C O R R E C T E D V E R S I O N

LAW REFORM COMMITTEE

Inquiry into review of the Members of Parliament (Register of Interests) Act

Melbourne — 29 June 2009

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Professor B. Costar, coordinator, and

Professor J. Given, Democratic Audit of Australia.

The CHAIR — Professor Given and Professor Costar, thank you both very much for coming to talk to us this morning; also, thank you for the joint submission you have lodged with us — it was very useful. We have about 45 minutes. We will give you an opportunity to speak to your submission and then we will jump in with some questions. But before I do that there are some formalities I have to run through.

You are aware that this hearing operates under the Parliamentary Committees Act and the Constitution Act and that affords you privilege within the confines of this area. If you say perhaps some of the things that you should not say outside, you will not be afforded that privilege. Hansard will be recording our discussions and you will be sent a copy of that transcript subsequently, which you can make some changes to but substantially it must remain the same. This is a bit like the flight attendants in aeroplanes when they tell you how to jump out if there is a disaster — everyone hears you say it and we just move along. However, you understand the spirit of it, that it is really to protect you and to keep an order to the meetings. Over to you.

Prof. COSTAR — Thank you very much for inviting us. What we thought we would do, with your agreement, is Professor Given will speak to our submission, which as you know is a fairly focused submission. Then I might simply go through a couple of the broader issues, not for too long, and then leave it for questions.

The CHAIR — Thank you.

Prof. GIVEN — As Brian said, the submission we have made is pretty focused. It is on issues that are mainly to do with access to information, I guess. Overall the two points we make I think are really just about a kind of modernisation of the framework that exists at the moment. Part of it is a legal modernisation, recognising that the laws of defamation which appear to have influenced the drafting of the legislation in its initial form have changed; perhaps that can be made consistent.

The second area is a kind of technical modernisation, where the internet and particularly all of the movement towards online information by government seems to provide an opportunity to — as a number of submitters have said — make the register available online. Perhaps, as was discussed in the previous session, both the input and the output from the register can be an activity that occurs online.

On the first point, I am not sure I need to go through it in any more detail than what is there. It is just to indicate that although, in what we have been able to look at on the debates surrounding the legislation as it was passed, it is not absolutely clear where the language of the provision governing publication of information from the register came from, it seems to me fairly clear that it is drawn from the language of defences to defamation at the time. Given that the defamation law has changed, a little over three years ago now, and been made consistent nationally, it seemed to us that perhaps this provided an opportunity to make that consistent — although it may well be that law officers within government would have a view about that as well. But it seemed to me a good opportunity to do that.

On the second point, about access to information overall, it seems to me that there is so much pressure — and I think a committee was appointed by the federal government recently — about public information, making more information available online. Certainly in my experience in teaching, my sense of the way people acquire information now is online, and if there is a register, they expect it to be available online — and if it is not, we need to have a good reason for that.

The second aspect of that is that it is not just about the users of the information wanting to be able to get access to it online, but it seems to me that it might be quite a helpful thing for members to be able to supply the information themselves online. Issues have been raised in the earlier session about timeliness as well.

If there is a question about there being a substantial transaction, a substantial shift in properties owned or interests held, those sorts of things, where a member decides that it is appropriate for them to take advantage of the opportunity to amend information online, that might well be a helpful thing for everyone, for the information to be as current as possible. That is really just a summary of what we say. I am happy to take questions on those points.

The CHAIR — I think the points that you have made give another experience, and there will be other questions on that. I think that is relevant to our inquiry, and we will certainly take that on board as we move through.

Prof. COSTAR — I am just going to touch on a couple of issues, some of which have already come before the committee. As Jock was saying, it is very interesting to go back to the original act. It was very typical of the Hamer progressive liberalism of the 1970s. You could almost hear Premier Hamer negotiating this through the party room and negotiating compromises to get what he wanted in the long run. I think that is probably why there are a number of things that come out of it.

As people have said, it is quite narrow, there is a protective element to it — that is, that people cannot get access, at the moment, to the original submissions. But of course at the time it was a very progressive piece of legislation, as was a lot of the Hamer government legislation. But I think it has come out today that 30 years have gone by; the internet had not even been thought of in 1978, and a lot of other things as well.

I suppose on reading a lot of the submissions there is the standard contest between privacy and transparency coming in — about addresses of properties. Of course if you look through the summary, some people give very specific addresses, some do not. That may well be addressed by guidelines. From a personal view, in most cases, and on this one, I would go for transparency; not simply for what you might call the moral ground, but the practical one.

People have spoken today about the image of the Parliament, the image of politicians. It seems to me that transparency is the best advocate of parliamentary systems and parliamentarians. I think that is clearly obvious in the current condition in the UK, where the suppression, or the ham-fisted attempt to suppress the information, has just made the whole situation 10 times worse.

On the summary of interests, this problem that I have may well be solved by another means. I can see why the clerks were given the duty of preparing a summary back in 1978; because of their total impartiality, they were obviously the people to give it to. Now having heard what the Clerk of the Council said, really the changes are not that great. Still, I do not think it is a good system asking the clerks to produce a summary, because it does have the potential to corrode their impartiality.

I think this can be solved. I get the impression that there is a strong view that the register should be electronic and everything should be there — that is, there should not be summaries of the register. Now that of course does not obviate the opportunity to have better guidelines. I think that is what the clerks were saying, too — that if you are going to do that, you should have better guidelines.

Another problem is what you might call clumsily the policing of the register. I think, again, it was the Clerk of the Council who said that the history of privileges committees and privileges hearings around here is not all that encouraging. That is not this Parliament that is the problem; wherever you get a privilege question involving a member there is the temptation — as I think the Clerk said — for the committee to split along partisan lines.

In fact, in another area it came up in the Atkinson case all those years ago, when Justice Vincent clearly sent a message that it was quite inappropriate that questions of privilege should be settled by majorities in one house or the other and that there needed to be another way. The big question, of course, is: what is the other way? There have been a number of options — to give it to somebody else: the Auditor-General, the Ombudsman and so on. I thought what was in the discussion that was had with the clerks about having a specialised person on a retainer rather than having a permanent officer, or loading up some other officer with the job, is probably a better way to go.

On the separate code of conduct, again there seems to be a consensus that it needs to be separated and the code of conduct needs to cover a broader area. As has been said, there are plenty of examples of codes of conduct, parliamentary ones from other jurisdictions. The United Kingdom has a wonderful one or a number of wonderful ones. It has more codes of conduct than you could possibly imagine. They did not work.

I think the reason there is — and this is the very tricky business — we can legislate for all sorts of levels of conduct, we can put in values and so on and so forth, but there has to be the culture there to operate it. And it clearly is not there in the UK at the moment — and it probably has not been there for a while; it has just blown up.

I will finish on a controversial point here. Is there a role for party organisations in areas of conduct? Are we not being a bit naive, even though they are quite valuable, as people come into this Parliament and other

parliaments, most of whom come out of political parties — and I do not complain about that; I think that is a good thing — to say we give them an induction session and they get half an hour on conduct and ethics.

It seems to me that the parties need to take some responsibility for this, to start creating some culture of codes of conduct inside political parties. Because, after all, the people who come into this Parliament come out of those cultures; they do not come out of a vacuum. That is not going to be easy. To finish on a controversial point, I will leave it there. Thanks, Chair.

The CHAIR — I think that is a fabulous point to raise, because before you went there I was going to ask you — because you had used the word and had talked about a culture shift and that is right. You can have the best guidelines in the world, and it will not make any difference unless people enact it and give it life. So that is really important.

What I was going to invite you to do was: you mentioned the party area which I had not immediately thought of then. But this is a societal thing. The Speaker earlier this morning talked about community trust and politicians; she talked about the trust of Parliament but not an equivalent or a commensurate trust of members of Parliament. Can you talk to us about broader social things, maybe civics education, and maybe media and some of those areas that you think would feed into this process in the way you have suggested political parties might?

Prof. COSTAR — Yes, it is a tricky area. The superficial research shows that parliamentarians in Australia are not well regarded.

Mr FOLEY — I think we come just above used car salesmen, don't we?

Prof. COSTAR — I noticed that university lecturers improved in the rankings so I wonder what brought that about!

Mr FOLEY — That was because of your good work, Professor, I am sure.

Prof. COSTAR — I doubt that. On the other hand, people have been shown to have confidence in their own MPs. They have a lack of confidence in MPs as a class, but not individually. I think there are some segments of the media and elsewhere who are never going to be converted. There are some people in the media who would prefer that politicians received no payment whatsoever so that they could be pure. I do not think you are ever going to change that.

What is an interesting case is that as you know, over many years I have now been involved in the parliamentary internship scheme. About 1000 students have gone through that. It is very interesting to read their reflective essays. So many of them say they came in here with the stereotypical view that politicians were all in it for themselves, did no work and they would then say how wrong that was and how wrong that perception was.

In a sense you have 1000 ambassadors out there. I think that is the way it changes, because the reality is not the perception; the perception of politicians that we read in the media and elsewhere is not the reality. The question is to bridge the gap. I think it is probably going to take time and it has got to be done by indirect means.

Mr CLARK — Could I tell you what I regard as the elephant in the room? It is in relation to codes of conduct which you have advocated. What would you say about what should be or should not be included in a code of conduct in relation to issues of honesty and frankness in public debate? I mentioned when the Speaker gave evidence earlier that one of the radio commentators this morning said that the current federal controversies were largely a distraction, because most members of the public thought that politicians were dishonest and that they wanted to get on with other things.

Do you think it is feasible or desirable for codes of conduct to require honesty generally not just in relation to personal dealings but in terms of how public debate is conducted? If so, how would you do it and how would you enforce it?

Prof. COSTAR — I think the balance you have to strike with codes is that of course they have to have values in them — that is what codes do. But it has got to be done in a way that does not look 'twee', if I can use that old-fashioned phrase. They have got to be practical and operational.

But also there are areas of difficulty — for example, truth in advertising and truth in political advertising. We had truth in political advertising in federal Parliament for six months in 1984. They had to repeal the legislation because it was unworkable and because who is going to decide what is truth in advertising? I think it has got to be very carefully drafted with the intent of not so much chasing misdemeanours but by again encouraging a change in conduct.

I remember, and this is purely accidental, a political philosopher from the University of Sydney whose name is Michael Jackson — this is true! — who I heard at a conference once say, 'Look, you cannot teach people to be ethical, but you can teach people to be aware of ethical issues'. That may be what codes of conduct will do. It is not much good producing a code of conduct and just leaving it in the papers office. It has got to be given work. That would be my response to that. I recognise the difficulties.

Mr FOLEY — If you cannot teach people to be ethical, to take your last point in your submission about the culture that produces those people, and whilst it is beyond the terms of reference of this committee, what would be the interface between any outcome of this committee's work and the potential strands of how you change the culture that produces those people in terms of how they act ethically through the party structures? Do you see any good work to be done by this committee in fleshing out some of that?

Prof. COSTAR — I am not sure whether it is within the terms of reference of the committee, but I think probably with some reference to party responsibilities. You could mandate as a condition of party registration that they have to conduct ethics sessions — yes; but the more tricky thing is to say that they need to behave ethically. Again, partisanship gets into this. Normally what is going on is if there are difficulties inside political parties, it is in one political party at a particular time and in another political party at another time. We run an adversarial system after all, and I am not opposed to that.

But the problem is that, I think, what sometimes feeds this posted negative attitude to politicians is that politicians, because it is adversarial, will criticise politicians of other parties which is as natural as dogs chasing cats. But the problem with that is that it seems to me, and research is pretty slim on this, that the way that is perceived by the public is not of, 'A politician of party A is doing something wrong' but it is, 'Politicians are doing something wrong again'.

In a sense there needs to be a bit of restraint, I think, not just among politicians — let us broaden it a bit — but the political class, which includes party operatives and whatever, of sometimes resisting the temptation to score a quick hit — no reference here to current events — that would have a negative affect overall. Let's face it: scoring quick hits often misses and does not really produce much anyway. So it is the negativity that comes through not any advantage being pursued.

Mr FOLEY — We have an adversarial system. We have a government and Her Majesty's opposition. Is not that counter to the whole Westminster tradition about how parliaments engage, the notion of combat, testing and all of that kind of thing? It is almost a kind of but not necessarily even a European kind of model let alone within parliaments and within political parties.

I suppose I am in a quandary: while supporting the notion that there may well want to be some broadening out to, as you say, the political class, how that would apply when the culture of conflict and conflict management is so integral to what we do as politicians both in the Parliament and in the broader political structures?

Prof. COSTAR — True, but the problem is that most people see Parliament through the prism of question time in the House of Representatives. You will all know that that is not typical of the day-to-day workings of Parliament. How many people see committees operating where there is a degree of consensus? It is not 'either/or'. You can have the big adversarial stuff, which I am quite happy with, but there is always an opportunity for consensus. It happens. Every committee in this building builds consensus amongst its members — not always, but most times. Committee hearings are productive activities, aren't they? They are not like question time in the Legislative Assembly.

Mr FOLEY — Thank goodness!

Mrs KRONBERG — We would be exhausted. I would like to direct my question to Professor Costar. This comes from personal experience. In terms of the level of detail, if you were to have it online, that would be required, and obviously there is the integrity of that. I am about to make an adjustment to my submission

coming up for personal safety reasons. We have had our office requiring to have an intervention order against certain persons. It becomes not only a privacy issue for the member in terms of where their property holdings are but a personal safety issue as well. A stalking situation has prevailed for two years. We extended consideration and Christian understanding to somebody who was a disturbed person, but in the end we had to get the law to intervene to act on our behalf. My view is that I am going to say the street where I live, but I am not going to give the specific number of the house, for instance. When we are looking at safety, that is one consideration.

Prof. COSTAR — That is perfectly reasonable, and the guidelines should make provision for that. It is analogous to some of the reasons you can be a silent enrolee — that is, you can be on the roll, but your details are not published. There are provisions for that to happen, and that would seem to me to be included in the guidelines. If safety is an issue, then it may well be that you do not list your address for two or three years, and then later on the issue goes away and you might put it back in. I think the guidelines could cope with that.

Mrs KRONBERG — Do you feel that this issue, in terms of intensity of focus on issues like this, is episodic based on what is out there at the moment, if we look at local issues where these things have been brought to the fore or particularly the UK experience? There is more intensity and more heat in the concentration and looking for scalps in these situations anywhere and everywhere, generally applying to what you call the political class?

Prof. COSTAR — A lot of issues come on political agendas because of that. That is not necessarily a bad thing. As you know, parliaments are busy; they have lots of things to address. We have gone for 30 years without addressing the register. As the clerks pointed out, the register seems to have worked quite well — there have not been scandals or anything of that sort — but somebody has decided that it is time that it be updated. That is just the way politics works at times.

Mrs KRONBERG — You have seen this issue over time. Do you see an intensity throughout Westminster systems around the world because of the scandals coming out of the abuse in the UK?

Prof. COSTAR — It is possibly true. In another circumstance, I am often before parliamentary committees on electoral matters — on the question of disclosure of donations and the whole political money area. One might ask what incentive do parties have to be terribly transparent about where they get their money from? You do not have to go to the altruistic point. We have seen in almost every comparable jurisdiction of recent times a major scandal relating to political donations. That is a good reason to have mechanisms that make sure that it does not happen here.

A lot of those situations have been very damaging, not just to the political party that was holding the scandal when the music stopped but to the political system. In Britain one wonders whether people will obey anything out of the Palace of Westminster for the next five years. It does cause damage, it has the capacity to damage. In a sense you anticipate. As Jock said, there are benefits to both the public and to MPs of having a good system of register of interests.

On that, reading some, not many, of the submissions some people drift across to the notion that this is a register of wealth, or they think it should be. It is not; it is a register of interests. I saw that coming through a couple of times in a couple of the submissions. People say they do not know if an address is a shed or a 10-storey mansion. That may or may not be relevant. It is not the value of the interest necessarily; it is the interest.

Prof. GIVEN — On the point of identifying a residential address or an address, is it worth coming back to the principle of the legislation as expressed in the catch-all provision of what needs to be declared and final clause (i) of section (6)(2), which states:

> any other substantial interest whether of a pecuniary nature or not of the Member or of a member of his family or which the Member is aware and which the Member considers might appear to raise a material conflict between his private interest and his public duty as a Member.

It seems to me that is the core of the principle of what the act is about.

On the question of an address, do you need to prescribe exactly what number in a street, or is it adequate for the purpose of the legislation to be able to give more detail than 'Property in western Victoria' by saying, 'This is where the property is', although perhaps not down to the level of a number in a street? If the purpose of the

legislation can be addressed by identifying with sufficient specificity that the potential for conflict is covered without necessarily going to the level of detail that creates the privacy and security concern, then I think maybe it can achieve that. I appreciate that from property to property it might be difficult to get that balance right. That overall principle is different from a policy principle that we should know where MPs live. If that is what we are addressing, then let us address that, but I do not think that is what this register is about. This register is about the potential for addressing conflicts. You may be able to satisfy that perfectly well by identifying the property with sufficient specificity without necessarily saying, 'It is that house'.

Prof. COSTAR — One of the submissions that I read seemed to be desirous of knowing the addresses of politicians so they could conduct media stake-outs, which I do not find very convincing.

The CHAIR — We did not like that either.

Mr CLARK — I would like to follow up on Professor Given's point, which seems a very sound one. I am thinking, for example, of a conflict of interest where you have a property on land that is about to be rezoned, then clearly that is material gain. Following on from what you say, should the disclosure be mandated in purposive terms? In other words, should you have to make sufficient disclosure in order for people to be able to ascertain whether or not there is a conflict of interest? A purposive approach to what you mandate might work around those problems.

Prof. GIVEN — The range of potential conflicts is clearly very wide in a field such as the national broadband network, which I am reasonably close to. At a federal level if you are thinking about the detailed decisions about where that is going to be built and when, those are interesting and important questions that are going to matter a whole lot to people representing electors in different parts of the country. It would be of great interest to have quite a lot of detail about where particular MPs might have interests.

On the other hand I do not think that the register is workable if you are needing MPs to make almost day-by-day decisions about how they are describing a particular interest. You want to be working in a practical and common-sense way governed by this overall requirement, which is about circumstances where the member considers it might appear to raise a material conflict between private interest and public duty. If that is the case and the member is aware of that, the ability to make a declaration or change the form of it to allow the public and people to see the nature of the interest that is held seems to me to be the practical response to it. It would be a shame if you have to think, 'There is a broadband program going on', and every day you are having to change the register. That is not going to be very practical for anyone.

The CHAIR — I think Professor Costar started off talking about the tension between privacy and transparency. This is a question to both of you. One of the issues that you would have heard we are dealing with is about where family members fit into this. Could I invite you to comment briefly on that?

Prof. GIVEN — At the moment the way I see the register working is that it requires disclosure of a detailed set of interests as described, but then it has this catch-all provision at the end which says that the areas where family members come in are either in relation to a trust where a member of the family has a beneficial interest, and then the catch-all 'other interests', where there might appear to be a substantive interest.

You are not required to list everything at the same level of detail as for the MP, only where you think that there is a potential conflict of interest. I guess if that provision is well honoured in practice, that would seem to me to be quite a good way of dealing with the issue. The family is defined as 'spouse and any children under the age of 18 who are normally living at home'. That seems to me to be a reasonable response, though from a public point of view you can well understand why there may be public interest in knowing about interests held more widely than that. In getting the balance right, how do you strike the balance between privacy and public interest? If you have this catch-all which covers other interests that are held which you think might well raise a conflict of interest, such as if there is a major rezoning and it turns out that in-laws would hold the property — reasonably close relatives, but not within this definition — I would have thought it would be sensible for a member to declare those interests, and the provision is there for that to occur. But I well understand you have to get the balance right between having a register which confronts the major likely conflicts and ensuring that people at an increasing distance from the MP are not being drawn into a net where distant family members have to declare where they live.

Mrs KRONBERG — I was just going to draw upon your expertise in terms of the momentum of communications and technologies and when, let us say, these registers of interests are posted on the internet. Then, of course, they are subject to behaviours that one would see from the blogosphere, for instance. I am thinking of the current example that we have here in Victoria, where people who are relatively passive owners of properties could unwittingly, through the government's decision to make changes to the urban growth boundary, get an extensive improvement in the value of their property holdings. I just want to get some commentary in terms of where this would end up. Will we have maps electronically available with flashing red signs saying, 'MP alert here. They have not updated this. We have the latest valuation on this property, and they did not update it. Properties have gone up because of sales over the weekend'? In terms of the observers and the commentators it can sort of run away, and MPs — who are busy with other tasks, being MPs — can have a gap by virtue of the momentum and the blogosphere commentary.

Prof. GIVEN — I think that is certainly right. The process at the moment is where there is an annual return; contrast that with something where there is, say, a live site and you load your own information onto it, and it is kept as up to date as you choose to keep it. It seems to be that there should be some flexibility so the MP is not necessarily caught by, in particular, things that are beyond their control. On the other hand, if circumstances change, at some point in a reasonably timely fashion it would be appropriate that the people whose interests are being served by the register were made aware of it, because it is about the appearance of the potential for conflict as much as it is about real conflict. I do not think that the responsibility for updating information should simply be lost when changes happen through circumstances beyond the MP's control.

But say, for example, there was a change in the structure of a company — take CSR at the moment, which is about to split into two companies — and the MP indicated on their return that they owned shares in CSR, and then not long afterwards they owned shares in two different companies, which would be the split entities from CSR. I think it would be entirely reasonable for there to be a period of time during which there was a process of updating. At the moment when shares in new companies vest, you are required to change the register; it seems to me it is just practical that there be a little bit of time given.

The example I would give where I have had some experience is in relation to broadcasting ownership laws, where we have had a similar kind of thing. We thought it mattered a lot who owned broadcasting companies, and we put in place laws that were quite intrusive as far as deciding who owned them. We recognised that it was quite possible for control to be exercised even though you did not hold terribly many shares, so we exercised very tight control of small interests in holdings. Those things might change. If you own shares in a company, and that company does something with another company and that company in turn does something, your interest in this broadcasting company over here ends up changing, but by virtue of what has happened through three other companies; you actually had no control over it at all. I think it is a good example of where we would say, 'Look, we are not going to hang you instantly by virtue of that', but on the other hand, it does matter. The reason we have got these laws in place is because we think there is a chain that is worth correcting and we need it to be responded to at some time, perhaps just not quite as quickly as when you acquire a controlling stake very deliberately in a particular enterprise or acquire property in a particularly sensitive area.

Mrs KRONBERG — On that point, in a code of conduct or in legislation perhaps there should be an understanding of the opportunity to update before judgement. We are living in a time of people responding within nanoseconds. That is what I am looking for in terms of your views on what seems to be reasonable and human, from a flesh-and-blood perspective, rather than having a large cohort or collective of people accessing information and being driven through electronic responses. In terms of having that understanding, it is the human technology interface we are actually talking about here.

Prof. GIVEN — I think if you were to move to some kind of online register, you would probably have to build in a time frame. If you are going to say that the obligation is to maintain that register, there is going to need to be some thinking about what 'current' means — how long it is between the interests changing and the MP's obligation to amend the register. At the moment, it is neat; it is a physical register, and you have to put in a return once a year. You might well still decide to stay with that time frame and say the obligation is still only to update it as of 30 June each year. That might be the obligation, but the MP might choose to do it more regularly than that to respond to the concern and say, 'Here is the register now publicly available. I know circumstances have changed. It is my responsibility to get it up to date even though I will not have infringed the act by virtue of not updating it'.

Prof. COSTAR — Somewhere in the committee's report it would be nice to strike an optimistic note. How much have things improved as a result of the register back in 1978! In the previous couple of decades in this Parliament there were some notorious conflicts of interest that were exposed and were simply ignored. The Box Hill railway station case has gone into the textbooks. All of a sudden the public drinking fountains at the Box Hill railway station disappeared. The next day soft drink dispensing machines arrived. The Minister for Railways owned the company that owned the soft drink dispensing machines. What happened? Nothing. There was a debate in Parliament; the Premier said, 'I am not fazed by this', and away it went. Imagine if that happened now! There has been substantial improvement — just the recognition of a thing called 'conflict of interest', which was not recognised in this Parliament or in others as well, but it now is. If we are talking about crises, yes, there are crises, but there are also success stories.

Mrs KRONBERG — Thank you very much for that example, Professor. Professor Given, in terms of anybody's ability to actually alter the data externally and some sort of security firewalls, encryption or whatever, would you like to make a comment in terms of protecting the integrity of the data from anybody wanting to interfere with or manipulate it once that is online?

Prof. GIVEN — IT security is a huge issue; it is a huge industry. Certainly any public register which is made available online is going to raise major questions about security and integrity — whether it be births, death and marriages, MPs' interests or anything that is done — on the Hansard record. The consequences of the changes that have gone on and the consequences of the communications world we now live in are immense. Yes, it is a major issue, but I guess it is what we pay IT security companies to deal with. I am not sure I can say much more than that. This would be clearly as important a public register as would be likely to be made available. But if you think of births, deaths and marriages information and those kinds of things — all of the information that is now made available online — there are costs and benefits associated with that openness, and overall we hope that the openness delivers us a better world, provided we safeguard ourselves from the potential problems.

The CHAIR — I take a quick moment to welcome Heidi Victoria who has now been able to join us.

Mr CLARK — Professor Costar, in your remarks you raised a possibility of the Parliament engaging someone on retainer to provide advice about disclosure issues. In the evidence that the clerks gave earlier, an alternative that one of them suggested was that if there were adequate guidelines, it may in fact be possible for the clerks themselves to provide any necessary advice. From the point of view of avoiding unnecessary additions to the public payroll and public expense, do you think a model of having better guidelines backed up by the clerks providing any necessary advice would be adequate, or would you still consider there would be an important role for some other person on retainer?

Prof. COSTAR — I think the system that you put forward could work — and, as you said, without adding to the payroll. I think the trickiness comes not so much from providing advice but from breaches. What if there are breaches? What happens then? Those two should be separated. Let us remember what the clerks said. Since 1978 there have been two reported breaches, neither of which was found to be established. We are not really talking about an avalanche of malfeasance; quite the opposite. Maybe the advice end is the place, because you notice that the clerks are a little reluctant to give too much advice. They are saying, 'We are not lawyers'. There is the other thing: if the clerks say, 'This is a very difficult case. We think you should go and get independent legal advice', is that fair on the MP? They have to pay for that advice. There might be some system where they could get independent legal advice — you know what I mean — paid for by the Parliament. Given that it seems to be happening so infrequently, the issues — depending upon how clear-cut the guidelines are — are likely to be few and far between, so it is not going to break the budget of Parliament.

Prof. GIVEN — Just a really quick follow-up point on the question about security of the register. I think the comparison is probably not best made between the register as it is now or the summary prepared by the Clerk — a physical document, which seems to be completely secure and maintained and does not change until the Clerk changes it — and something online which, in a sense, might seem open and available to anyone to change. I guess the comparison is probably better made between all of the sources that are currently available for getting information on MPs' interests versus a source over which the MP has quite a lot of control. So all of the rumours that might circulate about what happens out there and who owns what around a decision would best be compared to something which is publicly accessible under an MP's control and where you can see what is happening. If it does turn out to be wrong at some stage, you have the ability to fix it and change it. I think this

kind of thing is something that we are all living with to some extent, when corporations are needing to check Wikipedia entries on their senior staff every day to ensure that the story that is being told out there is one that they are comfortable with. I think dealing with this universe is problematic, but it is what we have to do rather than trying to pretend that it does not exist.

The CHAIR — I keep threatening to wind this up, but I crave your indulgence for one more moment. Heidi Victoria, would you like to ask our final question?

Mrs VICTORIA — I hope you can hear me; sorry about the laryngitis. What is your opinion on the public having a role in the reporting of breaches of the code, as is the case in other parliaments around the world? And in those parliaments where there are facilities available for the public to make a contribution, are they using that facility? How often does this occur?

Prof. COSTAR — It does seem a little anomalous at the moment that really the only people who can make complaints are the people about whom complaints might be made. On the other hand, if you open it up and say, 'Anyone can say anything', you know what is going to happen: there is going to be an avalanche of vexatious and trivial partisan-motivated allegations flying around left, right and centre. I think that would be a bad thing, given that we know we are not looking at a scandal here that we are trying to clean up; there is no scandal. I do not know whether you can find a middle way between them — other than making life very hard for the clerks, for example, or somebody — where these allegations cannot be made publicly but must be submitted to someone in the Parliament who will investigate them. That again could invite a whole lot of vexatious people to put in these things simply to tie up the business of the Parliament.

Mrs VICTORIA — Have you conducted any investigations on whether this is available in other parliaments; and where it is available, was this the case?

Prof. COSTAR — I have to say I do not know.

Mrs VICTORIA — Thank you.

Prof. COSTAR — It is a very interesting point. I will chase it up and provide the committee with information. It is very interesting.

The CHAIR — Fantastic. Thank you very much to everyone, particularly to Professor Given and to Professor Costar. It has been extremely interesting and very informative. Thank you for being able to stay a bit over time.

Prof. COSTAR — Thank you.

Witnesses withdrew.