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To: The Commonwealth Treasury – *Rethink* Tax Reform Discussion Paper
From: Adam Johnston, Proprietor, ADJ Consultancy Services
CC:
Date: 15 May 2015
Re: Submission

1. Can we address the challenges that our tax system faces by refining our current tax system? Alternatively, is more fundamental change required, and what might this look like?

A good place to start would be to look at all the previous related reviews, most notably the National Commission of Audit and the Henry Tax Review. I wrote to both of these processes and, am frustrated by the lack of reform seeming to come from both.¹ I stand by all recommends made to both inquiries.

2. How well does Australia's utilisation of its available taxes align with the evolving structure of Australia's economy and changes in the international economy?
3. How important is it to reform taxes to boost economic growth? What trade-offs need to be considered?
4. To what extent should reducing complexity be a priority for tax reform?
5. What parts of the tax system are most important for maintaining fairness in the tax system? Are there areas where fairness in the tax system could be improved?
6. What should our individuals income tax system look like and why?

The *Rethink* inquiry is largely a concession that our tax system is not a good fit with the economy – otherwise, you would not need to ask these questions. Firstly, if taxation is to in any way boost economic growth, we need to stop viewing the tax system as part of the welfare or transfer system. To reduce complexity, we must stop individuals and business's structuring their affairs with one eye to tax concession X, Y or Z. The tax system should be about the Government raising revenue, not about the taxpayer subsidising a vast array of rent-seeking special interests.

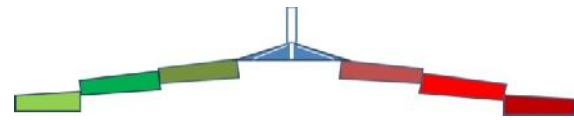
Therefore, given recent public commentary, while it seems politically unlikely, scrapping grand rent-seeking forays like negative gearingⁱⁱ would appear economically and fiscally responsible. Indeed, in a speech to the 122nd Annual Henry George Commemorative Dinner, noted economists Saul Estlake charted the history of housing supply and the rates of home ownership in Australia. He also observed that land tax had historically been considered amongst the 'least bad' taxes by economists from across the political spectrum. In particular, Mr. Estlake said:

(The) advocacy of a greater role for the taxation of land in taxation systems (is not) an exclusively left-of-centre position. Adam Smith, commonly if not entirely accurately regarded as the father of "laissez faire", proposed what he called 'ground rents' as 'a proper subject of taxation' a century before Henry George (Smith 1776: Book V, Chapter 2). Milton Friedman – who in no sense

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could be characterized as being anywhere near left-of-centre (notwithstanding his principled advocacy of the decriminalization of drug use) – once said that, in his opinion “the least bad tax is the property tax on the unimproved value of land, the Henry George argument of many, many years ago” (Friedman 1978). The Economist – the antithesis of a ‘socialist rag’ – earlier this year stated that “taxing land and property is one of the most efficient and least distorting ways for governments to raise money”, citing an OECD study suggesting that “taxes on immovable property are the most growth-friendly of all taxes” (Economist 2013: 70).

The Henry Review of the Australian taxation system concluded that “land is an efficient tax base because it is immobile; unlike labour and capital, it cannot move to escape tax” and that “economic growth would be higher if governments raised more revenue from land and less revenue from other tax bases” (Henry 2009: 247). Henry George would have been pleased.

All of this notwithstanding, very few economists – and I am not one of them – would today accept that it would be either possible, or even if it were possible, desirable, for a land tax to be the sole source of government revenue, as Henry George advocated. He was writing at a time when government revenue requirements were substantially smaller than they are today; and when it was far less likely than it is today that people could be ‘asset rich but income poor’. But there is still a very sound case for the taxation of land to play a greater role in raising revenue for public purposes than it does today.ⁱⁱⁱ

In the same speech, Mr. Eslake directly challenges claims that negative gearing is as important to maintaining housing stock as some claim. He rather points to factors including stamp duties, up-front charges to developers and, restrictive planning laws in the suburbs, as factors more pertinent to housing under-supply.

I make these points because in my opinion, simplicity should be the highest virtue in a credible tax system. This is in accord with the general legal principle that the laws of the land should be generally understood. Our tax system, because of the multitude of concessions, deductions and rebates, cannot claim this; as stated in a submission to the Inspector General of Taxation, when even a High Court judge says that trying to read and interpret the tax laws is like entering a “parallel universe,”^{iv} all should acknowledge there are serious problems. This submission was also provided to the National Commission of Audit^v and, in providing it to this inquiry,^{vi} I draw to your attention its recommendations. Namely:

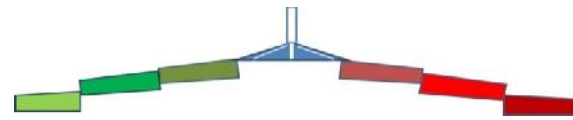
1. The minimum rate of tax be lifted, so that the 73% of Australians who receive transfer payments equivalent to the tax they pay, need no longer interact with the tax system;
2. The Government introduce “tick and flick” returns,^{vii} as widely as possible for individuals and businesses, significantly reducing the compliance burden;
3. The Government simplify and shorten the ATO’s window to review returns, by placing more of an onus on the ATO itself to stand by its original assessment (particularly with the introduction of “tick and flick” returns, prepared by the ATO);

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4. Any review launched by the ATO should be subject to a cost/benefit analysis. Complex cases should also be subject to regular cost/benefit evaluation, to avoid outcomes such as those highlighted by the Australian Broadcasting Corporation's 7:30 program;^{viii}
5. The Government should consider waiving its status as a secure creditor, in the interest of other creditors, be they individuals, small businesses, workers, contractors or to meet the day-to-day needs of a debtor's immediate family.

I stand by these recommendations.

7. What should our fringe benefits tax system look like and why?
8. At what levels of income is it most important to deliver tax cuts and why?
9. To what extent does taxation affect people's workforce participation decisions?
10. To what extent are the interactions between the tax and transfer system straightforward for the people who deal with both systems?
11. How important is tax as a factor influencing people's decisions to work in other countries?

Having never worked overseas, I cannot comment on Question 11. However, the tax system does impact on my decisions about my approach to the workforce, as I'm sure it does for many people with disabilities. Firstly, finding work is a particular problem and, one has made no secret of my growing frustration for the range of less than competent NGOs^{ix} which the government subsidises to *allegedly* assist people like me find work. These organisations are not fit for purpose; the cynic in me says policy makers perpetuate the system so they can claim they are doing *something* for the disabled and unemployed. Having dealt with three disability employment agencies, had an employment history marked exclusively by temporary contracts (with notable unemployment interludes) and, concluding that superannuation not only won't ever support me but is a drain on what little temporary earnings I receive, there is an urgent need for reform.^x

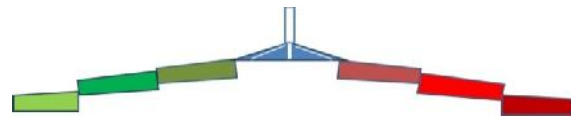
In keeping with my comments above, all tax concessions for superannuation should be abolished.^{xi} We might then have the funds to do something constructive for people like me, on the margins of the workforce. For instance, as somebody confined to a wheelchair and, with chronic conditions coming from disability, you do have to make a judgment about whether taking up employment and potentially giving up subsidised access to medicine is a positive step for either your physical or financial wellbeing? In short, both personal welfare and, the welfare system more generally, have a vexed relationship to the tax system.^{xii}

To resolve this, tax expenditures must be considered. A tax expenditure is "a provision of the tax law that provides a benefit to a specified activity or class of taxpayer that is concessional when compared to the 'standard' tax treatment that would apply."^{xiii} Holmes and Gobbett demonstrate that expenditures are carving out a significant hole in budget receipts, to the value of \$115 billion, or 7.5% of Gross Domestic Product (GDP) in 2012-13.^{xiv} Ending tax expenditures would put the budget on a much stronger footing and, as Holmes and Gobbett argue "transparency would be increased in many cases if tax expenditures were replaced with direct expenditure".^{xv}

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There are also several notable observations coming out of the *Rethink* Discussion Paper, which deserve serious consideration at this point. If we ended expenditures, perhaps we could afford to index the tax thresholds.^{xvi} Given my doubts about superannuation, I'd also support a flat tax for social welfare spending.^{xvii} Furthermore, your discussion paper also acknowledges that the Australian tax system has what you call a 'tax wedge'. And this is worsened by targeted assistance for families, whereas "countries with lower tax wedge progression have flatter tax schedules (and yet) some European countries...have universal payments for families with children".^{xviii}

In my view, Australian needs to flatten and simplify its tax rates, if we want to be more competitive *and* have an improving standard of living. *Rethink* put the evidence from Europe in front of us, but are we prepared to act?

12. To what extent is tax planning a problem in the individuals income tax system? Are existing integrity measures appropriate?
13. What creates incentives for tax planning in the individuals income tax system? What could be done about these things?
14. Under what circumstances is it appropriate for assistance to be delivered through tax offsets?
15. To what extent do our arrangements for work-related expense deductions strike the right balance between simplicity and fairness? What could be done to improve this?
16. To what extent does our fringe benefits tax system strike the right balance between simplicity and fairness? What could be done to improve this?
17. To what extent are the concessions and exemptions in the fringe benefits tax system appropriate?
18. What tax arrangements should apply to bank accounts and debt instruments held by individuals?
19. To what extent is the rationale for the CGT discount, and the size of the discount, still appropriate?
39. Does the R&D tax incentive encourage companies to conduct R&D activities that would otherwise not be conducted in the absence of government support? Would alternative approaches better achieve this objective and, if so, how?
40. What other taxation incentives, including changes to existing measures, are appropriate to encourage investment in innovation and entrepreneurship?

From my comments above you are aware of my opposition to tax expenditures, deductions and incentives. The absence of these limits the opportunities for tax planning and "gaming the system".

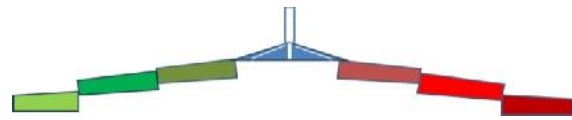
It is disappointing then, that *Rethink* argues for Capital Gains Tax deductions this way:

The tax system may encourage Australian households to invest more of their savings in companies, particularly Australian companies, than they would otherwise.

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There are three key reasons for this. First, CGT is generally paid on 50 per cent of the gain (Box 4.1). This discourages saving in instruments such as bank deposits, and supports saving in capital assets such as equities or property. Second, because the imputation system only benefits Australian shareholders, it has the effect of increasing the return for Australian shareholders in Australian equities (for a more detailed explanation see Chapter 5 —Business). Finally, because Australian households do not receive imputation credits for foreign company tax paid, they may face an extra layer of tax on savings in foreign equities (subject to tax treaties) compared to Australian equities. These factors may also have effects on the broader financial system as noted recently by the Financial System Inquiry.

Many companies use retained earnings as an easily accessible source of funds for new investments. However, retention of earnings within private companies also allows for the payment of any additional tax on dividends to be delayed. This can be a preferred means of saving for individuals facing marginal tax rates higher than the corporate tax rate.^{xix}

Given that the language used is only that these arrangements “may” encourage investment, this is hardly persuasive. In my view, it would be better to treat any deduction as more of a loan acknowledging entrepreneurship, rather than a benefit to investors or speculators. If it is clearly a loan, then it is revenue-neutral for the Government because the money has to be paid back.

Equally, whether it's retained earnings or a company car, it's all income being earned by someone. As such, the value of a fringe benefit should be assessed against the income of the person or entity receiving the car or other benefit (i.e.: the employee). Again, one has never seen a persuasive rationale for the taxpayer perpetually subsidising business or personal choices by tax expenditures. The Treasury pie chart present by Holmes and Gobbett^{xx} is demonstrative of the waste and misallocation of resources.

There are many anomalies in the tax system, most notably in the way savings are treated. For example, *Rethink* states:

Australia's tax system treats alternative forms of saving differently. At one end of the spectrum, savings held in the family home are taxed at average effective tax rates approaching zero. At the other end of the spectrum, savings held as financial deposits are taxed at full marginal rates, without any recognition for the costs of inflation.

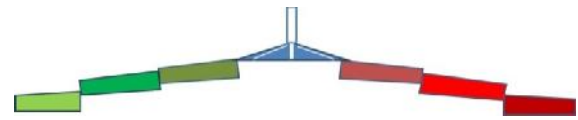
The policy rationale for these differences is not always clear and can distort taxpayers' savings decisions. This has implications both for efficiently allocating savings in the economy and distributing risk across households.^{xxi}

We need to unify and flatten these effective tax rates, lifting some and lowering others. I note in particular, public commentary from Quinten Dempster, making the case for a broad based, low-rate land tax, while also demonstrating the political difficulty of achieving such a reform.^{xxii} Nonetheless, such a reform would be

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welcome, as land is immobile and as Peter Costello and John Howard argued when introducing the GST “the broader the base, the lower the rate (of taxation)”. And, while we are at it, in my view we should abandon the GST exemptions regime. After all, there is little or no evidence that GST-free fresh food is causing consumers to eat more of it, or live healthier lifestyles.^{xxiii}

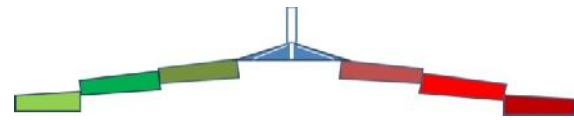
41. What effect is the tax system having on choice of business structure for small businesses?
42. What other options, such as a flow-through entity (like an S-Corporation), would decrease the overall complexity and costs for small business involved with choosing a business structure? How would such an entity provide a net benefit to small businesses?
43. Is the interaction of the personal and business tax systems a problem? What can be done to manage the personal-business tax interactions?
44. What are the most significant drivers of tax law compliance activities and costs for small business?
45. How effective is the current range of tax concessions (such as CGT and industry specific concessions) at supporting small business engagement with the tax system? To what extent do the benefits they provide outweigh the compliance, complexity and revenue costs they introduce?
46. What other mechanisms (such as a single lower tax rate, improved technology deployment or other non-tax mechanisms) could assist small businesses to engage with the tax system while decreasing compliance and complexity costs?
47. Are the current tax arrangements for the NFP sector appropriate? Why or why not?
48. To what extent do the tax arrangements for the NFP sector raise particular concerns about competitive advantage compared to the tax arrangements for for-profit organisations?
49. What, if any, administrative arrangements could be simplified that would result in similar outcomes, but with reduced compliance costs?
50. What, if any, changes could be made to the current tax arrangements for the NFP sector that would enable the sector to deliver benefits to the Australian community more efficiently or effectively?
51. To what extent are the tax settings (that is, the rate, base and administration) for the GST appropriate? What changes, if any, could be made to these settings to make a better tax system to deliver taxes that are lower, simpler, fairer?
52. What are the relative priorities for state and local tax reform and why? In considering reform opportunities for particular state taxes, what are the broader considerations that need to be taken into account to balance equity, efficiency and transitional costs?
53. Does each level of government have access to tax revenue bases to finance new spending decisions? If not, should arrangements change to achieve this? How should they change? How important is it that the national government levies taxes on mobile bases? Could some taxes be shared?
54. To what extent does Australia have the appropriate mix of taxes on specific goods and services? What changes, if any, could improve this mix?

S-Corporations would be useful and, I would consider turning my own micro-business into one, given the simplified compliance regime, alongside limited liability. However, one is less convinced about the continued ability of shareholders to write off losses.^{xxiv} Ultimately, we are still asking taxpayers to underwrite other people's business decisions.

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Similarly, there seems no need to continually subsidise NGOs; they should be taxed like any other business. This is an argument I have made in my Pre-Budget Submission;^{xxv} this document highlights other inquiries, where I have made similar arguments.

Reform of the Federation is also critical and, I draw your attention to Appendices 5a and 5b.^{xxvi} Further reform could involve recall elections,^{xxvii} as well as other disclosure and transparency improvements.^{xxviii} In my view, these would have positive economic impacts and, improve the polity more generally.

Endnotes

ⁱ See my submission to the National Commission of Audit at <http://www.ncoa.gov.au/docs/submission-adj-consultancy-services.pdf> as at 9 May 2015; my submission to the Henry Tax Review at http://taxreview.treasury.gov.au/content/submissions/pre_14_november_2008/Adam_Johnston.pdf as at 9 May 2015

ⁱⁱ See e.g.: 'Compelling case' to end negative gearing, says Saul Eslake, Sep 30 2014 at 8:33 AM Updated Sep 30 2014 at 7:29 PM, <http://www.afr.com/real-estate/residential/compelling-case-to-end-negative-gearing-says-saul-eslake-20140930-119m0e> as at 9 May 2015

ⁱⁱⁱ Saul Eslake, *50 Years of Housing Failure*, Address to the [122nd Annual Henry George Commemorative Dinner](#) The Royal Society of Victoria, Melbourne, 2nd, September 2013 - See more at: <http://www.prosper.org.au/2013/09/03/saul-eslake-50-years-of-housing-failure/#sthash.ecveg6Vr.dpuf> as at 9 May 2015

^{iv} Max Blenkin, *New High Court justice critical of legal complexity*, Brisbane Times, November 21, 2012, <http://www.brisbanetimes.com.au/national/new-high-court-justice-critical-of-legal-complexity-20121120-29ojd.html> as at 29 November 2012

^v See <http://www.ncoa.gov.au/docs/submission-adj-consultancy-services-appendix-2.pdf> as at 10 May 2015;

^{vi} Refer generally, to Appendix 1. Also note Appendix 2, which is my submission to the Standing Committee on Tax and Revenue regarding its inquiry: Disputes between taxpayers and the Australian Taxation Office (ATO). These outline my proposals for reform of the ATO.

^{vii} This was a proposal announced and then dumped by former Treasurer Wayne Swan: see Jessica Wright, *Litany of major pledges axed to keep surplus*, Date: November 18 2012, Sydney Morning Herald, <http://www.smh.com.au/opinion/political-news/litany-of-major-pledges-axed-to-keep-surplus-20121117-29isy.html?skin=text-only> as at 2 December 2012

^{viii} For example see, *Tax office faces accusations of abuse of power*, Australian Broadcasting Corporation, Broadcast: 09/04/2012, Reporter: Peta Carlyon, <http://www.abc.net.au/7.30/content/2012/s3473563.htm> as at 2 December 2012

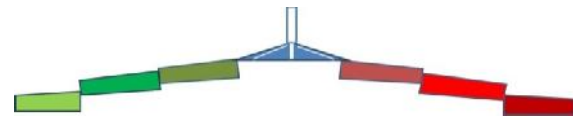
^{ix} See e.g.: Submission 12: *Social Security Legislation Amendment (Strengthening the Job Seeker Compliance Framework) Bill 2014*, Senate Standing Committees on Education and Employment, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/Strengthening_Job_Seeker/Submissions as at 10 May 2015

^x Superannuation does not work, particularly for those in seasonal, contractual, or otherwise temporary employment. We will never accumulate enough funds in a super account because our work is not regular or reliable enough. In my opinion, the money in these accounts should be returned to such workers, to meet immediate daily living needs. See my submission to the Productivity Commission's inquiry *Default Superannuation funds in modern awards*, <http://www.pc.gov.au/inquiries/completed/default-super/submissions/sub054-default-super.doc>. Also note my submission to the *Better Regulation inquiry* http://treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/Consultations/2013/Better%20regulation%20and%20governance/Submissions/PDF/Johnston_Adam.ashx. Further note my submission to the *Financial System (Murray) inquiry* http://fsi.gov.au/files/2014/04/Johnston_Adam.pdf as at 12 May 2015. All documents talk extensively about the shortcomings of superannuation and the need for reform

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^{xi} See e.g.: Heath Aston (Political reporter), *Tax relief for rich superannuation holders costs budget \$6b a year: analysis*, Date: April 8, 2015, <http://www.smh.com.au/federal-politics/political-news/tax-relief-for-rich-superannuation-holders-costs-budget-6b-a-year-analysis-20150408-1mg4s6.html>; Mark Kenny (Chief political correspondent), *It's super tax concessions, not pensions that are killing the budget*, Date: April 21, 2014, <http://www.smh.com.au/federal-politics/political-news/its-super-tax-concessions-not-pensions-that-are-killing-the-budget-20140421-zqx7p.html> as at 10 May 2015

^{xii} I have written about this vexed relationship to a number of inquiries; see generally, Appendix 3 which was my contribution to the recent McClure Review of the Welfare System. Also note Appendix 4; my submission to the Human Rights Commission's "Willing to Work Inquiry" (Appendix 4a is the submission to the Productivity Commission's Workplace Relations Review, referred to in Appendix 4)

^{xiii} Commonwealth Treasury definition, taken from Dr Anne Holmes and Hannah Gobbett (Economics), *Tax expenditures: costs to government that are not in the Budget*, Parliamentary Library, http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/Briefing_Book44p/TaxExpenditures as at 10 May 2015

^{xiv} See *ibid*

^{xv} *Ibid*

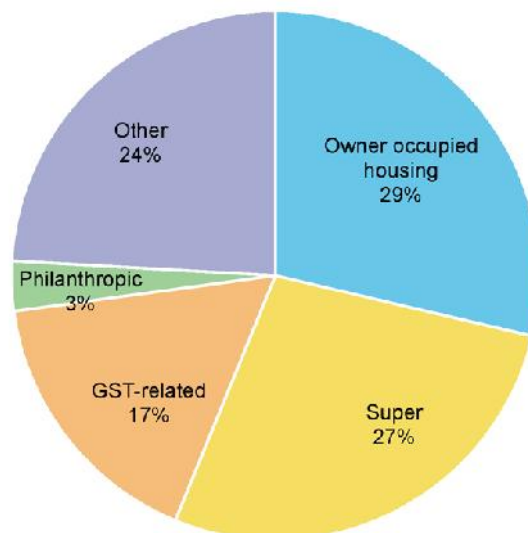
^{xvi} See The Treasury, *Rethink*, Commonwealth of Australia, 2015, p.37 [44 of 203]

^{xvii} See *ibid*, p.30. A flat rate social welfare levy may be preferable to the superannuation system; at least when it is public money, the Parliament is clearly and directly accountable. The same accountability cannot be said to exist in many superannuation funds.

^{xviii} *Ibid*

^{xix} *Ibid.*, pp. 61-62 [68-69 of 203]

^{xx} See Holmes and Gobbett, *op. cit.* and their Figure: Major measured tax expenditures, 2012–13



^{xxi} The Treasury, *op. cit.*, p.33 [40 of 203]

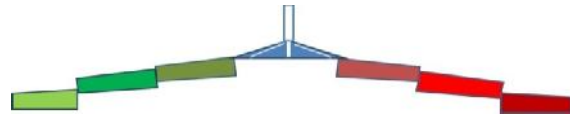
^{xxii} See generally, Quentin Dempster, *Federal budget 2015: Budget will test whether Tony and Joe have nerve for 'radical fairness'*, Date: May 10, 2015, <http://www.smh.com.au/business/federal-budget/federal-budget-2015-budget-will-test-whether-tony-and-joe-have-nerve-for-radical-fairness-20150510-ggub3m.html> as at 14 May 2015

^{xxiii} See e.g.: ABC News, *Australian obesity rates climbing faster than anywhere else in the world, study shows* Updated 29 May 2014, 12:28pm, <http://www.abc.net.au/news/2014-05-29/australian-obesity-rates-climbing-fastest-in-the-world/5485724>; also see ABC News, *Research to uncover secrets of male obesity*, Posted 20 Mar

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2014, 7:42am, <http://www.abc.net.au/news/2014-03-20/research-to-uncover-secrets-of-male-obesity/5333024> as at 14 May 2015

^{xxiv} See The Treasury, op. cit., 109-110 [116-117 of 203]

^{xxv} See generally, Pre-Budget Submission, attached

^{xxvi} Appendix 5b is the "Appendix 1" referred to in Appendix 5a

^{xxvii} See my Submission to the Panel of Constitutional Experts - Review into Recall Elections at http://www.dpc.nsw.gov.au/data/assets/pdf_file/0008/131120/06_Johnston.pdf as at 15 May 2015

^{xxviii} See e.g.: my submission to The Expert Panel on Political Donations (NSW) at http://www.dpc.nsw.gov.au/data/assets/pdf_file/0003/166008/Submission_19_-_Adam_Johnston.pdf as at 15 May 2015