

ELECTORAL MATTERS COMMITTEE

Electoral Matters Subcommittee

Inquiry into voter participation and informal voting

Inquiry into political donations and disclosure

Melbourne — 24 July 2008

Members

Ms C. Broad

Mr R. Scott

Mr A. Somyurek

Chair: Mr A. Somyurek

Staff

Executive Officer: Mr M. Roberts

Research Officer: Ms N. Wray

Witness

Professor C. Hughes.

The CHAIR — Welcome, Professor Hughes. We have got a subcommittee here this morning.

Prof. HUGHES — Right.

The CHAIR — Welcome to this teleconference of the Electoral Matters Committee inquiry into political donations and disclosure and the inquiry into voter participation and informal voting. All evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and further subject to the provisions of the Parliamentary Committees Act 2003 — —

Prof. HUGHES — Understood.

The CHAIR — It is also subject to the provisions of the Defamation Act 2005 and, where applicable, the provisions of reciprocal legislation in other Australian states and territories. I also wish to advise you that any comments you make outside the hearing may not be afforded such privilege. Professor Hughes, I take it that you have read the 'Giving evidence at a public hearing' pamphlet.

Prof. HUGHES — Yes.

The CHAIR — Thank you. Can you also please state your full name and business address.

Prof. HUGHES — Colin Anfield Hughes, 23 Arrabri Avenue, Jindalee, Queensland 4074.

The CHAIR — Thank you. Also please state whether you are attending in a private capacity or representing an organisation.

Prof. HUGHES — Entirely in a private capacity.

The CHAIR — The evidence will be taken down and become public evidence in due course. I now invite you to make a submission and give evidence. Thank you.

Prof. HUGHES — Will do.

The CHAIR — It is over to you, Professor Hughes.

Prof. HUGHES — I am sorry.

The CHAIR — You are welcome to now make a verbal submission.

Prof. HUGHES — Thank you. May I begin with a small typographical, for which I apologise. On page 4, in paragraph 2 'that' should be 'than', but the meaning is perfectly clear. There is only one bit of business that should be updated. You may remember that I mentioned the case of Mr Cube starting it all off. I see of late that Tate and Lyle, having diversified in the meantime, has in fact disposed now of its sugar interests. The campaign has sort of marked the beginning and the end of it. I think the point really is that there is a lot of change, economic and otherwise, going on out there, and a system of campaign finance regulation really needs to recognise that it will be a constantly changing world with which it has to cope.

When I said at the beginning that there were two things that were essential, machinery and disclosure, I did not go on to amplify what I had to say about machinery and I think, particularly given that there is an alternative model available in Australia — that is, of having a second body that is in some way at arm's length from the main electoral commission — it would be helpful if I did. I think that it is a debatable case but, in the first place, when in doubt be parsimonious, and therefore it is better to have one body. Secondly, it is the sort of subject that requires a lot of internal review, and the bigger you are the more senior people you have who can do a decent job on internal review. Thirdly, the public convenience I think would be better met by having one place to do all your election business with, rather than two, even if they share premises. Fourthly — and this will emerge perhaps a bit further on — depending on how you have your disclosure system decentralised, if at all, it may well be that if it is decentralised it is a lot easier to have one lot of staff handling all electoral matters in the individual electoral districts.

I think that it is important to try to get material out prior to polling day. That raises some problems that perhaps I should amplify very briefly. One problem is whether the donation is really intended for current spending or, if it is

very late in the day, it is in fact intended to prevent the party going even further into debt — the experience at the moment of Senator Clinton, who is now at the end of her campaign and is raising \$5 million to get out of a personal debt. I think the best bet here is really to be attentive to what material is coming out and to try to pace it. I think it will be very difficult to set a — —

The CHAIR — Professor Hughes, can we just hold on for a second? We are having some technical difficulties.

Prof. HUGHES — Okay.

The CHAIR — If we can continue now, but we might have to hold again after a couple of minutes.

Prof. HUGHES — Sure. There seemed to be a buzz over the voice at that stage.

I will go back to the issue of prior to polling day. It may be that the donation is given at the last minute, not for current spending but to prevent the party being in debt. There is the problem that if a late entry is not needed for current spending, then it is more likely to smack of being a bribe for something or other, so the only thing to do is to trust the media to pay attention to the flow of information that comes out and to dig further if it becomes necessary.

After the event, supposing forensic auditing starts to produce evidence that disclosures were false — that the originator of the donation was not in fact the beneficial owner of the money, so to speak. One thinks, for example, of the Buddhist nuns in the United States who gave heavily at the start of the Clinton-Gore, campaign in 2000 I think it was. Will the ordinary penalty situation apply to that? Perhaps the situation really should be that you have a disclosure system that requires recipients to be more careful than they perhaps have been in the past, and I will come back to penalties later. One possibility is to have a donation form that is prescribed, even perhaps in the schedule to the act, which makes it a more formal business, and then breaches of that are more easily treated as offences and subject to penalty. For example, if there is a cheque, that is straightforward, but what if cash is brought in? Should the donor then be required to indicate the bank account from which that cash has just been withdrawn, which provides a trail that can then be followed up?

My initial reaction to the thought is that perhaps what the committee might do, if I might be so bold as to suggest, is to note that the idea was about and put it on hold until you see how the first election with the new regime works, so that it is hanging up there to be brought down and make donations more difficult and perhaps more dangerous if it is shown that sharp practices are continuing after the next election. It would certainly make life more difficult, but it may well be that the evidence will require it at a later stage. Penalties are a matter I have discussed in the written submission, and they are a very substantial matter indeed. One problem would be if a collection of straw men were used to take the penalties, if they are to be imposed, such that the recipient at the party offices is in fact a junior typist or someone of that sort. Responsibility needs to be sheeted home to very senior party officials to ensure that it is enforceable with some degree of justice.

The final point I would like to make is concerning my condemnation of public funding. Thirty-odd years ago Douglas Hurd, a distinguished conservative politician, then the British Prime Minister's private secretary, wrote a piece for the *Observer* that bears looking at again. He began by saying that a hundred years ago people would have been horrified if you had said that MPs ought to be paid; fifty years ago people would have been horrified if you had said we have to build a new office building to accommodate the staff that the public Treasury are now providing to MPs; and now here they are back again and they want money to fight their campaigns!

The lesson to be drawn from Hurd's point is that paying MPs and giving them staff are regarded as experiments that are pretty satisfactory, and people are content with those outcomes. However, I am not at all sure that public funding is a successful experiment. It certainly has not stopped the parties being massively dependent on private donations and more and more so, and I suspect the public has not taken it on board. I think if it exists then there is a bit of a problem taking it away, but if it does not exist, I think there are very good reasons for not introducing it in the first place and allowing parties to go out and raise money by traditional ways. Those traditional ways are changing. Hurd, also in that piece in the *Observer*, pointed to the good there was in party activists being out there beating the bushes in their constituencies so they could raise money to pay the local agent who resided permanently in that constituency. That sort of politics has long since gone. It may be that Senator Obama is pointing the way and it will all be done on the Web from the centralised operation in the future, but his campaign has shown that it is still possible to get a large number of small donations out of party well-wishers and supporters, and this is really what

any good system of campaign finance control ought to encourage, because it makes for the good health of the party system. I thank the subcommittee for its indulgence in hearing me at this length.

The CHAIR — Thank you, Professor.

Ms BROAD — Professor, to follow up on that last observation you made about fundraising on the Web, according to reports that I am aware of fundraising via the Web for those campaigns includes examples of members of family groupings, including eight-year-old children, making donations to the limit which is allowable.

Prof. HUGHES — Yes.

Ms BROAD — And when you add together those donations, clearly they are designed to get around those restrictions. Do you have a view about that?

Prof. HUGHES — Yes. There are two situations. One is the small social group. It may well be that all the members of the family are ideologically committed. It is a long time ago now, but there was a time when the Country Party had family memberships, which produced a very swollen, gross membership of the party, but it was pretty realistic given the politics of rural areas. What is more suspicious — and I think it is the example I give in the paper — is where you have a bank that gives a very large sum or a lot of tellers who give very small sums, but I do not know how you can prevent smurfing. You do not want to do anything to encourage it.

The prevention is if it is possible to identify the occupation or alternatively the address of donors and this appears on whatever the public record is, then that ought to enable the media to say that there appears to be something going on and then leave it up to the judgement of the electorate whether they think this is a bad thing for which that candidate or that party ought to be punished. Putting people's addresses on I do not see as any harm. Putting their occupations on might produce some problems — a lot of people have two jobs now, for example — but I think it ought to be possible to have an identifier. What would be more interesting would be to have a requirement that they state whether they are a member of a political party or not, because it is obvious that party support now is much more extensive than party membership. But that perhaps is a political scientist's interest in trying to see what is going on out there rather than a member of Parliament's interest in trying to regulate what is going on out there.

Mr SCOTT — Professor, I would be interested in understanding your opinions on campaign expenditure limits.

Prof. HUGHES — The principal reason for having that is it gives you a good check on donations. Apart from that, it is, again, of interest. The professionals in the media and advertising industries have a very good idea, and informed pieces will appear in financial journals and the broadsheets telling the electorate probably all they need to know. It is really the backup for making sure donations are honest.

To qualify an impression that I might perhaps have given, that I came to my opinions a long time ago and have not changed them, I would offer one opinion which I have drastically changed. Until fairly recently I would have said that a piece of paper from a recognised auditing firm would be quite sufficient evidence to go on. Since Enron I certainly would not say that any more. I think you have got to try things and see whether they work, whether the complaints about them in operation are bona fide or just an attempt to get them taken away again, and make informed judgements as you go along. But it is one of these operations like taxation. It is a constant game of tennis or badminton: it is battered back and forth over the net and things keep changing all the time. I think it is worth trying, but if it appears not to be working or it appears to be oppressive in the demands that it makes, then there is a case for thinking again. One of the advantages, if I may say so, of having a standing committee concerned with electoral matters is that you have machinery that automatically reviews things at very regular intervals instead of having to get up the steam to produce an ad hoc inquiry when something appears to be defective.

Mr SCOTT — Just to clarify, Professor, I was referring to expenditure limits. I think you were discussing disclosure of expenditure.

Prof. HUGHES — As regards limits, I just think that it really is unrealistic. All that you do then is push the expenditure off into other quarters. The American experience is just so devastating on this. You have corporations sponsoring it, but you have all these ad hoc bodies which have perhaps — but who can tell? — some relationship with a candidate or with a faction and a party or a political party. They are amateurs. They hit once and are gone. You have the whole swift boat phenomenon from the United States. They sail close to the wind in what

they say. They introduce libellous, false information into campaigns and they are gone again. It is rather like the requirement of having a name and address on any advertising material; you have got to have a hook to catch up with them, but when you do it is very often the case that these are either men of straw or, worse, non-existent. That is the reason for getting after expenditure. I do not think you can control it without pushing it out into the shadier areas of politics, which should not be cultivated, if at all possible.

The CHAIR — I have a follow-up question. You do not think that regulation of third parties, and I guess you were referring to third parties with those comments — —

Prof. HUGHES — The third party is in a sense a particular legal concept of what, for example, the Commonwealth Electoral Act has produced. I think you need to look at their experience. I have been away from that for some time now, but you need to look also at experience in other countries, because there is in the professional area a great awareness of what happens in other countries and what political parties and groups in other countries get away with, and make up your mind on the basis of that evidence. A straight reading of, for example, the Commonwealth Electoral Act might be misleading in fringe phenomena that people know of, but the act has not caught up with them yet or may not catch up with them for all the political considerations that make amendment difficult.

Ms BROAD — I note in your recommendations that you do not support a prohibition on donations from any particular class of person. We have certainly had in submissions to the committee quite a range of views about this, but I would have to say to this point there have been many recommendations which particularly focus on a prohibition on corporations. Have you got a view about that?

Prof. HUGHES — I think the instant you start defining any category there are exceptional cases. Corporations, but does that mean that partnerships are all right? But if you identify artificial persons, then again you just sort of move it up. Artificial persons employ people and all that does is the directors do it instead of XYZ Ltd. If you say company directors may not, then company employees do. Money is fungible, and political money is exceptionally fungible; it is somewhere between mercury and a will-o'-the-wisp most of the time. Identifying areas that have a bad record — for example, in Australia I think developers is a sort of label that you could pin on and people would say, 'They are a bad lot', but what about the good developer who builds nothing but low-cost housing for the needy? Why should they be lumped in with their less attractive brethren? It is the problem of getting a working definition. Maybe you could say people who have ever been convicted of an electoral offence, and that would be fair enough, but apart from that I am worried about any attempt to categorise. I think I pointed out that there are overlapping categories, as with a political party and the interests of that country.

Ms BROAD — Thank you for that. Just as a follow up at a more practical level perhaps, you have also suggested that there may be a role for the Victorian Electoral Commission in providing assistance, I presume particularly to candidates and smaller parties, when it comes to disclosure regimes. Can you just elaborate on that?

Prof. HUGHES — I think one of the problems is that outside the major parties the level of professionalism in Australian political parties or groups that have political labels at election time, with the upper house et cetera, is pretty tenuous. I recall from the AEC's early experience a poor devil who was stuck with a party office and was paying out of his pocket for some time after the event just because of the total inadequacy of record keeping in the days when records of expenditure had to be produced. The commission generously paid the bulk of the claim on first acquaintance and then went over the records subsequently. People like that ought to be encouraged. There ought to be an opportunity to participate in the democratic process. If there are mines in the way of the democratic process, then there is an obligation to try to prevent people stepping on them. That means giving them assistance, which may consist of a packet of software nowadays. In the days when we were introducing it in the 1980s it was a matter of producing a fairly full handbook and hoping that they would, one, read it, and two, understand it if they did read it. Nowadays there is just so much experience of small business with packets of software appropriate to whatever their line of business is that I think that is the way to go. But, again, you could no doubt get good and experienced IT advice better from people other than me.

Mr SCOTT — My question relates to limits on not who would give donations but the size of donations. One of the suggestions we have had is that there should be a limit on contributions to sort of \$1000 or \$1500. What is your opinion of that sort of limitation on donations?

Prof. HUGHES — Again, I do not think it works. Anything that seeks to impose a quantity can be avoided. Proving that it has been deliberately avoided is a long and expensive task. If it were possible to have palm tree justice, as I think it used to be called, whereby somebody will say on the day after the spurious claim has come in, ‘No, you have broken the law, here is your penalty, that is the end of the matter’, and therefore the information that the culprit had tried to rot the system was out before polling day, that would be effective, but it is not going to work like that. You are going to have an investigation that is going to drag on for months after polling day. The scoundrel is meanwhile sitting in Parliament laughing their head off and nothing has been done about it. All you have got is an expense. If you were to make your penalty that the person would be unseated because of this offence, that probably would cause members of Parliament and professional party officials to sit up and say, ‘Wait a minute, we will pull up our socks and blow our noses et cetera’, but that seems an unlikely course.

The old penalty for corruption, if you are going back into the 19th century in the British Isles, was that the constituency was unseated. The member was thrown out and his constituents did not have a representative until the next election if there was a lot of corruption going on, but that was corruption on a highly decentralised basis of everybody in the constituency getting a little something for their vote. That is not this system. What you need to do is to discourage behaviour but probably unseating the member is going to be overkill, unless something quite extraordinary comes up and you are really into the proper bribery class, in which case the bribery penalties will still be in place and do the necessary.

The CHAIR — Professor Hughes, thank you very much for your time this morning.

Prof. HUGHES — My pleasure.

Witness withdrew.