hundreds of thousands of dollars in advertising for her at the end of the day because of the focus that it put on her state-wide, Australia-wide and in that electorate.

Mr Murray—That does not make it right.

Mr BRUCE SCOTT—That was a media campaign.

Prof. Williams—They did not necessarily know it to be false, either.

CHAIR—With the greatest of respect, as a Legal Aid lawyer, I would have thought that would not be picked up under the Electoral Act. That is publicity. That is outside the parameter of the conduct of—

Mr Murray—I used that as an example of how long it takes to resolve such issues, not as an example of what could be caught by the legislation.

CHAIR—I appreciate that.

Prof. Costar—Under the South Australian law, if it was translated into the federal act, and during an election campaign I said, ‘Senator Brown represents atheists’, would that go to court or not?

Senator BOB BROWN—Not.

Prof. Costar—You know my point. It is a bit like the thespian. Of course he represents atheists. That is his job. He represents Anglicans, Catholics, people of no religion and whatever. You can see how this can be used in a way in which it is absolutely true—quite irrelevant and mischievous.

Mr Murray—I reply that the South Australian legislation has not had that effect. Of course, those who look at it from a different perspective might simply say, ‘It actually has had very little effect and that political discourse is unchanged in South Australia.’

CHAIR—We can have another look at that, but the issue is on the table. Other issues, Senator Brown?

Senator BOB BROWN—I would just remind the committee that in Tasmania you could not say that. You cannot say ‘Senator Brown’ anything. It is a very interesting set-up there.

CHAIR—It is good political practice not to name your opponent.

Senator BOB BROWN—That is true.

CHAIR—I propose to continue where we were prior to having morning tea. We have also got to talk about donation restraints, systemic caps, whether we have a complete ban and increased public funding as alternatives. I would not mind going into that aspect of what your thinking is on that.

Ms Jones—I would like to make one quick point about the public funding. There is a principle here and that is that I do not think that the average voter would want to see more public funding happening unless these other controls were in place. People already see the current

system as double dipping, anyway, and there is a fair bit of dissatisfaction about that. I am sorry I cannot back up some of these statements with any evaluation of the current system, because I think that something as important as our democratic system and the current rules and regulations that we have really should have been evaluated. These things often do not happen and it is left to everybody else to do their research about it. I just think that the weakness, if I can be explicit about this, in changing the system is that it is politicians who are going to change a system and it is politicians who are directly the recipients of whatever is good or bad about the system. So there does need to be some sort of independent, at arm's length, body or agency that has responsibility for a lot of what we are talking about. I do believe that many people recognise the problems and the weaknesses and they would like to see, whether it be the Auditor-General or another sort of body, another agency.

CHAIR—I just want to put on the record that what stunned me on page 41 of the green paper was the two graphs, in terms of major political parties' source of funding. I think it is worth while putting that in the arena now. Funding to major political parties constituted only 20 per cent public funding and 80 per cent private funding and, of the private funding, 75 per cent was fundraising activities, investments and debt, and 25 per cent of donations. That is the mix that we are talking about and, frankly, that stunned me.

Prof. Williams—On the basis of that, you would have to ask why any public funding is provided whatsoever, because the key rationale is to reduce reliance upon private funding and therefore the distorting influence of private funding. If you have got a system along those lines it just means public funding does not achieve its core goal.

Prof. Costar—The previous manifestation of this committee in 1983, the Joint Standing Committee on Electoral Reform, identified five benefits that would flow from public funding, one of which I cannot understand, and three of which where public funding had the exact opposite effect that it said it would have. The only one that partially worked was to bring new players into the game, and it really is one new player, which is the Greens because the Democrats predated public funding, but it probably kept them going.

Mr Murray—And One Nation briefly.

Prof. Costar—Yes, One Nation briefly, but nothing continuous. Greens are the only continuous one. What struck me about that and some other tables is that back in 1984 public funding accounted for about 40 per cent of the major parties' campaign expenditure. It now accounts for less than 20 per cent. I think it is 17 per cent for one and 18 per cent for the other.

CHAIR—Does that mean they just pocket the public funding, but then increase their activities in other forms?

Prof. Costar—It just shows that public funding has risen a couple of times. It is not that public funding has fallen backwards. It has gone up. What has also gone up—going back to our old hungry beast again—is the expenditure on election campaigns. That is why the percentage now is so much less. It is half what it was at its first outing in 1984.

CHAIR—The other point that needs to be made at this stage is that that public funding did increase over the period in terms of including the Senate vote and the amount per vote over the

period. It is not as if it has not been generous. The point Ms Jones makes is that if we are going to increase public funding people would want to see other methods.

Mr Brent—Does the voter really know or care much about public funding?

CHAIR—It is not a question of knowing or caring. It is public money at the end of the day for the legislators, the participants and the main players. I do not want to deceive the electorate. I do not think it was a deception in 1983. What 1983 has shown is that the nature of campaigning has changed in the 25 years since public funding.

Prof. Costar—I do not want to say that it was deceptive at all. I think they were genuine.

CHAIR—If we are charged with bringing a new system in, we should be gathering the evidence of the existing system and what preceded it.

Mr Brent—We have to be responsible and careful with public money. I do not agree that the public will not wear such and such. If it went up to \$5 a vote I do not know whether anyone would notice.

Ms Jones—They need to be consulted. I am from New South Wales and I can tell you this issue has been very strongly aired by at least one major newspaper for some time. It is a bit more focused on the New South Wales government than federally, but given that the response in New South Wales is, ‘We can’t do anything because it is a federal matter’, I think there is a fair bit of public concern and interest.

Mr Brent—A newspaper can have their little campaigns for a while. New South Wales is a bit of a dysfunctional place.

CHAIR—There have been some substantial changes in relation to that area that the state government brought in, I think with the Opposition’s support, arising out of Wollongong. That also applied at a council election in terms of the restriction on where you could get donations.

Mr MORRISON—While we are in New South Wales there is one thing. The green paper mentions this, too, as an option which I will say is not wise to go down, that is, that you ban all private funding, which I would think would fail a High Court challenge, and you replace it by total public funding. That is just not workable. It has two effects. One is that it would not survive in the High Court.

Mr Murray—I suggested it as well.

Mr MORRISON—One leg of it would not survive. If the total amount is coming out of the public purse, there would be a reaction.

CHAIR—How do you have the mixture then? What is the mix we should be looking for if you are not going to ban?

Mr MORRISON—What percentage?

CHAIR—How do you want to do it?

Prof. Costar—I would not change the rate of public funding. If you went back to 1983 and assessed its effect you would say abolish it but, as we say in our report, it has been around now for 25 years, and it would probably kill off the Greens, which is not a thing we want to advocate. They could be green, pink, red or whatever they are, but they are a small party and we do not want to kill them off. We do not want to kill off big parties, either. I think you should probably sit with it as it is and address it by addressing the other problems that we talked about before morning tea. Expenditure is the big problem.

CHAIR—And disclosure.

Prof. Costar—And disclosure.

CHAIR—Professor Williams.

Prof. Williams—I agree. I would not be looking at big increases in public funding. The key is can you actually reduce the size of the pie so that, indeed, the percentage of public funding increases markedly from where it is. If the parties spent less, either because of effective expenditure caps, or because certain forms of campaigning are not enabled in the expensive way they are at the moment, then public funding starts to achieve the sort of purpose for which it was designed.

Mr Marr—Given the proportionality that you just pointed out, if a party is getting 80 per cent of their funding from private means then the public funding really is a waste of time. Unless we come up with a system that effectively reverses those proportions, partly by shrinking the pie, then the whole thing is defeated before it starts. That is a very large job.

Mr BRUCE SCOTT—You could turn that on its head and say that the public funding is not sufficient and that is why they go to the private sector or private donations, to get more money to be effective in a campaign. The public pie is not big enough. I am afraid the argument is both sides of that coin.

Mr Brent—If the cost of elections is increased exponentially, you could argue public funding should as well.

Mr BRUCE SCOTT—Yes, but then you put a cap on it and you deal with the other private stuff. The other argument is that you could ban it.

Ms Moor—This discussion illustrates how big the challenge of this matter is. PIAC is of the view that donations, other than from individuals, should be banned, which is what the green paper calls the citizen approach. The reason that we have taken that view is that we feel that individual voters should be encouraged to participate in the political parties and participate in the democratic process. It is not the core business of entities to do so.

CHAIR—What about the trade union movement that would see the Labor Party as integral to improving a lot of their constituency?

Ms Moor—Yes. That is a difficult issue. We have come to the conclusion that all entities should be banned from donating and that it really is the province of individual citizens. Where do you draw the line? If you include unions then you have probably got some comparable arguments to include small business.

CHAIR—I am not going to argue that.

Ms Moor—I think that the answer is in a whole systemic reform, whereby the amount that is spent during election campaigns is greatly reduced.

Ms Jones—Most people will remember how long the last federal election was. It seemed to go for a year. I wish somebody had surveyed what people's views were about that. I have only got anecdotal evidence, but there was so much frustration about how it went on and on. Surely it is to all the political parties' advantage if we actually had a level playing field so that everything was shorter and the elections were not this year long—

CHAIR—The problem you have is that the actual parliament sat again short of its three years. The election was longer because there was no doubt that the union movement put life into a campaign against WorkChoices. That did not commence from when the election was called or anything like that. It commenced a long time before. It was the union movement that actually turned it into the issue and then the Labor Party jumped on board. That is the history of it.

Mr MORRISON—There is a danger if we start going down a track that sees a political debate as an inconvenience publicly. It should not be. It should be something that people should be able to engage in for as long as they like or for as short as they like.

I would like to touch on a point you made before. Mr Marr may be able to comment on this as well. This is the issue of public funding. You could go to the population—a bit like politician's salaries—and say, 'Do you think there should be more money available for the political parties for campaigning at elections?' I do not need one of my pollsters to tell me what the answer to that question is going to be. What I find interesting about the public funding debate is that the public funding is not there for the politicians, it is actually for the population to protect their own democracy. At the end of the day, if those figures of 20 per cent and 80 per cent are inversed, the pressures that are on the political system change fundamentally and dramatically. Who benefits from that? It is the punter, at the end of the day.

No politician can honestly make that argument out there, because of what perceptions would be, and I do not think any politician has even tried. The public funding debate would meet a very unsavoury end because of that, but what is still at stake is this issue about what percentage of the spend that is incurred by political parties at each election is subject to that influence and how big that influence should be.

CHAIR—I would like to go to Mr Murray and then Mr Sutton. I would like the participants to think about this idea of whether we ban all entities other than individuals, in terms of donations, because that is quite a change to the system. I will then go to Professor Williams. Mr Murray.

Mr Murray—In this part of the program I want to deal with three issues. The first is efficiency. I think that if everything was left alone you need to make the system work more

efficiently. That means simple devices such as with regard to AEC websites being user friendly, providing a proper analysis of what donations have been made, how funding is occurring and all that sort of thing. It means being able to put in electronic lodgement of returns.

CHAIR—Does it mean more timely disclosure?

Mr Murray—Yes. It means early disclosure. Efficiency is a very important mechanism because what you have got with political participants is that frequently they are poorer administratively and professionally, and they need as much assistance as possible to be able to engage in the system effectively.

There is one area to which I would draw your attention. I do not want to discuss it much unless others do. That Senate inquiry I mentioned into not-for-profits recommended a national fundraising act. Fundraising is a very important mechanism in the political process, whether it is for advocacy groups or for political participants. The fact that you have eight different fundraising regimes between the states and territories around the country is a great problem in terms of compliance cost and efficient mechanisms for simply managing the business of raising money. It does not matter if you are not-for-profit or a political party. I would throw that into the mix. That is the efficiency area.

The second area is accountability. At the moment the division between the two majors is not whether the matter should be disclosed but at what level it should be disclosed. Disclosure is not an issue itself. That is a principle. Beyond that, of course, there are areas that are opaque where disclosure is inadequate or poor, such as who lies behind trusts, foundations and clubs in terms of major donations. The second issue is whether the system is sufficiently accountable, and the green paper tries to attend to ways in which you could make disclosure more apparent, more transparent, and more open and you know who lies behind the monies that are donated.

Neither of those two things—efficiency and disclosure—really affect the construct of the system. It would not alter it much at all. Whether things are tax deductible or not does not affect the architecture, if you like. The third area, where we began this discussion, does and that is that the community, the parliament and the political participants have to make up their mind as to whether they think large donations are a corrupting influence or not. The general view of the population, the media and so on is that a large donation is a corrupt influence because it allows for easier access and greater ability to participate in a political system than for those who do not make such a donation. If you agree that is the problem, the only logical alternative is to replace private funding with public funding, supplemented by a very low level of donations that do not have a material effect on political behaviour. For instance, a \$1,000 private donation is neither here nor there. If you do not think that it is a corrupting influence with respect to donations then you are not going to cap large donations and say they cannot be above a certain level or you are not going to increase public funding. The weakness with respect to the two professors—and I mean it with respect and not in the legal sense—is that their response about private donations does not address that fundamental issue. By the way, Dr Joo-Cheong Tham outlines these arguments quite well in his submission. It does not address that fundamental problem of the corrupting influence of money.

I also think there is a negotiating position that is possible for the federal government. If it were to take up the mantle and say, ‘We will federally fund all politics with public funding and in

return you must give us authority over funding and disclosure nationally', and a few other items I mentioned in my submission, then you would have a replaceable system. I would urge people to look at those three areas separately.

CHAIR—One way of dealing with it—and I do not want to expand the debate—is if you had a national body looking at administering each of the jurisdictions if they were referred to them by the states and the territories, plus the national body, it does not require a funded state or territory. Let us get real here. I do not think the Commonwealth is going to be funding state and territory campaigns. They would be flat out increasing our federal campaign. I hear what you are saying, and we want these issues on the table, unless I have misunderstood what you were saying.

Mr Murray—It is always possible. I even misunderstand myself sometimes.

CHAIR—You talked privately about the benefit of a national scheme. This is if we were able to get the harmonisation in terms of electoral funding or whatever that is administered through the Commonwealth and the Commonwealth meeting those particular costs or whatever.

Mr MORRISON—Administratively.

CHAIR—I am talking administratively.

Mr Brent—About half the states and territories have public funding at the moment.

Mr MORRISON—But the other half do not.

Mr Brent—In theory you take it off the money that the federal government gives the states.

Mr MORRISON—There are two separate issues here. There is the public funding process, but then there is the more important process for the issues that we are talking about, which is the process of disclosure, compliance and so on. One of the difficulties I would urge people to bear in mind when it comes to disclosure and compliance is that largely the people filling out these forms are branch presidents and secretaries who have other jobs and all the rest of it. We need to make that process easy for them to comply with and a one stop for doing that. At the moment you have to comply with local, state and federal disclosure requirements and they are all subject to audit, with some pretty serious penalties being applied. We want to go after the people who are trying to bend the rules or bust them rather than those who frankly got their paperwork wrong.

CHAIR—Professor Costar wants to come in on this and then Mr Sutton and Professor Williams. I then propose to go to the next topic.

Prof. Costar—While we are on disclosure, I will mount my favourite hobbyhorse here. While I thought the green paper was excellent, as a whole, I thought it was very conservative in this area of disclosure. Twice yearly disclosure is better than once a year—just. There are much better models. My hobbyhorse, which I have related to your secretary, is the New York City Campaign Finance Board's internet based in time disclosure of donations.

The Victorian Electoral Matters Committee, which is what I gave to the secretary, visited the New York City Campaign Finance Board last year and had a long discussion with them. It could be said that they were fairly impressed by the system. The system has been in operation for 20 years. It was produced, of course, by a scandal. In its early days it was terribly inefficient, but once the internet became functional it has become a very simple system to use. If a branch president can use the internet then they can use this system. The parties, of course, did not like it at the time and carried on about it, whereas now they appreciate it because it is an efficient accounting system. At the end of elections they do not have to go auditing their books, because it is already there. The way it works is that as donations come in—and there are timelines, which I will not bore you with because it is in this report—this material is sent to the Campaign Finance Board, which immediately puts it on the website and it is all there.

I appreciate the thing about corruption. I notice that a person who is not here—and I do not want to verbal him—but I will quote from the representative of the Urban Taskforce, who said, ‘Despite the absence of wrongdoing ...’ There is plenty of evidence of wrongdoing. What there is not is evidence of decent prosecution. When was the last person prosecuted under section 20 of the Commonwealth Electoral Act? I think it was in 1996. Are we to overlook the Tweed City Council election, the Gold Coast City Council election and others?

CHAIR—In fairness to the authorities, some of these matters have been referred and it has been found that prosecution would not likely be successful.

Prof. Costar—I am not blaming the AEC. They have to work with the act that they have got.

CHAIR—We have got matters before the court in New South Wales at the moment relating to Lindsay.

Prof. Costar—Setting aside the issue of corruption—I am not saying ignore it, but for my argument it is not necessary—my position is this: why should voters not have as much information about the candidate or party they are going to vote for before the election and not afterwards? Not wait until February of this year to find out who donated what to whom at the sharp end of the 2007 election campaign. Even at federal level in the United States, which is hardly an ideal model, they would not stand for that. You have to disclose before the election, and this method is a very simple method.

The New York City Campaign Finance Board has offered the software to the AEC for free and to other Electoral Commissions around the country. Apparently there are some adjustment issues about Australian Accounting Standards, which I do not understand, but they are just technical impediments. If there were the political will to do it, you would get a much better system.

Mr Sutton—I was going to come in earlier when Mr Morrison raised the point about the question that you asked the public. Like so much of that survey process, a lot hangs upon the question and how it is put. I equally think that, if you did ask the public the reverse proposition, whether it is a good thing that major corporations and major unions are bankrolling the electoral process, and is this a danger to democracy, then you may well get a similar 80 per cent kind of answer. That reflects a bit on the way these things are put in surveys.

Generally, I subscribe to the views that Mr Murray was putting about public funding. Let me say, taking up your question, Chair, particularly when you made the point about trade unions and our desire to participate in the political process and have our views heard through the political party that we are affiliated with and that we established. I am not speaking for our organisation here and I am not going to speak for anyone, other than cast a personal view, which is a view of some 30 years experience in the union movement that I have now have. If I could be satisfied that corporate donations were effectively cut off and there really was an effective method of cutting off corporate donations, would I be satisfied and refrain from participating in the political process? Yes, I would. If we could be satisfied that our political opponents were not going to be fed with the corporate donations, we would be more than happy to sign up to it. We do not relish spending rather scarce resources, comparative to the corporate world, anyway, on the electoral process. That is a personal view.

Prof. Williams—I would like to go to the question about who should be entitled to make donations, which the chair has raised. Subject to some of the earlier comments I have made about caps, bans and limits, I am very attracted to the idea that the only people who should be entitled to donate to political parties should be people who are eligible to vote. That limits it to individuals. It limits it to those people who have the greatest interest in the electoral process. It also removes any constitutional issues, because there is no right of corporations, unions or other entities to give money. If there is a right, it is simply the people who are eligible voters. I would also limit the amount that they can contribute to \$1,000 or a relatively small amount, because I do think that the larger the amount the greater potential for the corrupting influence. I would support limiting it to individuals and eligible voters, and I think that you would audit the process to ensure that it does not go outside that. That obviously knocks out people donating money who live overseas and who are not on the voting roll.

Dr Ogle—We would certainly be attracted to the sort of instantaneous disclosure regime that Professor Costar was talking about. As to the question of who is entitled, it is an open question. If I donate \$5 to a local candidate, they might not know why I think they are marginally better than the other candidate. I am not particularly speaking with the Wilderness Society hat. To simply limit it to individuals actually just entrenches the inequality of individuals. What we know is people without resources get a voice in this system by aggregating into groups. I am thinking of something like the League of Conservation Voters in the US. I am not quite sure how EMILY's List works, but you could envisage what I think is a perfectly legitimate political intervention, which is disparate money sourced but is actually used as a way of putting an issue that is probably legitimate. I am just wondering how that plays with what you just put. Having said that, I think any system should be subject to pretty strict caps for non-individual donors.

Prof. Williams—What you are suggesting would happen, and that is that individuals would collectively make their donations to make a collective point. Certainly, that does happen in the United States under some of the similar systems, and I think it is entirely appropriate that it is possible to do that. You could just make a donation yourself or to say, 'This is part of 100 people who care about the environment or whatever other issue. We want you to remember that there is an issue we care about.' Equally it may be that shareholders or people involved in the corporate world do it that way, and also unionists may want to get involved in that way, not through an entity but as individuals organising collectively.

We are stuck with that system perhaps inevitably anyway because I am not sure we can ban individuals making donations of this kind for some of those constitutional reasons, and also this is just part of the give and take of the process, anyway, that they are able to do it. The key is to have a relatively low amount they can donate. If it is \$1,000 or \$500 or whatever it might be, that limits the capacity to have too much of a distorting effect.

This is also where I might quickly mention a response to something that Mr Sullivan said earlier, and that is that for me it is not a matter of achieving the best system, the perfect system, or a system that works. It is a matter of alleviating pressures within the system. Can we improve the system such that it operates better than it does now? I think we clearly can do that and that really is the test of judging what we are doing. Will it make it work better, and not will we get to a system that we think achieves the perfect outcome.

Mr Murray—Do you mean better and fairer?

Prof. Williams—Yes, all of those objectives. Better, fairer, with integrity, but just making it better according to the criteria we use as opposed to achieving an illusory goal.

Mr BRUCE SCOTT—If we agreed to a cap in the first instance with the public funding, the donations and third-party donations really almost become quite a side issue where you may never need it, because the cap is going to restrict the amount of money that is spent in any one campaign. If you deal with that issue of the cap, you agree with a cap, and you increase public funding for every political party and the candidate base has got access to that then this third party donation really is not an issue. If you allow that as well you could have so much money that could not be spent. That is what I am saying.

Prof. Costar—The problem with the third party is not only that they might donate to political parties, which as you say if there are caps then they cannot use the money. The problem is that they will campaign themselves. That is the real problem and that is why we used the Swift Boat example.

Mr BRUCE SCOTT—You register them.

Prof. Costar—Yes.

Mr BRUCE SCOTT—They would have to be registered.

Prof. Costar—That is why we suggest in our submission that there be a national agency and it would have the power to bring these groups under the system. If we did that then I would agree with you.

Mr MORRISON—I just want to clarify something that people are talking about regarding donations. As I understand it, donations include cash and in-kind contributions. When we are talking about caps, we are talking about capping the total value of both cash and in-kind, regardless of the other things we are talking about, capping how much they can spend. Does anyone have a different view from that? I just want to be clear that we all had that same understanding.

Prof. Costar—The current definition of ‘donation’ is a bit narrow. What about the situation, as I understand it, where lobby groups will allocate staff members?

Mr MORRISON—That is an in-kind donation.

Prof. Costar—Is that picked up under the current legislation?

Mr MORRISON—It should be.

Prof. Costar—I do not think it is.

Mr MORRISON—I believe it is.

Prof. Costar—I do not think it is.

Mr MORRISON—If they are not disclosing it, they are breaking the law.

Mr Brent—I am interested in the debt component of the numbers that you quoted from the green paper. It was something like 20 per cent is from public funding and of the other 80 per cent only 25 per cent is donations that are declared. The rest is debt, fundraising and so on.

CHAIR—It just says 75 per cent fundraising activities, investments and debts.

Mr Brent—That is interesting. I wonder what proportion that accounts for. It can obviously just be donations under another name, and if we were not to have a cap then the parties that are not raising enough money could just spend more by raising debt.

Mr Murray—The answer to your question is twofold. Firstly, I go back to accountability and reporting standards. Accounting standards and so on do not apply so people do not have to produce that information in reports. Secondly, the disclosure returns are very weakly designed because you are not presenting material that enables analysts to actually disaggregate those figures. I would say to you that is an issue of accountability that needs to be addressed, and you cannot get the information required. No-one can find out what debt component there is within political parties.

Mr MORRISON—Before we leave the topic, I would like to come to the issue on caps on donations themselves. Mr Murray raised an important point as to at what point does a donation present a risk in the broadest definition to our political system. Is it \$500,000? Is it \$100,000? Is it \$50,000? Is it \$20,000? I am just not sure how the \$1,000 figure has been arrived at, where we get that figure from and on what basis we think anything above that level represents a massive problem. If you have expended caps in place then a lot of these problems that we are talking about actually recede, because the demand for money is not as much. If you were talking about the disclosure arrangement, which is over \$1,500, \$5,000, \$10,000 or whatever figure you want to pick, one of the virtues of a disclosure arrangement above a level, say, of \$1,000, \$1,500 and so on is, if you are not allowing donations above, say, \$1,000, then you raise the prospect of people seeking to make donations above that level in other ways. At least if you have a disclosure arrangement for donations above that level then it is being reported, it is transparent, you do know where it is coming from and you have a sense of confidence in the system.

I only make that point to alert the group to the risk of going down that ban at \$1,000. I am not quite sure about that. If you take the view of many in the room that it is only limited to those on the electoral roll, then there are not too many people that I am aware of who are going to write out donations for \$500,000 personally. I think that is a real risk. I am not quite sure what the argument is for \$1,000, and maybe someone who thinks that is a reasonable limit might outline it.

Mr Brent—Are you arguing against any figure? You can make that argument about any figure that is arrived at.

Mr MORRISON—It could be \$1,000, \$5,000, \$10,000, \$20,000 or \$50,000. If there is a figure I would like to know why that figure has been chosen and what the risk assessment is based on where you set it.

Ms Moor—I do not think the issue is so much about corruption as it is about participation. As you say, there would be very few people who could write a \$500,000 cheque. There would probably still only be a relative number who would write a \$1,000 cheque or a \$100 cheque. You would probably get quite a lot more. But as Dr Ogle said earlier, probably the bulk of participants would make a donation less than that. One of the principles behind a cap on donations was not just to remove undue influence, which perhaps a higher figure would do, but also to allow citizens the equality of participation in the democratic process.

Mr MORRISON—For me, that goes to the issue of choice. You have introduced a different argument. The argument being put before was that the cap was there to protect against undue influence. I am yet to see an argument which says that a \$20,000 or \$30,000 cap would not equally suitably guard against that type of activity.

Prof. Costar—There is the Canadian legislation—

Mr MORRISON—What is that based on?

Prof. Williams—It is based upon a perception that the figures that you are talking about do start to raise questions of undue influence. Again, there may be an entirely different empirical finding there. I think the answer is if a cap was to be imposed it does need to be based on the sort of analysis you are talking about and a separate discussion.

Mr MORRISON—My worry is that if you set the cap too low you actually encourage activity. You could have \$3,000 or \$4,000. You have got in-kind donations being given and is it \$950 or \$1,050? You start to create some technical and implementation problems that a higher cap would avoid.

Prof. Williams—You do, but you must twin this with a quite significant sanction. If you do try to avoid it through other means, there are penalties so there has to be a regulatory regime as well.

Mr MORRISON—If you have disclosure operating above, let us say, \$1,000 or \$1,500, and you have a cap set at \$10,000, \$15,000 or \$20,000, it is a valid comparison to make as to what system is going to work.

CHAIR—The arguments are on the table. I do not think we can advance it anymore. Mr Sullivan.

Mr SULLIVAN—Transparency and disclosure are the weapon against undue influence. The point that I wanted make was this one. Going by the figures produced by the chart that the chairman referred to, plus the amount of money spent by the federal government on public funding of the 2007 election, all participants in the process expended a total of \$20 per voter. Now, \$20 per voter divided between three parties in most electorates, plus a few independents, is not a great deal of money to be spent on getting information of at least three different viewpoints out to the voters in a period of four or five weeks. I do not think that this money arms race that we are talking about is actually happening, if you look at it from that point of view. Twenty bucks is not much.

CHAIR—I propose to move to topic 3, harmonisation. I just want to tell people the constraints. We will have to finish at 1 pm, because a number of people have other arrangements post 1 o'clock. I would appreciate it if you could keep your comments tight. I am obviously interested in the participants more than I am in my colleagues because we can speak at any stage. The harmonising we can do pretty quickly. The green paper says that as part of the process the government has consulted with states and territories obviously on electoral funding and disclosure issues. What we are interested in is whether there are areas where a harmonised approach is essential and/or areas where it is desirable, and what consideration should be given to incorporating local government within harmonised arrangements. If participants have a view on that, what is essential and what is desirable for harmonisation, and what about local government? Dr Ogle.

Dr Ogle—Harmonisation is essential for no other reason than you look at the definition of 'expenditure' and that blurs or includes state or federal politicians. Just speaking on behalf of the punter in our office who has to do the returns, it is a very annoying compliance cost to get your head around the different regimes and to try to comply with them all. It would be good if we could do one set of compliance.

CHAIR—For local government as well?

Dr Ogle—That is probably not an area we deal with. I would accede to people with more experience in that. If the range of candidates is wider then it might be quite different.

Ms Jones—In principle, we should include local government. Harmonisation is obviously an important aspect of what we are trying to achieve here. In the larger state, New South Wales, although some minor changes have been made through legislation recently, it is used as a, 'We can't do anything really until the federal government takes action.' Whether it is possible or not, it is basically used as an excuse for us not to have better reforms.

CHAIR—What areas are essentially desirable—the level of disclosure or donations?

Ms Jones—It has to be comprehensive. We know that if you put a partial ban in place then you are going to get money coming through in other ways. The money shuffle or the money trail can be coming from federal to state parties or from state to federal. It just has to be transparent. All the principles that we have spoken about we would like to see happening.

CHAIR—Everywhere?

Ms Jones—Everywhere.

Ms Moor—Likewise I think that harmonisation is absolutely essential. If we are going to have major electoral reform it needs to result in an efficient system for parties and for others. The more streamlined compliance is the more likely compliance is to take place.

Mr Murray—As you know, I ask a fundamental question in my submission: what is national and what is federal? I actually think harmonisation is a bad second best in this particular circumstance. I argue that there is only one system that is genuinely federal, and that is electoral systems; constituencies, whether you have an Upper House or not with fixed terms and all that is up to the nine individual jurisdictions. But the conduct for elections, the regulation of political participants and funding and expenditure, I argue, all should be national. I would urge the minister to ask the Council of Australian Governments to step back and ask themselves the question: what is federal and what is national? And having agreed what is national, decide the principles that they would support in a national scheme. It is much easier and much simpler than trying to harmonise systems.

Prof. Williams—I agree with the statements that have been made. I think a large part of this must be harmonised and must be part of a national scheme, whichever way we want to put it, simply because it will not be effective otherwise.

CHAIR—At every level?

Prof. Williams—Yes. I would certainly include local government for two reasons. One is that many of the problems that have come to light exist at local government. That is where some of the greatest community concern lies. If governments are seen to act but not to deal with the source of what is often the problem, then that is really problematic. And, secondly, I think that political parties often play a very large role at that level, anyway. I do not think that you can disaggregate their role at local government from the state level, so I think they should be part of the system. Whether it should be through intergovernmental or other arrangements there should be measures taken to work towards a more national or harmonised system, and even if we do not get all of the states in immediately it does not matter. You simply work with who you can get in at the first stage and over time more may join that system. It is better to start with whatever states will come into a system rather than believing you need everyone at the beginning.

Prof. Costar—I would agree with all of that. Local government clearly needs to be regulated, but when we had the farce that was the 2004 Gold Coast City Council election, and there was a judicial inquiry into it with prosecutions that might still be going on, at the time the Queensland government was strongly criticised for not extending a regulatory system of financing across local government, to which then Premier Beattie said, ‘Yes, but you have the city of Brisbane. You have the Gold Coast. You have some other big centres. Then out in western Queensland you have local government areas that are very sparsely populated with very small numbers of people, very low rate bases. Do you make them do it as well?’ It is a practical problem. I am sure we can get around it, but I just think it needs to be noted. Also, on Mr Sullivan’s \$20, if three parties spend \$20, a total of \$60, on each elector—

Mr SULLIVAN—That is the total.

Prof. Costar—A total of \$20 multiplied by 13 million it is a lot more. If you do it that way, it is a lot of money. If you take it in terms of individual voter, it might sound chickenfeed.

Mr SULLIVAN—I think that is the problem. It sounds like a lot of money, but when you bring it back down to what it has been spent on, and that is accessing and providing information to each individual voter, it becomes a small amount of money. \$42 billion sounds like a lot of money.

Prof. Costar—When do election campaigns ever do that?

Mr Brent—It terms of what is essential, I agree with what has been said about harmonisation. What is desirable is to have no state electoral bodies, along the lines of what Mr Murray has been saying. Not one national body but possibly three national bodies—one that enforces things that we have been talking about, another that maintains the electoral roll and another that conducts the election. It would be desirable to have no state bodies. In terms of local government, I think most local government elections are run either by the AEC or the state commission. That part of what is desirable is already in place. I imagine the other part is such a can of worms that it is desirable as well to have uniform laws across all of the councils, but I imagine that would be very hard to put in place.

Mr BRUCE SCOTT—Professor Costar made a very valid point. When we start to look at local government we are not looking at a local government the size of Sydney or Brisbane across Australia. Brisbane City Council has a bigger budget than Tasmania's. Many of the local government areas in my electorate are not running political campaigns. There might be a couple of hundred people voting in the smallest. I think Diamantina has about 150, but then they do go to 8,000 and 10,000 further in because of the forced amalgamation of some of these shires against the will of the people. Sorry. I would make the point that perhaps if we were to include local government, it is where a political party endorses their candidates for that local government election that might need to be considered.

Prof. Costar—The trouble with the Gold Coast was the so-called independents. That was the issue. They were not 'endorsed' by a political party. I actually support the Queensland practice. I think parties should endorse people for local government and stop pretending that these people do not have political affiliations. In my state in Victoria it rarely happens. The Labor Party has even given up doing it. You have this problem of so-called independents, but who are they? That was one of the sections of the act that the wrongdoers broke in the Gold Coast by pretending these people were independent when in fact they were not.

Prof. Williams—I would also say that obviously a system needs to be designed for the size of the local government body, but sometimes the smaller the body the greater opportunity for undue influence as well. Sometimes smaller amounts, whether it be from developers or others, might have more of an impact. I would simply say that I do not think you could exempt anybody based upon their size, you simply have to tailor the regime appropriately.

CHAIR—I will now move to the second set of topics that we are going to talk about, which is to do with alternative regulatory approaches—advertising, specific donor regulation and

enhanced disclosure. Chapter 9 of the green paper includes some approaches that could be progressed in the absence of wholesale reform, including advertising regulation, specific donor regulation and enhanced disclosure arrangements. Some of these approaches could be incorporated into some of the possible models that we discussed in our first session. It is important to also state that a no-change option is one that could also be considered. I am interested in discussing now what has been the experience in other countries where some of these possible models are used, and to what extent should third party participants be regulated under these models.

Mr MORRISON—Can I ask a question before we go to this?

CHAIR—Yes.

Mr MORRISON—When we are talking about the caps on donations, which links to the disclosure issue that you are now addressing, are people suggesting that you would have a cap at the level, with \$1,000 being suggested, and therefore you would have no disclosure arrangements? Let us say we are working down the system that only private individuals enrolled can make donations, and they make a donation of \$500, should that also be disclosable?

Prof. Costar—We addressed that in our submission. Without going to it, we brought it back to the \$1,000 that it was before the integrity bill. We make the point that it depends on what disclosure mechanism you use. If you use the New York one, you can go much lower than that if you want to. The answer to your question comes after the decision on what sort of disclosure regime you have.

Mr MORRISON—I am just interested in the influence between the two. If it is \$1,000 then you have now got no companies, no unions and it is only individuals.

CHAIR—Before you speak I would like to say to people that it is important that we keep it tight and brief, because we have only got 20 minutes left and I want to give everyone a go.

Mr Murray—I will give a tight response. It goes directly back to your question as to at what level subjectively, because it is very difficult to establish empirically, parliaments and governments decide that there is potentially a corrupting influence of money. For instance, \$1,000 may not be a corrupting influence at the federal level, but in a local government election it might very well be. It does depend at where it sits.

The basic proposition is to make this system simple to participate in it. My view is whatever level is determined—and the \$1,000 federally seems adequate to me—you would not have to disclose below that, apart from to say that we received forty-five \$1,000 or \$950 donations. By the way, the value of that is that you can run a fundraiser, for instance a major dinner with 300 people attending at \$1,000 a head or \$999 a head and you would not have to disclose who was there and you can raise nearly \$300,000 worth of funds, which is very attractive to advocacy groups.

CHAIR—You have an example of that with the Millennium Foundation in the old days that did exactly the same thing without having to disclose.

Mr MORRISON—I am sorry, that is not true. The Millennium Foundation was set up under the Liberal Party and everything that went through the Millennium Forum was fully disclosed.

CHAIR—I understand that, but they also ran a number of functions—because I was on an inquiry with Senator Minchin at the time—that were consistent with what Mr Murray is saying. I am not trying to bag them, but it is history.

Mr MORRISON—You are you suggesting that the Millennium Forum did not disclose donations, and that is not true.

CHAIR—They disclosed the donations they had to disclose. They ran functions similar to what—

Mr MORRISON—We can talk about Max Markson as well, if you like, Chair.

CHAIR—I am using an example that happened in the nineties.

Mr MORRISON—It is not a good example.

CHAIR—It is a good example because it was consistent around the nineties.

Mr MORRISON—Maybe I was somewhere else.

Mr Murray—Bear in mind the important point that I have made. You would not declare \$45,000 in your return; you would declare forty-five times \$1,000. The reason for that is that all declarations should be capable of being subject to audit, so that an auditor can go back in and establish that, in fact, there were forty-five \$999 donations. That point is very important.

Mr BRUCE SCOTT—Why would they be declared if the \$1,000 is the figure?

Mr Murray—They would simply be declared in terms of the origin but not in terms of the person. An auditor has to be able to go back in and say that that is an accurate declaration.

CHAIR—I would like to go to Dr Ogle on these topics. This is to do with advertising, specific donor regulation or enhanced disclosure. Have you got any views in relation to that?

Dr Ogle—Again, the biggest problem we face with disclosure is simply that the definitions are not clear. We need a much narrower definition of what the electoral process is and my preference would be for time-limited donations, time limited so that we are not having to guess what might be an issue in an election 12 months or two years hence. We would be looking at something that might say, ‘In the last three or six months’, or whatever your disclosure time is, ‘was there anything that was expenditure in that period that was electoral based, or expenditure that would be for activities that would be in an election period?’ We would want a combination of narrower times and clearer definitions of what is the electoral activity. With that, we could have a better and more consistent compliance because everybody would be working off the same definition, and not as it is now, which is whatever you think you might want to declare as an electoral related thing.

Ms Jones—In summarising the relevant points that were made earlier that could be worth looking at, like the ban and ration, that sounds like a good mechanism to be considering, but also the verification in advertising in terms of trying to get at having something in there that is aiming at accurate and truthful information. If all the other comprehensive mechanisms were in place then I do not have anything else to add.

Prof. Costar—On the question of the definition, it might be useful to revisit the report of the Senate finance and public administration committee on the integrity bill, which they did in 2007, I think. That issue came up. There was a representative there from an overarching NGO organisation and he was very concerned about the definition. There was a long discussion there and I remember clearly that Senator Brandis looked into it on the run and said, ‘Yes, I agree with you. This is far too broad and it is catching people that we don’t want to catch.’ The point this person was making was not only is it onerous and potentially illegal if groups do not do the declaration, he said, ‘If you stick to this definition’—now I think the definition must have changed, but you might need to ask the AEC this—‘the AEC will just be inundated with paper because everybody is going to be filling it out in case they need to fill it out.’ It might be worth going and having a look at what happened there.

Dr Ogle—It had to do with non-compliance because if people did comply with the current definitions the AEC would be drowned.

Ms Moor—In terms of the specific issues for this discussion, I have talked about citizen based donations, but where we look at advertising regulation or specific donor regulation, I think that they are both second best options; systemic reform is what is needed.

Mr Murray—One of the things I would like to add is the consideration of the vexed issue of incumbency in government advertising. All I have recommended there is that COAG agree to principles and protocols covering those, both in terms of how they will be regulated within jurisdictions, hopefully on a harmonised basis, secondly, how they will be reported and, thirdly, how they will be audited. To this date, the Commonwealth, for instance, is the only jurisdiction to my knowledge that has actually audited parliamentary entitlements. It has never happened in the states as far as I am aware.

CHAIR—Mr Sutton, the CFMEU argued the ban and ration approach to electronic advertising for elections. Can I just ask: what about a system that allowed electronic advertising but was, in effect, part of funding at a federal level, but then rationed in terms of the major and minor parties? What I am concerned about is that we have the ban that the former Labor Government did that was knocked down in the High Court.

Prof. Williams—That was in 1992.

CHAIR—I am interested in a system that allowed it, but regulated it in terms of it being provided as part of a community announcement and not by buying your space on the television. The parties and players get a proportion; I do not know how you do the formula.

Mr Sutton—The government would be purchasing this advertising space?

CHAIR—That is right. It is not a ban like in 1992. Am I right, Professor Williams?

Prof. Williams—Back in 1992 they did provide free time. There was a free time provision and that was one of the major problems. It was divided up in what was seen as an unfair way.

CHAIR—That is where I am being confused.

Prof. Williams—You could do that. The provision was that you had the free time, both to do advertisements, which must be talking head advertisements that had a political figure sitting there talking to you while everyone changed the channel, and then apart from that you also had free time for the campaign launch. It was the allocation that was the problem within the scheme.

CHAIR—How does that need to be fixed up?

Prof. Williams—One of the main issues was that it gave an enormous advantage for incumbents and it meant that 90 per cent or more could go to established political parties and incumbents, with no capacity for new parties emerging. For example, they would not get any free time. Also, third parties were completely locked out, so they were unable to get their message across. It was very, very narrow in terms of the way it was done, and the High Court has got quite specific guidance there on how to improve it next time.

CHAIR—So a ban and ration might be a better way to go.

Prof. Williams—A ban and ration, but just better than the ban and ration scheme that was struck down in 1992.

Mr MORRISON—Mr Sutton, in your submission, if I remember rightly, you were saying that the free time should be provided through the ABC. Is that right?

Mr Sutton—No. We did not actually nominate the ABC as such.

Mr MORRISON—I am interested in your view, particularly if we are talking about changing how public funding is done and so on, as to why commercial networks, as a condition of their licence, would not be required to participate in that type of scheme?

CHAIR—They would have to be compensated, because it is an acquisition of property.

Prof. Williams—You do not even have to do that. You could just say it is a licence condition. All of the TV networks run according to a Commonwealth licence, so it would be quite possible to amend the licence conditions that you can operate your service subject to providing this many minutes of community service advertising which is taken up by political parties or others, according to a formula.

Mr Sutton—We like the sound of that. Politics, being the art of the possible and all the rest of it, if that was not achievable a second best position would be to keep that constituency quiet or happy by purchasing and allocating the space, and dealing with the problem identified in the High Court that new entrants have got to have a fair crack.

CHAIR—Mr Sutton, did you want to add anything further?

Mr Sutton—I am a bit troubled by Mr Sullivan’s proposition that if we are right in multiplying 13 million—I take it that is the number of people on the voting roll, is it—

Mr SULLIVAN—Yes.

Mr Sutton—by 20 million that only gives us \$260 million at the moment.

Mr SULLIVAN—It is 13 million by \$20.

Mr Sutton—Which is \$260 million. My maths are notoriously bad.

Mr SULLIVAN—Fifty million dollars was expended in public funding and that represents 20 per cent of the party’s expenditure. It is 50 times five, which is 250.

Mr Sutton—Your \$20 goes to public expenditure.

Mr SULLIVAN—No. That is the total expenditure.

Mr Sutton—Perhaps it is still \$260 million at the 2007 election. What is troubling me is that at the 2010 or 2011 election it will only be \$400 million and at the next one it will only be \$600 million. We do not like where this is headed. Speaking on behalf of a trade union, the capacity of our members and unions in general to be playing in that space, trying to match donations with the corporate world, is not a place that we want to go to. We do not think that it is a fair or a sensible system or sustainable looking onto the horizon.

Mr SULLIVAN—I do not think anybody wants to go there.

Prof. Williams—There has been a lot of talk about who should disclose and what amount of the threshold would be. I think we should be really focusing upon the mechanisms of disclosure, not just having a much more efficient and streamlined system, but when it occurs and how often it occurs. That is one of the biggest problems with disclosure at the moment that means that frankly the system just does not work very effectively. One of the most important aspects of disclosure is that people should be able to take into account who is providing money before they cast their vote. That is a really important aspect of being an informed voter, and there should certainly be one round of disclosure during the election period—it might be a week out—but clearly for that you need a much better system through electronic and other means to lower the compliance costs. I think the volume of disclosure that occurs on that annual basis is absolutely prohibitive in terms of voters forming a sense of whether there is undue influence and it affecting their votes in the way that it should do.

Prof. Costar—I am very encouraged by Mr Sutton’s remarks. I hope they are representative of the union movement; if we had someone here from the private sector I hope they would take it up too. That is, stop parting with large amounts of money. This is particularly about public funding. We talk about public funding of political parties. We are not really funding political parties at all. The political party is the intermediary who hands the money over to someone fortunate enough to own a television licence, to run an advertising agency, a pollster or somebody else. I come right back to where we started with Mr Morrison, and we have had this discussion before. I think that there is a cabal of those groups that have got their hands in

political parties' pockets and they are basically conning them along: 'If you do not spend all of this money, you will not get a vote.' It was like the old days when parties were allowed to nail up signs on trees and telegraph posts. There were people from parties who would go around counting the number of signs and come back to another party and say, 'They've got 10 more signs than we have. We will lose the election. Quick! Nail them up.'

Mr MORRISON—Some signs are still up in my electorate.

Prof. Costar—In the countryside they stay up for—

CHAIR—We could not find my opponent's signs at the last election. Are you finished, Professor?

Prof. Costar—Yes.

CHAIR—Dr Brent.

Mr Brent—I will pass. It has all been said, except that I would also take issue with Mr Sullivan's \$20 per person.

Mr SULLIVAN—Then you are taking issue with the—

Mr BRUCE SCOTT—You can count on union members.

CHAIR—What I propose to do is to bring this roundtable discussion to a close, with one qualification, and I will say a few words after that. If there is anyone who wants to make a closing contribution, please feel free to do so. What I will do is go from my right-hand side with Mr Marr, if there is something particular that you wanted to emphasise or any of the participants.

Mr Marr—The only thing I would say is that I think this is an excellent initiative. The one thing we all agree on is that the system is broken and we need to address it before it spins right out of control. This is an excellent and timely initiative and thank you for your excellent chairmanship.

Ms Jones—I do have a concern that we have probably not discussed, which is what is happening in the Senate. We have seen a couple of bills that the government tried to get through that were blocked that would have been an incremental approach to some of the things that we are talking about. I hope there is a B plan or there is some other thought that can be given to how you are going to be able to progress these important reforms. I understand that at least talking about it is a good start, so I wish you all the best for trying to progress and get the important things happening that should happen.

CHAIR—Thank you.

Ms Moor—I would also commend the initiative. I think it is a really important and long overdue issue. I would encourage you all to work on the political will that will be needed and bipartisan support to get this matter reformed.

Mr Murray—I just want to put a question to you and ask that in your summary if you could just indicate how you and the committee intend to use the material that has been presented to you today, whether it will be a report, or in the report, or whether any document will be produced.

CHAIR—Sure.

Mr Sutton—I would like to thank the committee for giving me and my organisation the opportunity to appear. I, too, commend the initiative to have this kind of fruitful debate. As to the substance of what we have been discussing, I would caution against the notion that we have to get things absolutely right or we have to wait until we can come up with perfect solutions. I do not think there are any perfect solutions in this area. Everything, as we have seen from the debate today, has some problems associated with it, but nonetheless we cannot be in the realm of doing nothing and just watching the money spent on elections escalate out of control. We have to take concrete steps. They will not be perfect. I guess I would underline our suggestion, again, about doing something about electronic advertising. Yes, technology will change and it is always changing, but there will be changes in the medium- and long-term, but that should not stop us from doing something about the single biggest spend that is occurring in elections right now.

Prof. Williams—I have nothing to add.

Prof. Costar—I hope we have another roundtable when the second green paper comes out.

CHAIR—I will do my best, Professor.

Mr Brent—I have got nothing to add, except to also thank you for this worthwhile get together.

Mr MORRISON—As the Chair closes, from the coalition's point of view, I would like to say that we are very committed to the issues that we have discussed today and I commend the Chair for the way he has conducted this committee's process, not just today but over a long period of time. Between the Chair and me, in particular, there has been a very close working relationship on these issues. I think that there are degrees of commonality that are emerging. The coalition wishes to see this issue addressed systematically and comprehensively, so we look forward to putting together a final report in due course, and I think today's discussion has been extremely helpful. Thank you for your participation.

CHAIR—I would like to thank the participants for really giving their day to come along and contribute in this roundtable discussion. I know some people have come off holiday to do that. There are only 49 submitters to the green paper process. We went through the green paper and those submissions and picked a representative group of people as best we could. That is how you came to be at the table today.

It is proposed, if I can achieve it, that I will get the major political parties, and the Greens obviously as part of that, to also have a separate roundtable. It was not possible to put them today, but I also think that it is better that we have yourselves separate from the political administrators. These sorts of things are valuable for the committee and also for the green paper process because it is not about politicians giving their views, it is about people who are on the

ground, with a level of respect, giving their views to the process. That is why I felt, and I know that the deputy chair and the rest of the members of the committee felt, that we needed a public process where submissions from the green paper could be commented upon, or key people could come along and make some comments, because that process was not actually factored into the green paper process. I know that the minister wants the committee involved, and that is the role I saw for this committee. I hope to do that on the next green paper as well.

I will get the secretariat to prepare a summary of today. We will also have the transcript and this will be discussed by the committee as well. I do not see our role as indicating a preferred option, but we can identify the areas of agreement, the areas of disagreement and highlight some things in that summary, which I undertake to give to each of you participants as well. I will see whether we can do it in draft form before we get it ready for the green paper and have your comments into that, but I cannot promise it. You will certainly have a copy of what we produce. That will then go over to be fed into the green paper process. I think that is important. If you have supplementary comments that you want to make, feel free to give them to the secretariat so that we can add that to our papers that we forward on for the whole process.

I do know that what the minister is interested in, certainly in this process, is to attempt, if he can, to achieve bipartisan support from the opposition. This is not a position that the government is taking where they are seeking political advantage for particular parties, this is something that we want to be fair and equitable for all players and to take us forward, not for the government to be getting an advantage from. That is why I think the comments of the deputy chair are appreciated because we do need the opposition on board. We do not want to go to the Greens and the minor players in the Senate to produce a regime along these lines, but it is going to involve all players coming to the table and probably a bit of give and take, to a degree.

Resolved (on motion by **Mr Scott**):

That this committee authorises publication, including publication on the parliamentary database, of the proof of transcript of the evidence given before it at the public hearing today.

CHAIR—Each of you will also get a copy of today's transcript which you can correct so that we make sure that we have an accurate record.

Committee adjourned at 1.03 pm