

**COSTAR, Professor Brian John, Private capacity**

**CHAIR**—I welcome Professor Brian Costar this morning. If you would like to make an opening statement, please do so. Then I will call on my colleagues to ask any questions they have.

**Prof. Costar**—Thank you. I will be fairly brief—and perhaps a bit provocative. First, in relation to the purpose of the bill: as you know, we have had a very brief second reading speech by the parliamentary secretary and the bill has now come to this committee. But perhaps I am not stretching it too much to deduce from the title of the bill that its purpose is to promote and ensure electoral integrity, and we would all agree with that objective. My problem, broadly, with the bill is that in its major components it will not achieve that noble objective.

I will divide the bill very crudely into two parts. One is dealing with enrolment—who can enrol, when they can enrol, and when they cannot enrol—and a slightly subsidiary issue about whether the incarcerated are entitled to vote or not. I take that as one major leg of the bill. The other leg of the bill is about what you might call political money. It is about disclosure, donations, tax deductions and so on. I take it that the idea is to promote integrity in both those areas. My concern with the bill is that, for various philosophical and also technical reasons, it is not going to achieve that purpose, even though that purpose is much to be admired. My worry about the first leg of the bill—that is, the question about enrolment—is that here again, in my reading of the JSCEM report and other reports that have come down over the last few years, the matters about changing the enrolment process are motivated by a concern about fraud, or stuffing the roll, to use an old-fashioned phrase.

**Senator BRANDIS**—It is an old-fashioned Labor Party phrase, Professor Costar.

**Prof. Costar**—It is an old-fashioned American Democrat phrase too.

**Senator FORSHAW**—The Labor Party would be using the phrase to comment about what others might do. I am sure that is what Senator Brandis meant!

**Prof. Costar**—I think that this conspiracy theory, if I can call it that, that there is out there a vast army of villains who want to take advantage of every nook and cranny of the law to sign up phantom voters—a Queensland term, Senator Brandis—to rot the system is not based on evidence. As Professor Hughes might mention, there have been 600 pages of investigation in a number of reports over the last few years on this, most notably the National Audit Office report on the integrity of the roll. No document is perfect—we all know that—but it seems to me that the section of the act addressing enrolment is solving a problem that does not exist and, in seeking to solve it, is creating other problems that need to be discussed.

On the question about money, my personal view is that there is too much political money sloshing around the system and it would be better if there were less. Let us not be naive about it; it is very difficult to control donations. The JSCEM talked about caps on donations. While that might be a desirable outcome, it is very easily avoided.

Let me now move to a couple of technical points about the bill that trouble me. I will move from the least important to the most important. Take the question of avoidance of disclosure. As I read the bill, the category of associated entity is to be altered. It seems to me that one group that will now be classified as an associated entity will be those trade unions that are affiliated to the Australian Labor Party—the only party to which trade unions are now affiliated, with the DLP shedding its affiliations in the seventies. There are a couple of problems here. We have mega unions now, some sections of which are affiliated to the Labor Party while other sections are not. While I have not checked up on this recently—it could easily be checked—it has always been the case that some unions were affiliated to the Labor Party in some states and not in others. This draws attention to the fact that there is no such thing as a federal affiliation of unions to the federal Labor Party, and there are historical reasons for that.

However, how might a trade union affiliated or even unaffiliated to the Labor Party avoid a disclosure, even under the associated entity expansion? Donate the money to the ACTU or its state division. Because the ACTU, not being a trade union, is not affiliated to the Labor Party, ergo it cannot be—as I read it, but we have not seen all of the debate on it yet—an associated entity. That is just one quick example.

The other concern I have with the bill is it is leading us into a legal and constitutional thicket that is not worth the effort. I am sure you have read Professor Williams's submission which addresses the question of, inter alia, prisoners. I do not think it is too far-fetched to expect a High Court challenge from some prisoner

who is denied the vote due to that clause of the bill that seeks to disenfranchise a class of voters, upon which the High Court has made obiter dicta remarks in the past. It was the disenfranchisement of all prisoners that brought down that section of the UK's Representation of the People Act before the European Court. We will go down that path. As I think Professor Williams suggests, it will hang on sections 7 and 24 of the Constitution, that say 'directly chosen by the people', which, of course, is a wonderful phrase. The jurisprudence about that is growing almost daily.

The other problem that I have, which was briefly mentioned here this morning—and I have mentioned it in my submission—is the existence of section 12 of the Constitution about the question of the issuing of writs. We all know that the Governor-General, acting on the advice of the Prime Minister, issues the writs for the House and the territorial senators. However, as Senator Brandis reminded us earlier, the state governors acting on the advice of their state premiers issue the writs for Senate elections. As we know, we have settled into the pattern now of House and half-Senate elections. One wonders why we would ever go back to stand-alone Senate elections and all the problems that they brought with them. So we can assume that elections henceforth are going to be either double dissolutions, which will probably be rare, or House and half-Senate elections, which will probably be common. Section 12 places a requirement on state governors as to the timing of the issuing of writs, but only in the case of a dissolution—that is, a double dissolution—that the writs must be issued within eight days.

**Senator BRANDIS**—Just remind me: it is the same, isn't it, for double dissolutions? It is still the state governors that issue the Senate writs.

**Prof. Costar**—Yes, it is still the state governors, but they are constrained. They must issue the writs within eight days.

**Senator BRANDIS**—Where does that come from?

**Prof. Costar**—It is in the Constitution.

**CHAIR**—Is it in the Constitution itself?

**Prof. Costar**—Yes. Section 12 is where it is. Do I want to see this happen? No, I do not. What might be its outcome if you had a couple of truculent premiers who said: 'We don't like this three-day'—or no-day, six-day, seven-day or whatever it might be—'period. We're going to withhold the issuing of the Senate writs for X days', with 'X' being different from the number of days for the issuing of writs for the House. What would happen then? I would not like to be a polling clerk on polling day when people came along saying, 'I want to vote for the House,' and to have to say, 'No, you're not on the House roll—but you're on the Senate roll,' if indeed that could even be established. Surely we would do not want to go through the chaos, confusion and cost of creating separate House and Senate rolls. Why would we do that? We fought long and hard to get common rolls for the states and the Commonwealth. Why would we want to do that?

**Senator FORSHAW**—You might be giving them ideas here!

**CHAIR**—Professor Costar, I know this is your introductory statement, but I just want to clarify this in my own mind. You are arguing that premising the roll closure on the issuing of the writs is the problem.

**Prof. Costar**—Yes. There is a solution—and let Colin Hughes go into it at greater length—if there needs to be change. To be honest, I do not think there needs to be change because I do not believe conspiracy theories.

**Senator BRANDIS**—Let it be assumed there will be change—

**Prof. Costar**—Let it be assumed that there will be change.

**Senator BRANDIS**—for the purposes of this.

**Prof. Costar**—If a change is to come, it would be better I think—and Professor Hughes can take you through this chapter and verse—to revisit the JSCER's recommendation of 1983 to adopt the Tasmanian principle of a proclamation; that is, that there is a proclamation of the calling of the election a number of days, however many you want, before the writs are issued. Senator Brandis is quite right. He and I must be the only people in the country who give a tinker's curse about when the writs are issued. But the key issue is calling the election. It works in Tasmania. Senator Abetz would be fully aware of it, being a Tasmanian. There are no problems with it. It seems to me that, if there is going to be a change, we should go to that rather than tie it to something which is an obscure occurrence. The only thing that would be more obscure than the issuing of writs is the date on which they are returned.

**Senator BRANDIS**—Your point, Professor Costar, if I could just jump in, is that the relevant time lines—whatever they may be—should progress from the date of proclamation, not the date of issuing of writs. Is it as simple as that?

**Prof. Costar**—Yes.

**Senator BRANDIS**—Thank you.

**Prof. Costar**—That is so that people have a reasonable time. As Professor Hughes will point out, what used to happen—and I think he goes back to the 1966 election, which I think is far back enough for us to develop a pattern—is that the Prime Minister would announce the election, usually in the House, then the parliament would see out whatever days were left of its term and then the electoral procedures would take place. And so it went.

**Senator BRANDIS**—The Prime Minister announced the 1975 election in the House.

**Prof. Costar**—Yes. You will recall that in 1972—

**Senator FORSHAW**—Which house? The one at Yarralumla?

**Prof. Costar**—You will recall the memorable case in 1972 when the Prime Minister would not announce the date of the election. The Deputy Prime Minister had to ring the Prime Minister of New Zealand to find out when the election was going to be held, because we always held our elections one week after New Zealand. I can commend the *Hansard* debate to you.

**Senator BRANDIS**—I am sure it gave Mr Whitlam a lot of material!

**Prof. Costar**—1983 has gained an almost mythical status in this debate. Remember—and I think Professor Hughes will point this out as well—that 1983 is the aberration. As I recall, the Prime Minister had some difficulty calling the election, as you will recall, because when he went to Yarralumla the Governor-General was receiving the credentials, I think, of the Polish ambassador and sent him away. When he came back the Governor-General was not satisfied with the documentation and he was sent away again. Eventually, the writs were issued and I think they closed the same day—at 8 pm that night or the next day. That is an aberration. That really is the odd case out.

That, of course, gave rise to what happened at the JSCER. Remember, the JSCER went for the proclamation issue and it is a bit of a mystery as to how the proclamation idea then, when the bill was drafted, became attached to the issuing of the writs—but we do not need to delve into that. That is all from me.

**CHAIR**—Thank you, Professor. Senator Forshaw, do you have any questions?

**Senator FORSHAW**—On this occasion, I am happy to let my colleague commence questioning. I do have some questions.

**Senator BRANDIS**—Senator Forshaw, I do not mind if you hop in, as it were, on the discussion as long as you do not say anything too controversial or rude. Professor Costar, on the proclamation issue: why was it that the 1983 recommendations were not adopted? Were those recommendations post the 1983 election?

**Prof. Costar**—Yes. Remember, post the 1983 election the government established the Joint Select Committee on Electoral Reform, as it was called then. It made the recommendations, most of which became the 1983 act.

**Senator BRANDIS**—The newly elected Labor government simply chose not to follow that recommendation?

**Prof. Costar**—And no-one knows why.

**Senator BRANDIS**—That was my next question. Are you able to tell us why that was?

**Prof. Costar**—No. From what we can understand, it was not at the decision of the government. Senator John Carrick apparently was its great advocate—of not having a proclamation.

**Senator BRANDIS**—Senator Carrick was a member of that committee, wasn't he?

**Prof. Costar**—Yes.

**Senator BRANDIS**—Was he the deputy chair?

**Prof. Costar**—I think he was.

**Senator BRANDIS**—Who was the chair?

**Prof. Costar**—I think it was Senator Robert Ray. Apparently there was no bipartisanship in it; it was a technical issue.

**Senator BRANDIS**—The 1983 committee recommended, on a bipartisan basis, that the significance in terms of the timetable of the issue of the writs be eliminated and that all relevant obligations date from the date of the proclamation.

**Prof. Costar**—Which had to be a number of days before the issuing of the writs.

**Senator BRANDIS**—And the date of the proclamation is what? The date on which the Governor-General accedes to the Prime Minister's advice—or, in the 1975 case, moves of his own initiative?

**Prof. Costar**—If memory serves me, that is where the seven days came in.

**Senator BRANDIS**—I see.

**Senator FORSHAW**—Professor Costar, you have put forward your views on it and you have correctly identified that the argument put forward, at least to this committee and the joint committee, and that has been out there in the public arena, about the need to close off the rolls early is based upon potential fraud. You have put your view about that and commented on that. The Electoral Commission is on the record on this issue in past inquiries, and you have referred to the Audit Office report about the integrity of the roll. Were you here this morning? I referred to the AEC's submission on a previous occasion. They seem to have a different view—in fact, it is acknowledged. Are you able to comment or give us your views on the role and position of the AEC here, given that they seem to be supportive of closing the rolls earlier? They are running this sort of ongoing campaign through publicity and whatever to improve the integrity of the rolls on an ongoing basis.

**Prof. Costar**—I have to confess that I arrived a little late but I think I heard that. The *Hansard* record will correct me if I am wrong here. I gained the impression that the AEC's view was that the early closure of the roll would make it administratively easier for them in all the other things they have to do in preparing for an election. We know that it is a major activity. My own view is that that is not a convincing argument given the fact that we know that early closing of the roll will, I use the word—and I have been chastised for this—'disenfranchise' people. Of course, it does not technically disenfranchise people because the young who are the non-enrollers, as we know, are not on the roll but it effectively means that persons otherwise qualified will not vote. As much as I do not want to cause extra work for the AEC, it seems to me to be an issue of resources and maybe that is the way it should be solved. I am obviously not an AEC employee.

**Senator FORSHAW**—Let's take a couple of categories. There are people who may have gained their citizenship in the month or two prior to the announcement of the election and the writs being issued. Under this proposal, they would not be eligible to seek enrolment because, as I read it, it is confined to people who otherwise would be granted citizenship in that narrow period of time. Similarly, there is a person who has turned 18 a month or two prior to an election being called. If the election is held around the usual time, that might happen to be when they are doing their HSC exams. There are at least two groups of people who have become eligible to put themselves on the roll but have not got around to it within a couple of months. They are not people who have been eligible for years. In that sense, do you see that this provides no opportunity for them to put themselves on the roll whereas, under the current arrangement, it is drawn to their attention, they see the publicity and currently they can go along to enrol. So there are at least those two groups of people.

**Prof. Costar**—I think the principle is that you should give such people reasonable time. We all know, if you look at the current state of the roll and you do an age breakdown, which can be done, you will find two things. One, is that it is the 18- to 20-year-olds who are in the age group who are non-enrollers. By the time they have reached about 23 or 24, they are at about the national average. The other thing, when I last looked is that there were variations from state to state, which is interesting. The Northern Territory, for example, is very low amongst enrollees in the younger age group. That may have to do with Aboriginality or distance and isolation—it could be number of things. It has been some time since I have done this and I should do it again. It was interesting to see that the rates of enrolment amongst the young were highest in the states which had most recently had a state election. This is Senator Brandis's point: elections get people on the roll. I do not think there is much point in us lamenting the fact that they have broken the law. Just the other day, I was horrified to discover that my fishing licence was a week out of date. I am passionate about fishing but I do not look at my licence every day.

**Senator FORSHAW**—When you use the word 'disenfranchised', I understand the debate about the usage of that word, but in those two categories that I put forward, here are people that I would suggest, and I ask you to comment, would not be picked up by the AEC through their normal processes of checking enrolments

because they may have only just turned 18 in the last month or two and they may have only just got their citizenship. They are not people who have been on the roll already where a letter has been sent to them and it has come back unopened. What this legislation is doing is to say, 'First of all, let's take it from seven days to three days,' but it also reduces the groups of people who can put themselves on the roll or regularise an enrolment.

**Prof. Costar**—Could I respond in two ways. First, the AEC does a very good job in seeking out the unenrolled and trying to get them enrolled by sending birthday cards and DVDs to them. It is very innovative. It is probably one of the best electoral education programs in the world. Electoral systems and administration are something that Australia does well, decidedly better than the British or the Americans. Electoral education is an area which we do quite well. If you were to assess it and say, 'Here's the package of materials' and you got an educationist to ask: 'Is this very good, good, mediocre or bad?' I think you would get lots of 'very goods'. But it is quite clear that there is a limit to the effect that education of this sort will have. It is not as though the AEC has just popped onto this idea recently; education programs have been going on for 20 years. As I said, they are very good, judged in an abstract way, but I wonder whether they are hitting the targets? I have a 19-year-old and I virtually had to sit him down and force him to fill out that enrolment card, despite the fact that he had been at high school and had done the VCE and legal studies at school. He had done everything. For a lot of young people, it is just not on their radar and they are not listening.

**Senator BRANDIS**—That is always the case.

**Prof. Costar**—I know.

**Senator FORSHAW**—But that is my point. If you are dealing with some groups who are not on the roll within a couple of months of the election, but they get into a position where they would be able to apply—and the natural thing is it will take a little bit of time—these provisions will prevent them from being able to be put on the roll at all, while the current provision at least gives them the seven days.

**Prof. Costar**—While education clearly works with the vast majority of people, what we are finding, aren't we, is that at each election around 80,000 people hitherto unenrolled—most of whom we have reason to believe have turned aged 18 in the last electoral cycle—get on the roll. We could argue about the length of time that they take but it is quite clear that, if you combine the ongoing education programs and the short, sharp shock of the calling of an election, you get more people on the roll than you would otherwise.

**Senator FORSHAW**—You would say that you cannot really replace the seven-day grace period with an ongoing, or even a ramped-up, enrolment drive campaign?

**Prof. Costar**—No, I do not think you can. Let us remember that, at that period, lots of other noise is going to crowd out an election advertising campaign. Who is interested? They are interested in what the Prime Minister is saying about this or whatever.

**Senator FORSHAW**—The other question I want to ask on this issue is the impact this proposal might have on voting on the day. If you have a lot of people who change their address and miss out on the opportunity to regularise their enrolment because it is reduced to three days rather than seven—and Senator Brandis might want to challenge that assumption; he will suggest that it will still peak—and if, as it was said this morning, 150,000 people now came along after the seven days and try to get on the roll or fix up their enrolment, would you see that it could cause more problems on the day where people would be going along to vote thinking that they are enrolled? Or could it possibly increase the level of absentee voting because people who would otherwise have changed their enrolment did not get around to doing it?

**Prof. Costar**—I can see that there are some sections of the bill that, if passed in their current form, could cause a good deal of delay and confusion at the polling place, particularly if we get into this situation. Remember, if people move within divisions, it is not too bad, but if they move from one division to another and stay in a state then their Senate eligibility is okay, but their House eligibility is not. I would not want to be the tally clerk sitting there, as the queues grow longer and longer at the Malvern Primary School, where I vote, as I rate electors arguing this and that and provisional ballots are being produced and so on.

**Senator FORSHAW**—That is the biggest single group, isn't it? I think it was 255-odd thousand at the last election.

**CHAIR**—For change of enrolment detail, yes.

**Senator FORSHAW**—If you reduced the period from seven to three, with the best will and campaign in the world, it would seem to follow as a matter of logic that you would be putting a heck of a lot more pressure on the AEC over those three days and also potentially on election day.

**Prof. Costar**—I must say I am genuinely puzzled about the level of debate and issues around this seven-day period. It is solving a problem that does not exist.

**Senator BRANDIS**—But there is a different problem that does exist. That is that, whereas all people might appreciate they have an obligation to vote, I suspect—and I invite you to comment on this—that fewer people are aware that they have an obligation to maintain a current enrolment. An example is a person turning 18 who does not appreciate that they are then obliged to enrol though does appreciate that when at some undefined time in the next couple of years there is an election they will have to vote. I suspect there are many people who think, ‘I don’t have to qualify myself to vote by getting on the roll until the election is in the offing.’

**Prof. Costar**—Yes, and we would not want to emulate the practice in some American counties where you can enrol on election day.

**Senator BRANDIS**—No, we certainly would not.

**CHAIR**—That would maximise the franchise, wouldn’t it?

**Senator FORSHAW**—I wanted to pick up on the proposals about increasing the threshold for disclosure and the issue of tax deductibility, if you wanted to comment on that. It has been put that this is reflecting inflation. Would you have a view about that and any other particular comments about the—

**Prof. Costar**—When writing my covering letter I consulted the in-house economist at our place and said, ‘What’s \$1,500 in 1983 prices worth now?’ He sat down and logged into the ABS database, where you can do this, and he came up with the figure of \$3,404. So clearly, whatever justifications there might be for raising the threshold, inflation is not one of them.

**Senator BRANDIS**—With respect, I do not agree with that; I think that is quite wrong. There seems to be agreement that the threshold that is being proposed, and it is a question of striking—

**Prof. Costar**—A balance.

**Senator BRANDIS**—the right point between administrative inconvenience and de minimus sums against substantial amounts of money, should broadly reflect the value of money over time.

**Prof. Costar**—Yes, but it does not.

**Senator BRANDIS**—Let me finish. It seems to me that if you accept both of those propositions then there is not a huge amount of difference—certainly not an in principle difference—if the threshold is \$3½ thousand or \$10,000. What you are doing is making a value judgment about where that line is drawn. But few people suggest that either it should not be drawn or it should increase over time.

**Senator FORSHAW**—That might be the case, but, if you are trying to find the arguments for increasing this, one of them is that you crucify any relation, which is wrong.

**Prof. Costar**—As I recall, the original suggestion was that it was going to go to \$5,000, and then it went to \$10,000. We can pick figures. But remember, as has been pointed out by people better informed on this than me, that \$10,000 donations means \$90,000 if you donate to the state divisions of your party and to the federal division. We are not talking about \$10,000; we are potentially talking about \$90,000.

**Senator BRANDIS**—You are adding on states and territories as well. I see.

**Prof. Costar**—As you know, not every party functions in every state, but technically that can happen. We are drawing lines. Most people would think that being able to donate \$90,000 to a political party for an election campaign is getting a little on the high side. I do not claim to be an expert on campaign finance. I have read the material, but I will leave that to others. But it seems to me that disclosure has to be the main game.

**Senator BRANDIS**—Yes. I agree with you.

**Prof. Costar**—All the other stuff could be easily avoided. I gave the case of the unions and the ACTU. The employer could give their money to their employees and get them to donate it.

**CHAIR**—There is a way around it.

**Prof. Costar**—You need a bit of trust to do that.

**Senator BRANDIS**—With respect, that is a bit too glib. It assumes there is a symmetry between unions and employers in the structure of the two parties, which there is not.

**Prof. Costar**—I will leave that.

**Senator FORSHAW**—I point out—

**Senator BRANDIS**—For example, the Australian Chamber of Commerce and Industry does not have 50 per cent of the preselectors in Liberal Party preselections. The structures of the parties are asymmetric.

**Senator FORSHAW**—They have 100 per cent.

**Prof. Costar**—That is quite clear. What is very interesting about campaign funding is that the party that has been least successful over the last 10 years is receiving most of the money. As I understand it, the explanation for this is that companies are now splitting their donations more regularly than they used to and that large trade unions are giving money to the ALP because they do not like the government's industrial relations policies. That seems a simple—

**Senator BRANDIS**—Your point being that the Liberal Party gets less than the Labor Party.

**Prof. Costar**—That is what the figures show.

**Senator BRANDIS**—Absolutely. Those of us who are members of the Liberal Party are very conscious of that.

**Senator FORSHAW**—Which is why you want to change the legislation.

**Senator BRANDIS**—Not at all.

**Senator FORSHAW**—I want to make a point on the question in relation to your example about the trade unions and the ACTU. As I am sure you would appreciate, trade unions, which are registered entities, also have to file audited annual returns of their expenditure, and there has always been a system in place where they have to reflect in their accounts what donations they make to the Australian Labor Party or any other political party. It is not as if it is hidden in that respect.

**Prof. Costar**—I will quickly respond to that. You raised the issue of unions being registered. As we know, the system is in the process of changing.

**Senator FORSHAW**—They are mainly registered at state level. Federal bodies have to file returns as well.

**Prof. Costar**—Are we going to disinter the Moore/Doyle problems of the past? Let us hope not.

**Senator FORSHAW**—As a federal secretary of a trade union with six state branches—and it was once said by Bob Carr that the federal secretary was like King John and the state secretaries were like the feudal barons in terms of who had the power—I can assure you that I am very aware of the Moore/Doyle example. I do not think we want to go back there.

**Senator BRANDIS**—Are you still on this issue or are you going to something else?

**Senator FORSHAW**—No, I have pretty much finished.

**Senator BRANDIS**—I want to purse that, Professor Costar. Let me go back to the point I was trying to make a little while ago. The structure of the political parties is asymmetric. The Labor Party has built into its structure a still very large extra-political wing, the trade union movement. The Liberal Party—and, for that matter, the National Party and indeed all the other parties I can immediately think of—do not. They are purely political parties, rather than amalgams of industrial organisations and political parties.

**Senator FORSHAW**—I raise a point of order. This is interesting, but the issue here is about disclosure. Do we want to debate the structure of parties? The issues that I and Professor Costar were raising go to disclosure regimes, and I was pointing out—

**CHAIR**—Senator Forshaw—

**Senator FORSHAW**—I am just saying that the issue in this legislation is about the obligation to disclose financial contributions, not—

**CHAIR**—I understand, but I think the question is relevant. There is no point of order thus far, Senator Forshaw.

**Senator BRANDIS**—Let me ask my own questions.

**Senator FORSHAW**—I just do not see the relevance of this, given the time.

**Senator BRANDIS**—Let me ask my own questions in my own way. Professor Costar, let me put that proposition to you. It seems to me to follow from that that the associated entities provisions in the act—and indeed more broadly all of the financial provisions of the act but particularly the associated entities provisions

of the act—assume a uniformity of structure which does not in fact reflect the structural reality of the two sides of politics. I invite you to comment on that.

**Prof. Costar**—You are well educated on matters of party structure, Senator.

**Senator BRANDIS**—That is because you taught me, Professor Costar.

**Prof. Costar**—I was not going to break out of my customary humility to make that remark.

**Senator BRANDIS**—What a lovely moment.

**Prof. Costar**—You would know that in the past the Country Party, as it was called, did have associated entities affiliated to it and that so did the precursor of the Liberal Party.

**Senator BRANDIS**—But the precursor of the Liberal Party has not been around for 62 years.

**Prof. Costar**—Agreed. As I said about the associated entities thing, you are quite right that the party was structured differently. But if those associated entities provisions are going to be expanded to trade unions and if they are going to be tied to the notion of, as you say, affiliation, then unions, if they are so inclined, can get around them as easily as you like by just donating the money to the ACTU and getting them to give it to the ALP.

**Senator BRANDIS**—If that is the case, then isn't there a very powerful argument for structuring this legislation so that it would bring in the ACTU and other peak union bodies as associated entities? You might not be familiar with this but in Corporations Law and, more specifically, in the laws governing the media, there are provisions for identifying associations between entities and structures much more sophisticated and far reaching than the associated entities provisions of the Commonwealth Electoral Act to which we might have regard.

**Prof. Costar**—You are correct. I am not an expert on Corporations Law but—

**Senator FORSHAW**—That is because there is more opportunity to hide them.

**Senator BRANDIS**—The related entities provisions of the Corporations Acts and the Broadcasting Act are much more far reaching than the associated entities provisions of the Commonwealth Electoral Act.

**Prof. Costar**—Yes. All I would say is that if you were to redraft that clause so that it may catch the ACTU you may catch some other fish as well.

**Senator BRANDIS**—Yes, you may. But it strikes me that, because of the asymmetry and because of the integration within the Labor Party structure of all of these other not specifically political party entities—which then have their own existence in another guise beyond the Labor Party and the peak body, the ACTU—there is more capacity for avoiding disclosure obligations on one side of politics—perhaps not for nefarious reasons; people are entitled to arrange their affairs so as to obey the law as the law stands—simply because the legislation does not reflect the different ways that the parties are structured. That is my point.

**Prof. Costar**—My comment on that is that all parties and entities can avoid the disclosure laws too easily, but I do not think there is much between them.

**Senator BRANDIS**—But there is a difference—isn't there?—between a party engaging clever lawyers who might be able to adopt a highly artificial way of meeting the letter but not the spirit of their legal obligations on the one hand and the legislation a priori being structured in a way which misses a large amount of one side of politics.

**Prof. Costar**—It does not miss it because the party has got to disclose the donation. That is why I really find the whole clause a storm in a teacup because—

**Senator BRANDIS**—You don't think that we should have disclosure of what the Americans call 'soft money' if we have these sorts of complementary campaigns by entities like the ACTU?

**Prof. Costar**—I would like us to have proper disclosure of soft and hard money, because you do not have to be a smart lawyer to get around it. A first-year accounting student could drive a horse and cart through the disclosure provisions. That has been said before. How many times has the AEC come before the JSCEM on that point?

**Senator BRANDIS**—I am somewhat sympathetic to your view but I must say—and I will finish on this—that it has struck me that the people who administer this legislation do not seem to be very sophisticated about the law of entities. They do not seem to often take advantage of the opportunities that they might take to draw in comparisons particularly from the Corporations Law—and also from the laws that govern other legal

entities—and apply them in a more sophisticated way to political parties so as to expand the reach of these provisions, particularly, as I was saying before, the associated entities provisions. Would you agree with that?

**Prof. Costar**—My point is that anything that contributes to maximum disclosure is to be supported. As you know, I am not a lawyer, so I cannot comment on the detail of that, but if that is the case then perhaps that should be drawn to the attention of the officials.

**Senator FORSHAW**—I know Senator Brown has a question but can I just make a final point. For all of Senator Brandis's interesting observations and comments about the different structures and associated entities in the Labor Party, at the end of the day, all those entities that he refers to, like the ACTU, are very public bodies. As I said earlier, trade unions have specific legislation that requires them to present audited accounts every year. There are all sorts of opportunities for people to examine and go looking for what the financial arrangements are. It has ever been thus. It is not something secret. Equally, might I say, if he wants to talk about running campaigns, the Australian Chamber of Commerce and Industry and the Business Council of Australia have been running an ongoing political campaign supporting the government's IR for months now. We can run the same arguments about the relationships between government parties and business organisations.

**Senator BRANDIS**—Yes, but that is an issue specific campaign.

**Senator FIFIELD**—They do not say, 'Put Labor last.'

**Senator FORSHAW**—No. That is often the Teachers Federation. But it is done publicly. The issue here is about public disclosure of finances. The real issues are about where the stuff might be hidden. It is hard to argue that the public relationship that exists between the ALP and the trade union movement is somehow a secret.

**Senator CAROL BROWN**—I would like to ask a question about closure of the roll. In your submission you suggested that the arguments that have been put forward failed. I would like your view as to whether you believe there are other reasons behind putting forward the changes to the closure of the roll.

**Prof. Costar**—As I said to Senator Brandis, I am puzzled by it. I do not see why you would do it. Some people have drawn attention to voting patterns of the young. There are counter views on this. I cannot remember who it was, but someone pointed out that at the last election more young people voted for the Liberal Party than voted for the Labor Party, which was true. Then someone else said, 'Yes, but if you converted it into two party preferred votes then more young people voted for the Labor Party than voted for the coalition because of the Greens and so on.' I have learnt not to ascribe base motive.

**CHAIR**—Really?

**Prof. Costar**—It does not do you any good.

**CHAIR**—It is unusual around here.

**Senator BRANDIS**—That is why you are a political scientist and we are politicians!

**Prof. Costar**—That is right.

**Senator BOB BROWN**—I have one other question. Senator Minchin quite recently in talking about the right of prisoners to vote talked about the pub test. What is your view on setting public policy on the pub test?

**Prof. Costar**—Others are going to give evidence on the question of prisoners. I gave this evidence, as some senators will recall, to the JSCEM. My initial position was that prisoners should absolutely not be denied the right to vote. I was drawn by Senator Murray and we decided that perhaps people convicted of treason might be denied the right to vote but we noted that no-one has ever been convicted of treason in Australia, so that is probably not a big issue. They have been convicted of sedition but not treason. Again, I would counsel against this. There are philosophical arguments which you have all heard. There are also practical ones.

First, there is going to be the constitutional challenge. You can bet your life on that. Whether it succeeds or fails, who knows? But I would encourage senators, if we are going down the American path here, which is where we seem to be going—why, I have no idea—to remember this: there are five million American citizens currently disenfranchised because they have felony convictions. Most of them are not in prison. If you go to the website of the Sentencing Project, which is a sort of prisoner advocacy group, they are particularly interested in voting rights for prisoners. You do not have to agree with what they have say about anything, but what they do is give you a media update almost every couple of days. The amount of time, money and effort

that is wasted, it seems to me, in the US over this issue is something that we do not need. Okay, unlike the US, it affects relatively few people, probably about 20,000.

But what also worries me about the bill is that, as you know, previously there was a sentence time line—five years, then three years. So everybody who is convicted—this removes parolees—and is serving a sentence when an election occurs is disenfranchised. So, if you are unlucky enough to be banged up during the election period, you lose your vote; but if you are smart enough to do the crime at another time and do the time at another time then you are not disenfranchised. That strikes me as simply randomness taking to extremes. Again, I am sure that will get mentioned in whatever challenge comes forth.

**Senator BRANDIS**—That implies strategic behaviour by the felon group!

**Prof. Costar**—Is their knowledge of the electoral cycle greater than we know?

**Senator BRANDIS**—I have a question on prisoners. On this point, though, about this being potentially a violation of section 24 of the Constitution—are there any of the states or territories that deprive prisoners of the right to vote in state or territory elections?

**Prof. Costar**—Yes, all do except South Australia. I presume it is due to their lack of convict heritage that they do not feel the need!

**Senator BRANDIS**—Has that ever been constitutionally challenged?

**Prof. Costar**—No. Remember we are talking hypothetically here. We have not seen any challenge. We are taking obiter dicta from High Court judges and other jurisdictions. Remember it is not excluding a class of voters; it is excluding a small class of the class of voters. That is, for most of the states other than South Australia it is tagged to the Commonwealth. But you notice from Attorney Lavarch's submission that Queensland will depart from that; that is another undesirable. There are still inconsistencies in federal and state law. This prisoner enfranchisement is one, and it would be better if we could move to uniformity on that, but all the others just put a time line on it.

**Senator BRANDIS**—When was the last time the High Court considered the meaning of that expression, 'section 24'? Was it McKinlay's case?

**Prof. Costar**—Yes, it was McKinlay. And remember in that case they said it would be possible to invoke sections 7 and 24—because as you know they say the same thing; one for the House and one for the Senate—if malapportionment were sufficiently severe, and they said it was not sufficiently severe. Also, one of the justices, or maybe more than one, raised this question about excluding classes of voters.

**Senator BRANDIS**—It was Justice Jacobs.

**Prof. Costar**—And doesn't Professor Williams mention that—

**Senator BRANDIS**—I do not know; I have not read his submission in much detail.

**Prof. Costar**—an attempt to disenfranchise women in the current Commonwealth would certainly fail, because the High Court would rule that that was directly chosen by the people.

**Senator BRANDIS**—That might, but if you look at section 30, which I have just been looking at here—

**Prof. Costar**—Yes, I know.

**Senator BRANDIS**—that does—

**Prof. Costar**—Yes, there is the clash there. As I said, the jurisprudence on this—

**Senator BRANDIS**—It is probably academic. All right. Thank you, Professor.

**Senator FORSHAW**—Just to go back to this issue about the closure of the roll, which has been discussed on a number of occasions, I take it from your comments, Professor Costar, your written comments as well, that you believe the changes to the roll closure provisions would have a particular impact on young people and fewer young people would put themselves on the roll than under the current provisions.

**Prof. Costar**—All we can do is derive that from the data that the AEC produce. I do not think anyone disagrees that if you want to identify here a class of voters or potential voters then it is the young.

**Senator FORSHAW**—And it is a class we are particularly trying to encourage to get themselves on the roll.

**Prof. Costar**—Tomorrow morning I will give a lecture in a first year politics class, and I will ask two questions. First: how many people in this room are over 18? Almost every hand will go up. I will then ask:

how many people are on the electoral roll? And significantly fewer hands will go up, whereupon they will be directed to the AEC's website and the existence of an enrolment form. In the US before the last election, a professor of English at an eastern college caused a furore by saying that any student who could attach a photocopy of their enrolment form got a 10 per cent bonus on their essay mark. You could imagine the furore that caused, which is exactly what she wanted. She had no intention of doing it, but this was on the front pages of newspapers around the country.

**Senator FORSHAW**—That sounds like electoral fraud, in a way, or academic fraud.

**Prof. Costar**—Alternative education, some might call it.

**Senator FORSHAW**—The argument is put about the potential for wide scale fraud during this seven-day period. It has always seemed to me—and I would ask for your observation on this—that one of the things that militates against corruption of the electoral roll, fraud on the electoral roll and fraudulent use of the electoral roll in Australia is the system of compulsory voting.

**Prof. Costar**—Because it creates such a large franchise that you have to have a lot of conspirators.

**Senator FORSHAW**—And that those who might otherwise have the capacity to do the sorts of things that are alleged, like moving a large number of people from one electorate to the other in marginal electorates, or dummy voting or face voting, as they call it, for people who might be on the roll, is a risky business when you have compulsory voting, which picks up, not just voting on the day, but also postal voting and pre-poll voting. So even if the neighbour knows that Mrs Smith is on holidays, they cannot be sure that she has not already done a pre-poll or a postal vote. Do you have a comment on that?

**Prof. Costar**—Yes. Remember, this conspiracy theory really got legs thanks to the Chapman Society, who seem to have dropped the idea or whatever. It got renewed vigour in Queensland again. Queensland seems to be the electoral laboratory of Australia in these matters.

**Senator BRANDIS**—More than just the electoral laboratory!

**Prof. Costar**—I will leave the adjectives to you, Senator Brandis.

**Senator FORSHAW**—So these are the mice or the guinea pigs rather than the toads?

**Prof. Costar**—I won't comment on that! There was the Shepherdson inquiry. Yes, the electoral roll was defrauded. But it would not be for a general election, because you would get caught. A very alert electoral official caught the 20 or so people who were all living at the same address. They wanted to influence a party preselection ballot, and they got caught.

**Senator FORSHAW**—It wasn't fraud committed within that seven-day period, was it? It happened at a normal time.

**Senator BRANDIS**—An ideal time for rorting preselections?

**Senator FORSHAW**—I take Senator Brandis's point. In other words, if people want to try to fraudulently enrol people it is not something that is peculiar to the seven-day period. It is very rare, in any event.

**Prof. Costar**—Remember the wonderful case of Curacao Fischer Catt—the feline who was enrolled in the 1990 electorate of Wentworth? His occupation was given as pest exterminator. But he got caught. That is the point about this—the electoral roll is not what you would call a dumb target that people can take pot shots at, at their pleasure. There were 20 enrolees involved in the situation in Queensland and they got caught. The system works.

**Senator BRANDIS**—Hang on! That's not right. The last bit, with all due respect, is preposterous. Just because somebody gets caught in a particular instance does not show the system works; it shows the system can work. It does not tell you how many occasions the system may have been evaded.

**Senator FORSHAW**—Have you told Senator Santoro about this because he has a completely different view to you when it comes to way in which aged care nursing homes are regulated in the country. He says that because you catch one it shows the system works. A little bit of consistency from the government—

**CHAIR**—Senator Forshaw, do you have any further relevant questions to the professor?

**Senator BRANDIS**—You should have asked him if he had any relevant questions.

**CHAIR**—Do you have any questions?

**Senator BRANDIS**—I have no further questions.

**CHAIR**—Professor Costar, on behalf of the committee I thank you very much for your attendance and your assistance today.

**Prof. Costar**—Thank you. Earlier today there was discussion about British subjects on the roll. I am not sure if I heard this correctly but, first, they were not citizens of Commonwealth nations because the vast majority of them are not British subjects. As I recall, when the act changed in 1983 and the basic criterion for enrolment said that you had to be a British subject, and that was changed to Australian citizen, it was realised that that was going to catch a number of people who are British subjects who are currently on the roll but who are not Australian citizens. A decision, presumably a pragmatic decision, was made that any person who was a British subject and who was on the electoral roll at the time the act changed had until Australia Day 1984 to register—or reregister, I suppose, but you could argue about whether it registering or reregistering. But that was the only category. People who are now British subjects do not have access to the roll, particularly since the High Court has described Britain as a foreign power in that notable case, anyway.

**CHAIR**—Let us not go down that path. Thank you very much for your assistance.