**REPORT OF PROCEEDINGS BEFORE**

# JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

## INQUIRY INTO THE FINAL REPORT OF THE EXPERT PANEL—POLITICAL DONATIONS AND THE GOVERNMENT'S RESPONSE

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**At Sydney on Friday 30 October 2015**

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**The Committee met at 9.00 a.m.**

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**PRESENT**

Mr J. Rowell (Chair)

**Legislative Council**
The Hon. R. Borsak (Deputy Chair)
The Hon. B. C. Franklin
The Hon. C. Houssos
The Hon. Dr P. R. Phelps
The Hon. P. T. Primrose

**Legislative Assembly**
Mr A. S. Crouch
Ms M. J. Pavey
Mr M. O. Taylor
Ms A. Watson

**CHAIR:** Good morning, everyone. Thank you for attending the public hearing of the Joint Standing Committee on Electoral Matters. For those in the gallery, I am Jai Rowell, the Member for Wollondilly and Chairman of the Committee. I am joined by Robert Borsak, Deputy Chair, and other Members. Today's inquiry is into the Final Report of the Expert Panel—Political Donations and the Government's Response. Thank you, Commissioner and your staff for attending today. I welcome the witnesses.

**COLIN BARRY**, NSW Electoral Commissioner, NSW Electoral Commission, and

**ALISON BYRNE**, Director of Funding Disclosure and Compliance, NSW Electoral Commission, affirmed and examined:

**CHAIR:** Do you want to introduce the rest of your team here today?

**Mr BARRY:** Keith Mason is the Chair of the Commission. There are a number of people from the Commission, but none of those people will be speaking.

**CHAIR:** Commissioner, would you like to make an opening statement before we commence with questioning?

**Mr BARRY:** Yes, I would. As you are aware, the Panel of Experts recommended substantial reforms to the system of campaign finance and the regulation in New South Wales. In describing the system, its stakeholders and its governing legislation, the panel used such terms as "ineffective", "unwieldly", "knee-jerk amendments" and "so complex that it works against compliance and creates loopholes". This is nothing new to me. I have been saying this for eight years. The Commission agrees with all the comments made by the expert panel. As I said, I have been saying similar things for seven years. We have made a written submission—you have the submission from the Commission. We have addressed each of the expert panel's recommendations. I want to highlight a couple of things this morning. Within the existing legislative framework the commission has been able to implement some of the recommendations from the Expert Panel. We have taken up a key recommendation, which is that there be a root and branch review to identify gaps between our capability and the demands of best practice.

I have mentioned to you that Ms Byrne has been appointed as director of the branch and she has undertaken a major review. There are substantial new appointments and some restructuring of the organisation to enable us to move from what has largely been an administrative unit to a regulatory unit. That is not an easy thing to do; it requires different skill sets. We have developed new procedures and processes within the existing legislative scheme to enable us to implement some of the recommendations from the Expert Panel. We have also taken a different approach to the auditing of returns, and Alison can talk a bit about that. In the past we took an administrative approach to this audit process; we would check everything that came in for compliance. We have engaged PricewaterhouseCoopers to provide us with advice on how we should approach the auditing. We are taking a risk approach to audit. We are not going to be checking every little piece of paper that might come through the door. We are going to be identifying where the risks are and taking that sort of approach. Alison can talk a bit about that.

I do not want to take up too much time. There is quite a lot of information I could talk about. I want to come back to another theme that the Expert Panel touched upon, and that is that the Commission needs to be supported in being able to move from an administrative unit to a regulatory unit. That principal support is embedded in a complete review and rewrite of this legislation. This is a drum that I have belted every time I have been before this Committee and, in fairness to the Committee, it has equally recommended to the Government that the legislation be reviewed and indeed, I think, rewritten. There was a commitment by the O'Farrell Government to rewrite not only the funding and disclosure legislation, but also the Parliamentary Electorates and Elections Act. The two pieces, to some extent, need to fit hand in glove. The work was done on the Parliamentary Electorates and Elections Act. In fact, a draft bill has been sitting on my desk for six months. It still has not been introduced into Parliament and no work of any substance has been done on the funding and disclosure legislation.

I now have concerns as every month goes by and no work is being done. The work on the Parliamentary Electorates and Elections Act took the best part of 12 months and that is a relatively simple piece of legislation. On the other side of the fence is the campaign finance, the funding and disclosure legislation, which is far more complex and which will take, in my view, more than 12 months before a bill can even be thought to be introduced into Parliament. We are in 2015, we are coming into 2016 and the election will be held in 2019. It is important that this legislation be given 12 months at least before the election because the stakeholders have to be informed about all the procedures and processes. One of the recommendations from the Expert Panel was that the commission be supported in moving from—it is not just about resources and money but if you do not get the legislation right you are wasting your time. My plea to the Committee again today—and I know that I do not have to prosecute this to you but I need you to underline it strongly to the

Government—is that work needs to commence on this now and that we should not wait for something else to happen. It needs to commence now otherwise it simply will not happen.

We can do a whole lot better in regard to some of the strategy. The existing legislation still hamstrings us a bit in that we cannot use modern technology. We are keen to have online portals so that parties and candidates can go onto a secure part of a website and be able to interact with the commission without having to fill out bits of paper and do things in that fashion. We would much sooner have something that is an online system, and that can be achieved, but we need legislation underpinning it. Naturally, there must be funding to go with it. That will happen if the Government introduces new legislation. I will stop there.

**CHAIR:** I will ask one question and then open up the hearing for questioning. Today we are going to talk about local government. Could you provide us with some of your views in relation to local government issues and, in particular, the caps—whether or not there should be caps, which I know that you recommend?

**Mr BARRY:** Well, I think there should. This is a gaping hole in the whole scenario. It is something that I have mentioned to the Expert Panel, but I think it might have been a bit outside its purview. But I have mentioned it to this Committee in the past and I have mentioned it privately to the Government that you cannot just deal with one side of this and ignore local government. Ms Byrne may have some other views and can give you some examples of why it is so important that local government be brought into it.

**Ms BYRNE:** I agree. There should be caps on donations in local government at the least. Obviously there is the argument that when there are caps there should be funding. That is an area to which we do not subscribe: public funding for local government elections. It would be very difficult to find an equitable and simple way to fund local government. However, looking at the statistics that we have and the data in regard to donations received and made and expenditure by local government, I do not believe there is a need for funding in local government because of the lesser quantum of donations that are dealt with in local government.

**CHAIR:** Commissioner, you identified potential risks. Can you elucidate a bit more on the risks to which you are referring?

**Mr BARRY:** The risks in what regard?

**CHAIR:** The administration that you were referring to before. You are not going to check every piece of paper.

**Mr BARRY:** Sorry. Ms Byrne might want to talk about the audit.

**Ms BYRNE:** Risk-based audit methodology. What we have done is we have looked at the population for audits and stratified that population based on risks—both internal and external. So when I talk about external risks, is it an election year? What has been going on in regard to media, inquiries by other organisations and so forth? But then, for internal risks, is this a parliamentary party? Is this a party that has antecedents for failing to lodge disclosures or offences against the Act? What is the internal governance of the party that we know of? We look at all those things to determine a risk rating for the party for that particular disclosure period or for the candidate, of course.

**Mr BARRY:** Kerry Schott was quite surprised to learn that we took an approach that every piece of paper that came through the front door, every return, we put it through exactly the same process. It is very resource intensive to do that. She said, "Look, maybe what you should do is take a more strategic approach with it and analyse what are the risks." We engaged PWC to come and give us a bit of advice on what is a modern approach to identifying risks with respect to audits. Even when the Auditor-General comes to our place they do not audit every bit of paper; they take a sample. I gave some examples to her and said, "Once you go down that path you run the risk, so to speak, of some quirky things getting through and getting funded." But I accept the fact that we have to move into a much different approach in how we deal with it otherwise it just becomes so resource intensive that we end up chasing a whole lot of rabbits down burrows with very little return and we are missing the big picture.

**CHAIR:** I will open up the inquiry now for questions.

**The Hon. BEN FRANKLIN:** I have a few questions about the online processing system and so on. When lodging disclosures with the Commission, currently political parties are required to hand over their raw

accounting software files, such as those in MYOB. Is the format of the data consistent across all disclosing entities?

**Ms BYRNE:** No.

**The Hon. BEN FRANKLIN:** Does that mean there will be issues in creating an online system to cater for those differences?

**Ms BYRNE:** No. What we have looked at—and we have presented a business case to Treasury with this online portal—is the ability to upload any documents and material in a variety of different forms. So MYOB, even down to PDFs of receipts, and uploading that into our system, which has already been built to phase one of the portal, if you will. And that system, which we have the back end, has the ability then to use that data and put it into our back-end procedures so we can use it and export the data into various different forms.

**The Hon. BEN FRANKLIN:** You mentioned before that the system will have some carriage of managing electoral and administrative expenditure. Does that mean that payments will be made through it—payments to suppliers for political parties and so on?

**Ms BYRNE:** Not through the Electoral Commission system. The clearing house model that was suggested by Professor Twomey?

**The Hon. BEN FRANKLIN:** Yes.

**Ms BYRNE:** No. The portal that we have made a case for is not based on a clearing house model; it is based on the current legislation.

**The Hon. BEN FRANKLIN:** Have you found the system for processing payments for election funding easier under the 2015 model with the dollar per vote model or the one in 2011 based on political expenditure?

**Ms BYRNE:** There are pros and cons for both. In regard to ease, obviously far fewer claims were made because endorsed candidates of parties where the party itself is eligible for funding, the party made the claim for all the endorsed candidates. So, obviously there was a significant decrease in the amount of claims. But the individual line items and expenses within the claims remain the same, whether it is by a one-party claim or 53 claims for the party and the endorsed candidates. So the economies that were made up there are not reflecting the work that we do.

**The Hon. BEN FRANKLIN:** In regard to the proportion of expenditure from 2011, would that not add another level of complexity to your systems rather than the more simple system of the dollar per vote system?

**Ms BYRNE:** No. In regard to the dollar per vote, obviously we had an overall figure of how many people there are voting in New South Wales or can vote in New South Wales, so we were able to work out the figure of whichever is the lesser. However, in regard to whether it is the diminishing sliding scale or a dollar per vote, our audit and assessment remains the same.

**The Hon. ROBERT BORSAK:** Commissioner, do you think the Commission should be responsible for vetting or approving officers of the party?

**Mr BARRY:** Officers of the party?

**The Hon. ROBERT BORSAK:** Senior office holders in the party—of any proposed party or any existing parties. Should the Commission have a right of veto over those appointments?

**Ms BYRNE:** I think that is in regard to the question about internal governance and responsibilities under the Act.

**Mr BARRY:** I do not think there should be a one size fits all for all this. I think what each of the parties needs to have is some sort of internal governance so we can be satisfied that if things go wrong and we need to start proceedings against a party there is something within the party where somebody is being held to account. The real concerning thing for me is that these political parties get millions of dollars of public funding

but, in fact, there is very little accountability. I do not think that there needs to be a model of one size fits all, but the party itself should propose to us a governance structure and we say, "Well, okay, it seems to us that that will work", and we say, "Fine", and they live by it.

**The Hon. ROBERT BORSAK:** That answer is a little at odds with what you said at the start when you said you accepted all the recommendations, because the recommendations are tough in relation to these matters. It is interesting that you are, at last, taking a risk-based approach—I applaud you for that—of moving towards controlling that risk and only auditing that which is important, or where you see the most risk. On the other hand, the recommendation is basically talking about the bureaucratisation of the political process in New South Wales and the Commission having a right of veto, effectively, over who is a fit and proper person. Even the corporations code does not do that. How do you justify supporting that recommendation?

**Mr BARRY:** I would not agree with us getting into who is a fit and proper person.

**The Hon. ROBERT BORSAK:** With due respect to you, Mr Barry, you accepted the recommendation that was in the report, and that is what it is pushing us to.

**The Hon. BEN FRANKLIN:** It is recommendation 34, for your information.

**Mr BARRY:** I think that the parties need to have some internal governance structure. As long as they propose something to us that looks as though it will be a structure that will work—

**The Hon. ROBERT BORSAK:** It goes even further. The Shooters and Fishers Party and the parties that have been set up more recently are usually incorporated as organisations. They are either incorporated associations or unlisted public companies. I have been involved in both in the past in the political process. The older political parties—the Labor Party, The Nationals and the Liberal Party—are unincorporated associations. I am sure they have very comprehensive governance structures. The panel has made a comprehensive set of recommendations which talk about forcing them, effectively, to adopt some sort of corporate model that would make them governable. I am sure each of those organisations has comprehensive internal governance rules that I would not begin to understand. How does that fit in with your reasons?

**Mr BARRY:** I might need to take that question on notice, to be quite frank. It has been a little while since I have had a look at the details of this recommendation. I did not think that it went to the point of us doing any checks on the individuals who were the party—

**The Hon. ROBERT BORSAK:** Mr Barry, it does.

**Mr BARRY:** That is why I said that I will take the question on notice.

**The Hon. ROBERT BORSAK:** Thank you for that. If you could give us an answer on that in due course it would be fantastic. The recommendation goes to the point that effectively the bureaucracy in New South Wales would have a veto over who plays in the political space and who does not. From the Shooters and Fishers Party point of view that is a real problem.

**Mr BARRY:** We will take it on notice.

**The Hon. ROBERT BORSAK:** Regarding systems and compliance, I applaud you for doing what you are doing. How do you propose to deal with small and emerging parties and the political processes of compliance as far as they are concerned? I note that you say you are not going to have one size fits all. I guess that would go to a systems point of view too. How would you deal with a small party that has massively limited resources and cannot, by its very nature, get any money because it has not yet been elected? How do you propose, as they are registered, they would be able to comply with the sometimes quite complex requirements of being able to upload files backwards and forwards?

You have to understand that these are organisations that are run by volunteers. It is hard enough now to get volunteers to turn up and stand at a polling booth let alone trying to get a volunteer who is an accountant, an auditor or someone like that, who has the time, the wherewithal or the resources, to do these things. How do you propose to deal with them—not to mention third-party campaigners?

**Ms BYRNE:** First, the system that we are proposing—the online portal—will be as simple as it possibly can be. Looking at things like the ATO—

**The Hon. ROBERT BORSAK:** Are you talking about walking away from having any paper-based documentation?

**Ms BYRNE:** That would depend on the legislation. If it is not mandatory you cannot walk away from paper-based documentation. There might be a sunset period of paper-based documentation. It depends on the legislation.

**The Hon. ROBERT BORSAK:** With due respect, a sunset clause is not good enough. Mr Barry is quite right: you cannot have one size fits all. That being the case, there should be comprehensive consideration of what the Government or the Commission can do to ensure that it is easy and cheap to get into the political process in New South Wales. If that means that you have to accept paper-based submissions in relation to what you are looking for as far as data is concerned, you have to cut your cloth to suit the smaller organisations, the smaller parties, the smaller third-party campaigners and anyone else that is going to be governed by the proposed legislation.

**Ms BYRNE:** I believe the panel recommended a mandatory system for parties in receipt of public funding because of the nature of public funding being given to parties—millions of dollars or less than millions of dollars depending on the size of the party—for administrative purposes. I would suggest that parties in receipt of that funding would be able to upload documents onto this portal in much the same way as you do your tax return online.

**The Hon. ROBERT BORSAK:** I hear what you are saying. Do you concur with the idea—I would term this as the crazy part of the recommendations from the panel—of having a massive bureaucratisation of the political process in New South Wales? The panel recommends a slicing and dicing—a reduction—of the ability of parties to conform, by taking their money away. Do you agree with that?

**Mr BARRY:** I am not commenting on that.

**The Hon. ROBERT BORSAK:** Do you want to take that on notice?

**Mr BARRY:** That is getting into a political comment.

**The Hon. ROBERT BORSAK:** With due respect, you supported that recommendation.

**Mr BARRY:** I said that I would come back to you with a response.

**The Hon. ROBERT BORSAK:** That was in relation to a different question. Are you going to come back to me on this one?

**Mr BARRY:** Can you frame the question again?

**The Hon. ROBERT BORSAK:** There were two recommendations. One of the recommendations from the panel is that the administrative funding be reduced to the pre-2015 levels. That is significant, especially for a small party like mine. It effectively almost halves the amount of administrative money that we would get.

**Mr BARRY:** Which recommendation is that?

**The Hon. COURTNEY HOUSSOS:** It is recommendation 16. Sorry, no it is not.

**The Hon. BEN FRANKLIN:** It is recommendation 18.

**The Hon. ROBERT BORSAK:** It is recommendation 18. I will just throw in—although we are not discussing it—that the same applies to the money we get in relation to campaign funding. I will not ask a question on that right now; someone else may want to.

**CHAIR:** You can take that question on notice, Commissioner.

**Mr BARRY:** Our response to recommendation 18 was that we do not oppose reinstating the funding entitlements of parties to the amounts prior to 2014. We did not say that we supported the recommendation; we said that we did not oppose it.

**The Hon. ROBERT BORSAK:** The way the panel's recommendations are framed, they are talking about a reduction from the existing levels of money to a lower level.

**Mr BARRY:** That is right. And you are asking me to comment.

**The Hon. ROBERT BORSAK:** I am asking you to comment because at the outset you said that you supported that recommendation.

**Mr BARRY:** I said that we did not oppose it.

**The Hon. ROBERT BORSAK:** You do not oppose it; okay.

**CHAIR:** I will open up the hearing for everyone else to ask questions through the Chair.

**The Hon. COURTNEY HOUSSOS:** I have a couple of questions. At paragraph 20 of your submission you outlined issues about prosecuting parties that are not incorporated. Do you think this problem could be rectified simply by deeming parties as legal organisations under the legislation?

**Mr BARRY:** This becomes complex.

**Ms BYRNE:** We support the deeming provision. It might not necessarily rectify every issue. To deem parties might not be the ultimate panacea. This must be considered in combination with a comprehensive review of the legislation, obviously, because when you consider "party" there are registered parties, parliamentary parties and non-registered parties. Parties have a variety of different forms. To deem a party to be a legal entity under the legislation would allow the Commission—the regulator—to prosecute the party as an entity rather than individuals within the party.

**The Hon. COURTNEY HOUSSOS:** There are some aspects of incorporation that might not be appropriate. I appreciate that some parties are already incorporated but others are not. In its submission the Electoral Commission supports incorporation. Has the Electoral Commission given any consideration to the question of whether there are any aspects of incorporation that may be inappropriate for political parties?

**Mr BARRY:** I think this will be quite an interesting issue, once it gets unpacked. The Panel of Experts canvassed lots of issues at the hearings that we attended as to what it meant to deem a party to be incorporated. In theory, we do not oppose that but I think how it all unfolds, or what does that mean in terms of prosecution? The problem at the moment is that, if we want to prosecute a party, we have to go for the registered officer. The Expert Panel thought this might be a way. Now, in theory, it might be a way but I think it is going to need a fair bit of legal intellect brought to it to see what the impact of it is.

**The Hon. COURTNEY HOUSSOS:** You have not given great consideration to this?

**Mr BARRY:** No.

**The Hon. COURTNEY HOUSSOS:** You propose the abolition of agents—sorry, the Panel of Experts proposes the abolition of agents and that is something you support?

**Mr BARRY:** Yes, it is.

**The Hon. COURTNEY HOUSSOS:** The subsequent recommendation is also that candidates, as Members of Parliament, are responsible for their own submissions. As the legislation stands, candidates or Members of Parliament cannot receive donations. How would they be able to be accountable for a return, when they cannot actually be involved in the administration of it?

**Ms BYRNE:** That would require the comprehensive review of the Act. That is a great example of why you need that. If you were to change the system of agency without looking at these other related provisions, suddenly you have someone who is responsible for accepting money that they cannot accept. So yes, we would

require an overall view of the system of accounting of campaign accounts and of receipt of donations, being actual physical receipt, and the provision of a receipt. But we propose that the candidate or elected member would be responsible for receiving and therefore disclosing.

**CHAIR:** You think that is appropriate, that members of Parliament receive donations and process all of those, or be responsible for them if other people do it, obviously in favour of their campaign?

**Ms BYRNE:** Yes.

**Mr BARRY:** See, this was the problem. The agents were in place to be able to protect the Member of Parliament from receiving donations and yet at the same time we found that it was extremely difficult to get them to be accountable for all this. My view is that Members of Parliament receive donations; they are accountable. The Expert Panel I think tended to agree. But at the moment we have quite a difficult situation where we have, for example, members of parliamentary parties, the candidates have the party agent.

**The Hon. Dr PETER PHELPS:** But that is done on the basis that, by excluding the candidate from the direct receipt and processing of money, you reduce the opportunity for corruption offences to take place. You literally cannot touch the money.

**Mr BARRY:** That is a view. The other view is that members of Parliament have to be responsible for managing their own affairs. And they equally have to be transparent and they equally have to be responsible for their disclosures. That is another view.

**The Hon. Dr PETER PHELPS:** Following on from that, also in relation to suggestions that election funding, post-election funding, be received directly by candidates, rather than by parties, it was certainly in the mid thousands, the Federal Government in fact changed the Federal Act so that it went to parties for precisely that same reason, so that the opportunity for personal profiting by members of Parliament from their election funding, the subsequent election funding would not take place. It appears now that the recommendations from the panel are that we should go back to a system where members of Parliament could personally profit from their campaign.

**Ms BYRNE:** With respect no, because it is not an entitlement scheme in New South Wales. They are not able to profit as, unfortunately, was the case I believe federally with a particular member some years ago. Being a reimbursement scheme, neither the party nor a candidate would be able to profit.

**The Hon. Dr PETER PHELPS:** But, I give you a situation where a disaffected losing candidate decides to take the money and not return it to the party, despite the fact that the party may well have paid for a substantial amount of his or her campaign. That does not strike me as being an optimal use of resources, to essentially give a losing candidate the ability to walk away and take, in many cases, tens of thousands of dollars with them.

**Ms BYRNE:** Indeed, but we have received, obviously, feedback from some candidates and parties that their structures are not of the sort where the party should receive all the money for the candidates. So, the prior scheme was candidates can receive election campaign funding directly or can direct that the Electoral Commission pay the party the amounts that they are entitled to. And, I believe we suggested that the prior scheme was something that we would not oppose returning to. But you do have that balancing act when you are dealing with very different party structures. That might be something for parties to obviously consider with their candidates and their contracts and so forth.

**The Hon. Dr PETER PHELPS:** At the current time the way the funding is structured, it requires candidates to show a degree of discipline which would not come about if the candidates themselves were directly reimbursed for the cost of a campaign which they might not personally have contributed one cent to.

**Mr BARRY:** I am a bit confused about some of that. This is a reimbursement scheme so, at the end of the day the candidate, if they are submitting a disclosure of what they have spent, they can only get back what they declare they have spent. If the party has spent money and the candidate has spent money, the candidate can only get back, under this sort of model that is being contemplated, what they have spent. Around this table you have a lot of people who have got bits of knowledge of how all this works. Can you come back to my point at the beginning? The Government needs to get on and do something about this piece of legislation, because it is complex.

**The Hon. Dr PETER PHELPS:** We agree with that.

**Mr BARRY:** We mapped out all the players in this Act and it took a person the best part of four months to simply be able to present it in a diagrammatic form. And my concern is that when you lay this out, it is like an architect's drawings. You suddenly pull a bit out here and fiddle with that, it has tentacles all throughout the legislation. And the issues that you raise, Dr Phelps, I do not disagree that they are important issues for the parties and for the candidates. We have to get it right but until work starts to be done on it—it is very difficult because the Government needs to see options.

**CHAIR:** Are there any further questions?

**The Hon. COURTNEY HOUSSOS:** One final question. You spoke in your opening statement about the need for the Commission to transition from an administrative unit to a regulatory unit. I think that is a positive change but obviously it is not necessarily an easy one to make. The Panel of Experts, in their recommendations, said that the Auditor-General should then be involved in this process of auditing returns as well. I understand in your submission you are not necessarily supportive of that. Would you like to explain that?

**Mr BARRY:** Auditor-Generals tend not to be dragged into other bits. Their role is specific; it is auditing the books and so forth of the bureaucracy. Starting to get the Auditor-General dipping into political parties, I think political parties have enough trouble dealing with the Electoral Commission delving into their books, I do not think they particularly need the Auditor-General coming in because the Auditor-General comes, and rightly so, from a mindset of Australian auditing standards. You are lucky that you do not have us saying that to you because we are not auditors in the sense of applying Australian auditing standards. I do not think that is going to be potentially a problem.

**The Hon. Dr PETER PHELPS:** But there is an important point to be made, is there not Commissioner, in the sense that the Electoral Commission has a specific and longstanding knowledge about what is and what is not election expenditure and what is in and what is out, the different way that parties do things, and the different standards that they apply with the internal auditing procedures. It is a distinct and specialised form of auditing, which has no replicability among the stuff that the Auditor-General does normally in relation to the ordinary business of government and government agencies.

**Ms BYRNE:** It is very particular, yes. But also add to the fact that the Expert Panel's recommendation was in relation to the Auditor-General being responsible for audits of any parties that are in receipt of public funding. That is eight-plus parties, depending on whether it involves the Policy Development Fund as well. That would then mean that the Electoral Commissioner is responsible for the great majority in terms of numbers of audits, but the Auditor-General performs what might be considered the more important audits of parliamentary parties.

You have the people of New South Wales having two government agencies audit, but then there has to be the sharing of that information to consider from a compliance perspective what has been going on and take that holistic view of the environment to then come to a risk-based assessment for the next year; or to assess for that year whether there are trends or spikes in terms of activities between parties that we have audited and parties that the Auditor-General has audited. I suggest that our new Funding, Disclosure and Compliance Branch, bringing in that area of expertise and forensic analysis, data analytics and so forth, is more than capable to provide the full service rather than having services distributed throughout New South Wales, and that duplication of effort.

**The Hon. Dr PETER PHELPS:** I presume, Ms Byrne, that you are unaware of the Auditor-General going out and auditing the hundreds and hundreds of non-government organisations [NGOs] who receive millions of dollars more of government funding than do political parties.

**Ms BYRNE:** No. I have no knowledge of that.

**The Hon. Dr PETER PHELPS:** That is right. They do not.

**The Hon. PETER PRIMROSE:** I have just had most of my questions slowly ticked off, but there is one that remains. It concerns recommendation 15 in relation to advance payments to parties from the Electoral

Campaigns Fund to be increased from 30 per cent to 50 per cent of the party's entitlement at the previous election. Do you have a view on that level—whether it should be increased from 30 to 50 per cent?

**Mr BARRY:** I mean it is just a number as far as we are concerned. We do not have a particular view on it.

**Ms BYRNE:** Yes. We have said that we do not.

**The Hon. PETER PRIMROSE:** Zero and 100 are numbers too. I know that you are not the Auditor-General, but do you happen to have a view?

**Mr BARRY:** I do not have a strong view on it. Fifty per cent seems all right to me.

**Ms BYRNE:** In terms of administrative work involved in that, there really is no difference between 30 or 50 per cent.

**Mr BARRY:** It is really the policy.

**The Hon. PETER PRIMROSE:** You would have no objection?

**Mr BARRY:** No.

**Mr ADAM CROUCH:** Mr Barry, earlier you mentioned the restructuring of your Funding, Disclosure and Compliance Branch. I have three questions. Do you believe that, with the additional workload caused by particular difficulties, there would be an additional workload caused by that restructure? Secondly, would the commission require additional funding to carry out any of the extra functions and activities that have been proposed? Thirdly, how much additional funding do you think would be required?

**Ms BYRNE:** Currently, there is additional work but that also coincides with the Commission receiving the mandate to investigate and prosecute offences under the Parliamentary Electorates and Elections Act and the Lobbying of Government Officials Act. That did increase the workload of the Commission and specifically our investigations team. We received funding in relation to that at the end of last year, or at the beginning of this year but the request was put in at the end of last year. The workload has increased for a number of reasons, but in terms of what we are doing under the new branch for funding and disclosure specifically, the workload has increased but we have also redirected our attention from focusing on non-compliances in an audit to taking on a more risk-based view of those non-compliances and also increasing our proactive investigations. That is where the increase has taken considerable resources but also different resources.

We have got an intelligence analyst function that we have created; senior and junior investigators from a variety of backgrounds—policing, other commissions of inquiry, international and New South Wales as well as other States and Territory experience. With that greater depth of experience, obviously, comes the capacity to handle different types of work more efficiently or expediently. But, yes, there has been an increase of work overall.

**Mr ADAM CROUCH:** The funding you have received is adequate to deal with the increase?

**Mr BARRY:** We have no complaints. The Government has been fine.

**Ms BYRNE:** Except for the online portal.

**Ms ANNA WATSON:** They would always accept more money, I am sure.

**The Hon. Dr PETER PHELPS:** Mr Crouch, you should never ask an official if they have sufficient funding. There will always be a little bit extra required.

**The Hon. PETER PRIMROSE:** There would be no objection to an increase.

**Ms ANNA WATSON:** That is right—no objection to an increase.

**The Hon. PETER PRIMROSE:** Not opposed.

**Mr ADAM CROUCH:** Not opposed, no.

**Ms BYRNE:** The online portal is definitely something that we have advocated funding for, but unfortunately we have not received it.

**The Hon. Dr PETER PHELPS:** Really?

**Ms BYRNE:** Yes.

**The Hon. Dr PETER PHELPS:** I would have thought that with the move towards e-government, that would have been forthcoming.

**Mr BARRY:** But, Dr Phelps, in fairness to the Government in relation to all of this, the Government has not said they will not fund it. Treasury knocked it back.

**The Hon. Dr PETER PHELPS:** Then that is Treasury's fault.

**Mr BARRY:** But I was not surprised at that and I was not particularly fussed because the fact is that it is this a whole review of the Act. The problem is that we need the legislative underpinning for whatever it is we are going to do in the future. It has to have legislative underpinning and then let us see what the Act is, or the bill, and then let us see what sort of funding we need. That is the way it should work. I was not too fussed. Ms Byrne might be a bit disappointed, but I was not too fussed about that at this point in time. But the Government—I must give the Committee the clear understanding that the Government has not been mean in terms of funding us for these reforms that the Premier has talked about.

**Mr ADAM CROUCH:** You see, we are very generous.

**Mr BARRY:** Appropriate funding.

**The Hon. BEN FRANKLIN:** Recommendation No. 48 states:

> That the NSW Electoral Commission conduct a root and branch review to identify gaps between its organisational capabilities and the demands of best practice electoral regulation.

I am just wondering if you have started that, if there have been funding processes, or if you have finished it, or where you are in the process.

**Mr BARRY:** We have finished it. We have done it.

**The Hon. BEN FRANKLIN:** Excellent.

**Ms BYRNE:** Yes. It started at the beginning of the year. We reviewed the Funding, Disclosure and Compliance Branch. I was appointed to the position of director and then we, with a group, looked at what it is that we should be doing now, based on our four-plus years of experience since the 2011 amendments. Obviously, we have learned a lot from there, the panel of experts' recommendations, ICAC, and other organisations—PricewaterhouseCoopers [PWC] and so forth. We reconstructed the branch into three teams based on our functions under the Election Funding, Expenditure and Disclosures Act [EFEDA] and based on the view that, yes, we still have administrative functions, but we do need to take more of a regulatory focus, enabling us to do that to support stakeholders as well.

**The Hon. BEN FRANKLIN:** Has the focus on that come as a result of implementing that recommendation?

**Ms BYRNE:** Indeed.

**The Hon. BEN FRANKLIN:** That is fantastic.

**Mr BARRY:** That was one of the recommendations we could do that did not require legislation.

**The Hon. BEN FRANKLIN:** That is great. Thank you.

**The Hon. Dr PETER PHELPS:** I seek clarification of one of your earlier answers. In relation to moving towards a revised Act and getting the system bedded down, you would expect that that would have to be in place or in place and bedded down by March 2018.

**Mr BARRY:** Dr Phelps, my concern is for political parties. I mean, it is all very well to talk about us and it is all very well to talk about the Parliament and the Government, but what about the political parties? They have got to also be educated, given time and given the opportunity to be able to get up to speed. Some of them are good and some of them are not so good, and some of them will go with the carrot and some will need the stick. We need that 12 months. I think they need that 12 months in order to get their house in order.

**CHAIR:** In relation to third party campaigners, we have spoken about caps in local government. What about caps for third party campaigners? Do you think that the caps as they currently stand are suitable?

**Ms BYRNE:** Is that for State or local government, are you suggesting?

**CHAIR:** For State.

**Ms BYRNE:** I know the Expert Panel has suggested halving the cap for third parties. I believe we have taken a neutral stance on that. Obviously they have got some data in there that they base their findings on and on which we agreed that the data is correct, but we have not taken any position.

**Mr BARRY:** That is really just a policy decision. We are not seeing anything come through that gives us reason to be concerned. That is just a policy decision, whatever the number is. We are not coming here saying that you need to be concerned about it.

**The Hon. COURTNEY HOUSSOS:** I have a question about third party campaigners. Obviously the 2011, but particularly the 2014 amendments place quite onerous requirements on third party campaigners; have you received any feedback from potential or actual third party campaigners around those requirements?

**Ms BYRNE:** No.

**The Hon. COURTNEY HOUSSOS:** That they were difficult?

**Ms BYRNE:** No, no feedback at all. You are speaking of the October amendments?

**The Hon. COURTNEY HOUSSOS:** I am probably echoing what the Deputy Chair outlined earlier which is that it is now a very, very complex area. It can be quite difficult to participate in and given that the whole purpose of the electoral system should be to encourage participation, the requirements on third party campaigners can be quite onerous.

**Ms BYRNE:** We received some feedback about that, obviously, even prior to the 2014 amendments. What is required of third parties has been quite consistent for a couple of years and some are very sophisticated in their responses to us, and some are not and they do find it difficult, yes.

**The Hon. Dr PETER PHELPS:** Following McCloy's case, and the confirmation that cohort prohibitions are legal, what is the Commission's view in relation to retaining them or removing cohort prohibitions? Does it make your task more difficult to find out what is a legal donation and what is an illegal donation?

**Ms BYRNE:** The current provisions do—the definition of a property developer.

**The Hon. Dr PETER PHELPS:** Yes.

**Ms BYRNE:** I think we would all agree, whether you are an Electoral Commission or someone trying to accept a donation that it is a very, very difficult provision. So we can do better on it, if the intent stands to keep prohibited donors, with provisions that are actually workable, less complex, we can do it.

**The Hon. Dr PETER PHELPS:** One way or the other, either a policy decision to remove cohort prohibitions or better clarification on what those cohorts actually represent is needed. The status quo must change?

**Ms BYRNE:** Yes.

**CHAIR:** Do you want to make a final statement?

**Mr BARRY:** Not from me.

**Ms BYRNE:** No, thank you.

**CHAIR:** Commissioner, you have taken some questions on notice. Would you be happy to provide a written reply within two business days?

**Mr BARRY:** Yes, I think we can.

**Ms BYRNE:** I believe that we have to tender a copy of our submission as well. I tender that.

**(The witnesses withdrew)**

**GEOFFREY ROY ASH**, Registered Officer, The Greens, and

**CHRISTOPHER HENRY MALTBY**, Deputy Registered Officer, The Greens, affirmed and examined:

**CHAIR:** Before we proceed, do you have any questions concerning the procedural information sent to you in relation to witnesses or the hearing process itself?

**Mr MALTBY:** No.

**Mr ASH:** No.

**CHAIR:** Do you want to make a brief opening statement?

**Mr ASH:** Yes. Thank you for the opportunity for The Greens to give evidence. Our party agrees with most of the recommendations made in the report on political donations, but disagrees with five recommendations. There are also a few recommendations on funding in various Greens' submissions to recent inquiries on funding which are not covered by the panel's recommendations and we will just mention those. Specifically on the panel's recommendations, we are concerned about recommendation 7. There is a suggestion in recommendation 7 that the ban on prohibited donors, such as developers, the tobacco industry, et cetera might be lifted if caps on political donations are introduced for local government elections. Our party is very much in favour of low caps on donations and expenditure for local government elections; it is one of the main points we want to stress. We think it is essential that there be legislation enacted well before next year's local government election.

However, we also strongly oppose repealing the ban on prohibited donors, such as developers. In fact, following the High Court McCloy case upholding the bans, we now believe there is no excuse to prevent extending the prohibition to other industries such as the mining industry and those companies holding or seeking major government contracts. These are all areas that carry a high risk for political corruption if donations are allowed in those areas. Moving to recommendation 10 which is to retain the current caps on electoral expenditure, The Greens consider the caps to be too generous, in particular the $9.3 million state-wide cap we believe could be reduced substantially, and so could the candidate cap.

I think we all know that high expenditure caps fuel the need for parties and candidates to chase political donations, and potentially break laws on donations caps and any dealings with prohibited donors. As well as saving the State, expenditure caps are an important vehicle for reducing the influence of wealth on political outcomes. We note the recommendation for reducing spending caps on third parties, and consider it should be complemented with a reduced cap for parties and candidates.

On recommendation 14(b), which is basically to retain the funding model linked to electoral expenditure, The Greens advocate a much simpler model based on the Federal Australian Electoral Commission funding model of a dollar amount per vote obtained as a direct entitlement. It would result in funding payments being made to parties and candidates within weeks, instead of many months. It would also remove the incentive to fraudulently manufacture invoices to claim more election funding under the current model, which is a reimbursement model. In relation to recommendation 16, The Greens suggest an amendment to the wording of "candidate's funding entitlement being paid directly to the candidate". It will usually be party money that has been spent on the candidate's campaign, therefore, the Electoral Commission funding should be paid to the candidate's election campaign account, which usually would have party signatories.

If there is not a candidates' campaign account then the funding should go to the party. Lastly, we comment on recommendation 18, which is the model for calculating entitlements to parties from the administration fund. That is based on the number of MPs that a party has in Parliament. We believe that the method of calculating the entitlement should be based on the vote a party obtains in the election for either House of Parliament. We think that would be a much fairer model. The single-member electorates in the Legislative Assembly usually result in the election of major party candidates in a higher proportion to the party's vote and minor parties are elected with a lower proportion of candidates compared to the party's vote. This can result in administrative funding outcomes that do not reflect the reasonable cost of administering parties.

I will mention three other points that The Greens have made submissions on but do not appear to be covered in the panel's recommendations. The first is prohibited donors—developers et cetera. We believe they

should be banned from third party campaigning for exactly the same reasons that they are banned from making political donations. A well-funded third party campaign promoting a specific party or candidate is almost the equivalent of donating to that party directly. The second is we believe there should be an exemption from the cap on donations in respect of party donations of its funds to its own candidates. The reality is parties largely pay for their candidates' campaigns.

Parties currently use a section of the Act, section 84 (7), to get around the cap on parties, which are regarded as organisations, donating to their own candidates. They do this by invoicing their candidates for electoral expenditure and then the candidate does not pay the bill. It is a convoluted method of effectively getting party money to the local candidate's campaigns and we think that reality should be recognised and an exemption made for parties when they are contributing to their candidates. Last is the cap on individual membership fees. We think the cap should be $250 instead of $2,000. We believe those fees should be paid into a party's State election account, which is currently prohibited, because membership fees are a relatively clean source of funding that could generally go into an election account of a party.

**CHAIR:** Thank you. I remind all members to ask questions through the Chair.

**Mrs MELINDA PAVEY:** What if the membership fee was from a property developer?

**Mr ASH:** That is a good question.

**Mr MALTBY:** To be slightly contradictory about our position, $250 is a very modest amount and it is per individual. I am aware that there are political parties which have at various times been accused, perhaps, of receiving bulk memberships from organisations and that might be a way to circumvent that. I am not sure that there is an easy way to prevent that other than through a governance issue for political parties. Other parts of the submission deal with those sorts of governance issues.

**Mrs MELINDA PAVEY:** What if the membership fee was from a miner, a labourer working in a mine, who happened to be a member of The Greens?

**Mr MALTBY:** I see where you are going, but there is a substantial difference between people who own and operate mines and are making development requests in relation to them and the people who are digging the minerals out of the ground. I am not sure that is a conflict for those people although obviously someone employed in mining might have a political interest in the continuation of mining. But there is a substantial difference between that and the profit motive associated with the companies.

**Mr ASH:** I might add that there is also a case for removing small membership fees from the Act's definition of "donations". In reality, members pay a fee and get services and entitlements. They have a say in a party, so to call it a donation is probably not strictly accurate. It also prevents—

**Mrs MELINDA PAVEY:** But, Mr Ash, were you not advocating that a donation could be a clean way of funding election campaigns?

**Mr ASH:** A membership fee?

**Mrs MELINDA PAVEY:** Yes.

**Mr ASH:** That is true.

**Mrs MELINDA PAVEY:** So it would become a donation.

**Mr ASH:** It is a donation currently and I am saying there is a case for small membership fees from individuals not being regarded as a donation. For one, it prohibits lots of candidates who might be number six or number 15 on a ticket from lodging nil returns although they may have made a donation, a $45 membership fee. It is a minor point, but I think there is a case.

**The Hon. Dr PETER PHELPS:** In relation to your concern about recommendation 14 (b) and saying it should move to a dollar-per-vote model: How do you stop the Pauline Hansons of the world getting vast amounts of money from essentially running a game on every election they seek to take part in and receiving far more in taxpayer-funded money than in expenses for their campaign?

**Mr ASH:** It is a good point and we have thought about that. I think the answer is a prohibition on spending election funding on anything other than elections and party administration. There should be hefty penalties if election funds are spent on personal or private matters and a requirement to repay funds enforceable by heavy penalties. There might be a provision in the Election Funding, Expenditure and Disclosures Act relating to administrative funding that says it is an offence to use funds for anything other than administrative funding. Similarly, you could have a provision that applies to election funding. I agree that it is a loophole that has been on occasions abused by candidates, but that is our answer—restricting what the money can be used for.

**The Hon. ROBERT BORSAK:** Rather than thinking about more restrictions, would you agree we should leave it the way it is at the moment—in other words, if you spend nothing on a campaign you get nothing back even if you do get elected? That is what finished up Pauline Hanson and that is why she is not interested in New South Wales anymore.

**Mr MALTBY:** That may be true. It is a fact that The Greens political party established itself on the basis of making surpluses on Federal elections and at no point in the party's history has anyone acquired a swimming pool as a result of running election campaigns. The party has marshalled that money and used it to fund subsequent campaigns and so forth. A legitimate way to use electoral funding is to put it in the bank and run future campaigns on it.

**The Hon. ROBERT BORSAK:** That is what it is for.

**Mr MALTBY:** Indeed. I listened to the Electoral Commissioner saying that the current reimbursement model generates a massive amount of paperwork and one of the advantages of an entitlement model funding is that it eliminates a lot of paperwork. On the other hand, it opens up the possibility that a small number of unscrupulous people will attempt to farm political funding in the way it has happened in Queensland. We think that rather than making everybody comply with a massive administrative burden to satisfy reimbursement funding rules it would be better to have legislative protection against the misuse of election funding. It was interesting to hear the commissioner refer to risk-based auditing. I think random risk-based auditing methods of political parties and that kind of expenditure would be an adequate protection.

**The Hon. ROBERT BORSAK:** It is interesting that you talk about membership fees being used effectively for campaigns because that is our position as well. You talked about dropping the cap from $2,000 as a maximum membership fee to $250. Given the cost of running campaigns these days and that you could get it changed, why do you want it dropped to $250?

**Mr ASH:** I think anything beyond $250 is entering the realms of being a donation. It goes much beyond—

**The Hon. ROBERT BORSAK:** You have said, effectively, you want to use it as a donation, even at the $250 level. You know that $2,000 does not go very far in a campaign?

**Mr ASH:** That is true. It is a source of legitimate income. Members have rights and that is why they pay membership fees and they get services. A low membership fee matches the cost to the party to administer its membership.

**The Hon. ROBERT BORSAK:** To go the other way, why would you not make $250 the minimum membership fee then? If people do not pay a membership fee they have no obligations.

**Mr ASH:** It is then getting into the realm of avoiding. It becomes larger donations and we do not want membership fees disguised as a backdoor method of large donations.

**Mr MALTBY:** I think it is also true that there is nothing preventing a person who wants to contribute $2,000 to a political party for making that a combination of a membership and a donation. We are arguing about a very minor aspect.

**The Hon. ROBERT BORSAK:** I am going to the other end of the scale and saying how involved would you be as a member of a party if you were getting a membership for nothing?

**Mr ASH:** I might add that the reimbursement model, the AEC [Australian Electoral Commission] model, would not remove the need for parties to produce invoices because the Commission would still need to determine that parties and candidates were not breaching the expenditure caps. It would mean that parties and candidates get their funding within a fortnight of the election. Now it is six months after the State election, and I know that parties and candidates are just receiving some of them now. It is such an onerous task for a party: you have to accumulate the returns and invoices from 93 separate campaigns. You are slowed down by the weakest link in the chain, the most disorganised campaign and months go by before you can pull your return together, get it audited and get it to the Electoral Commission.

**The Hon. ROBERT BORSAK:** You will have fun ahead of you now if the new recommendations are put in place. It is going to be 93 times worse.

**The Hon. BEN FRANKLIN:** Approximately how long have you been the registered officer of The Greens?

**Mr ASH:** I think I was the first registered officer back in 1990 or 1991 when we registered. There have been two or three different registered officers in that time.

**The Hon. BEN FRANKLIN:** You have had ongoing involvement at an organisational level?

**Mr ASH:** I have. Sometimes I have been a deputy registered officer.

**The Hon. BEN FRANKLIN:** I understand your point about the model that you would like in terms of public funding of elections and the dollar per vote. Putting that aside, in your opinion, do you think that the 2015 model, which was also a dollar-per-vote model, although without expenditure being vouched for, was a better model than the 2011 model, which was a percentage-of-expenditure model?

**Mr ASH:** It was very generous, the 2015 model, and it probably need not be so generous. I think we would lean towards the 2011 model. Again, it is linked to our argument that the expenditure cap should be reduced. We think there is too much money spent on elections.

**Mr MALTBY:** For smaller parties there are advantages and disadvantages either way. One of the advantages of the 2015 model was that entitlements were pooled across the State and so some campaigns which might not have received funding were able to have their expenditure reimbursed because they were part of a state-wide pool. On the other hand, the proportionate funding available in the 2011 model meant that there was a minimum amount that might be fully reimbursed regardless of the actual vote in that electorate. So candidates who are polling 5 or 6 per cent might have been able to fund a more reasonably proportioned campaign than a per dollar entitlement might have yielded. From our point of view, there were advantages and disadvantages in both. What Mr Ash has said in relation to the overall generosity is fair.

**The Hon. BEN FRANKLIN:** You support a dollar-per-vote model but not the current dollar-per-vote model because you need to vouch for expenditure?

**Mr ASH:** That is right. The actual rate we have not concluded on.

**The Hon. BEN FRANKLIN:** Can we move on to recommendation 18, which is about administrative funding for the parties being taken to the 2014 level. What are your views about that?

**Mr ASH:** Again, it was very generous. We probably would not have an objection to it being reverted to the previous model but our main point is about the way it is calculated, its unfairness being based on Members of Parliament compared to what vote a party gets. We thought perhaps the new version was a bit too generous.

**The Hon. Dr PETER PHELPS:** In relation to panel recommendation 7 and your suggestion of increasing the number of prohibited donor cohorts, there are a number of groups and industries that are affected by government policy. Would you like to see the ban on donations extended to, for example, environmental organisations such as Greenpeace and the Nature Conservation Council? Government decisions have a material effect on them as well.

**Mr MALTBY:** Quite so. It has been our position for a long time within this part of The Greens that there should be an overall ban on donations from corporations which would cover that situation. We would be quite happy to accept an outcome along those lines.

**The Hon. Dr PETER PHELPS:** Your position is the one that was struck down, that donations should only be from individual members of the public who are on the electoral roll?

**Mr MALTBY:** It is slightly more nuanced than that, but essentially from entities which are not membership based. I think in relation to the environmental organisations you mentioned, of course none of those organisations are donors to political parties that I am aware of.

**The Hon. Dr PETER PHELPS:** They should be banned, is that what you are saying?

**Mr MALTBY:** To the extent that they are membership based and reflecting a decision of the members to support an election campaign, that is an important part of electoral communication. The question that arises for us is when the purpose of the donation or the entity making the donation is a for-profit organisation and the nature of the corporate law is such that an electoral donation like that must be considered to be an expenditure in pursuit of the business's bottom line. That is an inherently corrupt association.

**The Hon. Dr PETER PHELPS:** Where you have an environmental organisation whose chief KPI [key performance indicator] is extending the amount of national parks in New South Wales, which can only be done through government legislative enactment and regulation, does that not also create an opportunity for them to be—I will not use the word "corrupting"—placing undue influence on Members of Parliament through their activities?

**Mr MALTBY:** To the extent that they represent people who have political interest by being voters, that is a perfectly reasonable thing for them to be doing. In the same way you can argue that hospital services ought to be expanded or family services ought to be expanded or whatever else might be desirable for significant numbers of people who are electors. That is essentially a matter of the public interest rather than the private interest and advocating for national parks is clearly a matter in the public interest.

**Mr ASH:** We do draw a significant distinction between for-profit corporations and not-for-profit organisations that are pursuing objectives of their members.

**The Hon. Dr PETER PHELPS:** But why? What is the basis?

**Mr ASH:** It is more altruistic, in essence. You have businesses that are there to make money and they want favourable government decisions to assist in that endeavour. Whereas not-for-profit organisations—some of them we agree with and some we do not—are genuinely arguing for a particular purpose, it is not about making money.

**The Hon. Dr PETER PHELPS:** Of course, governments also play a part in the tourism industry. They pay money to hold grands prix and to build new entertainment centres. Is it illegitimate, for example, for political parties to receive donations from people who have interests in the tourism industry, like Wotif?

**Mr MALTBY:** Sure.

**Ms ANNA WATSON:** I refer to recommendation 15 and the increase from a 30 per cent to 50 per cent advance in party entitlement. What is your view on that?

**Mr ASH:** I do not think we would have any problem with it. We have not discussed it as a party. However, obviously if a party has polled well enough in an election to be entitled to a substantial amount of money it is probably an established party. There should not be any problem with recovering that money if the party does not have such a good election. There is a problem with parties needing funds to spend in the first place before they get election funding. Advance funding helps alleviate that issue. I do not think we would have a problem with it.

**Mr MARK TAYLOR:** In your opening address you touched on the candidate entitlement from the election campaign fund being paid directly to the candidate rather than to the party. Do you want to add anything else?

**Mr ASH:** Most money spent in election campaigns is party money. You might have an odd candidate who is a fantastic individual fundraiser. Candidates in our party are financed by the party. Therefore, when the money is returned by the NSW Electoral Commission it should go back to the party. We are cognisant of the fact that local branches and so on should be entitled to their money because they have put it in and run the campaign. We would be happy for it to go to the candidate's campaign account. As I mentioned, that would be largely controlled by local party members; they would be the signatories.

There would be an assurance that the money would ultimately end up where it truly belonged—either with the party or with the candidate, depending on who stumped up the money in the first place. There might be a wayward candidate who if they received the money personally—and it might not be theirs; it might the party's or local branch's—there could be a risk that they would be resistant to returning the money to where it belongs. That is why it should go to the campaign account and not the personal account of the candidate, and if there is no campaign account then it should go to the party.

**Mr MALTBY:** You can also get the somewhat farcical situation where a candidate has received the money personally and may be caught in donation cap laws as they return the money to the party. That is clearly silly.

**The Hon. COURTNEY HOUSSOS:** Do you have a view on abolishing agents, as proposed by the panel?

**Mr MALTBY:** I was very interested to hear that discussion earlier with the Commissioner. I think the agents were brought in because of a perception that candidates and members of Parliament actively soliciting and handling donations was inherently corrupt, and therefore if it were somewhat removed it would be somehow better. I am not sure that that is a valid conclusion or anything more than a smokescreen. The reality is that politicians are out in the community and that people may choose to support them in fundraising and all those other things. To pretend that somehow or other because you are giving the money to the other bloke with the bag at the back and not to the candidate there is some sort of separation is a little abstract. I do not think having an agent will necessarily mean that a candidate is not tainted by donations.

Perhaps the purpose of the agent has been superseded. It does not make much of a difference. The important thing is the accountability for that money. One of the panel's recommendations was about more explicit disclosure of the purpose of a particular donation. If you go to a fundraiser and you pay $100 for a table it is recorded as a donation to the Liberal Party, but in fact you were there explicitly because you were supporting a candidate. That piece of information is presently not being disclosed. That is the key piece of information, not whether it went through an agent.

**Mr ASH:** Candidates are now obliged to have an agent. My personal view is that perhaps we should revert to the old system, where candidates could appoint an agent if they wanted to. The Greens previously avoided having agents, but then we were obliged to. Some candidates are simply hopeless at managing money and they could not get a return together; they would be incapable and they would need an agent. However, other candidates are very much on top of things. Perhaps there should be the option for a candidate who is not so capable to appoint an agent. I do not know that it should be compulsory.

**The Hon. COURTNEY HOUSSOS:** Mr Ash, given your experience over a number of years with the changing electoral legislation, you would no doubt acknowledge that it is an increasingly complex area and sometimes it is useful to have an agent who is across the finer details of a return as opposed to a candidate who is out there talking to people to garner support and to get votes.

**Mr ASH:** I can see the advantages.

**Mr MALTBY:** It is also true that the agents we have appointed in the past have been at an intermediate level on that stuff. Part of the cost of running elections is having people within the party who can deal with the complexity of the details and who are a gateway to the Electoral Commission when questions need to be asked that are not covered by the practice. It is true that we have probably been involved in continuous discussions with the Commission since the 2015 election about the precise details of particular claims and how things are supposed to be reported, who is responsible for what and stuff like that. Again in relation to what the Commissioner said earlier, we would be massively in favour of a rewrite of the electoral funding law and would

agree with his timetabling requirements. It is excessively complicated and probably gets in the way of doing the things it should be doing.

**The Hon. PETER PRIMROSE:** There seems to be two streams in this conversation with the Electoral Commissioner at the moment. I am interested in your comments. We have heard in earlier hearings and again today the Commissioner proposing a less rules-based system and a system that is less complex and easier to understand so that people make individual decisions. Yet the commissioner's submission recommends an increase in strict liability offences, which would seem to mean that you would be found guilty of a strict liability offence without intent if the strict rules were not laid down. Should we be going to a system where there are fewer written rules and people have to make decisions on their own, or one in which there is strict liability and people are always trying to clarify the rules?

**Mr MALTBY:** That is the essence of how you get the balance right in that sort of legislation. I am not sure there is a simple answer. The issue the panel has raised in relation to the governance of political parties is important. At the moment I think they would ask who would be the liable parties if there is no corporate entity if you brought in more strict liability offences. I believe that is true even for parties like The Greens. Is our registration as a political party associated with a corporate entity or is that separate? These areas of the law are unclear at the moment.

We have a Federal registration as well—is that the same entity or is that another entity? All of those kinds of questions segue a little bit into the need for national regulation, which I think we should at least put on the table at this moment. There is a sniff test thing—if somebody does something that you looked at and said, "Well, that was pretty dodgy," you would like the regulatory framework to be clear enough to make sure that it should not happen and, if it did happen, that it was pretty easy to get somebody on the hook for it. But whether that is possible, given the limitations of legislation and human nature, is a very good question.

**CHAIR:** We have two more questions.

**The Hon. ROBERT BORSAK:** Mr Maltby, where do you and your party stand in relation to the Commissioner having a right of veto on the appointment of officers to your party?

**Mr MALTBY:** I was interested to hear your questions to the Commissioner before on that topic. That would seem to be a little bit excessive—those sorts of matters; the appointment of officers and other things—but nonetheless the underlying requirement that the party be able to provide or implement appropriate governance standards that would satisfy that public funding was not being misused is one that we would agree with, yes. I do not see from the Commissioner's response any willingness on their part or particularly I think of the Panel to suggest that they would then say that such and such a person was not fit to hold that office and that they would be actively vetoing people on that basis. We would be opposed to that, clearly, but I think nonetheless having an appropriate level of governance is an important requirement to be registered as a political party.

**The Hon. Dr PETER PHELPS:** Finally, again in relation to cohort donors, in Unions NSW the High Court made the quite obvious point that the donations cap set in New South Wales is of such a low level that they cannot be said to have a material effect in the promotion of corrupt activity on the part of members of Parliament. Given the High Court's decision in Unions NSW and the fact that those caps have been reduced back to $5,000—they have not even been indexed—should the whole need for cohort prohibitions go? Do you accept that you cannot bribe a Member of Parliament for $5,000 or less?

**Mr ASH:** I think you could certainly bribe a local councillor for that amount of money.

**The Hon. Dr PETER PHELPS:** Yes, but I am talking about—

**Mr MALTBY:** It is very encouraging to hear that. I am not sure that it is entirely true.

**The Hon. Dr PETER PHELPS:** Really?

**CHAIR:** For the record, The Greens are encouraged by Dr Phelps' comments.

**Mr MALTBY:** I know how bizarre that may be.

**The Hon. Dr PETER PHELPS:** Is the position of The Greens that if I gave any of their MLCs $5,000 they will start suddenly pursuing a classical liberal economic agenda? Is that really your position?

**The Hon. ROBERT BORSAK:** Can you produce that cash now?

**Mr MALTBY:** I think that is a rhetorical statement.

**The Hon. Dr PETER PHELPS:** I think it is, but it is an important one. The High Court recognised that cohort prohibitions are not needed. They said it was a belt-and-braces approach. Where you have reasonably low level donation caps, corruption is not an issue. Surely that is what we have in New South Wales and we should just do away with the cohort prohibitions.

**CHAIR:** I am sure you have taken that as a comment.

**Mr ASH:** We would disagree. They might be low level donations. Five thousand dollars is not so low and there is always the risk there. Why not keep it completely clean?

**The Hon. Dr PETER PHELPS:** The problem with your argument is that you say it is fine for the Nature Conservation Council [NCC] or Greenpeace to donate but it is not acceptable for Paddy Pallin, Northface or Anaconda, all of whom would benefit from an expansion of hiking with the creation of new national parks, to donate. You say that the Sporting Shooters Association could donate in support of an extension of, for example, duck hunting arrangements, but you do not say that Bankstown Gun Shop should be able to donate. The material effect of both sets of lobbying is the same and yet you have this glass wall which you claim is based on altruism which gives it some sort of legitimacy. Why not just accept that people have interests and should be able to donate up to a very low level?

**Mr MALTBY:** I think we can agree that something needs to be done immediately about the local government issue because, while that remains, you have the need to limit particularly the development industry who benefit on a daily basis from local government decision-making. We might disagree about the threshold. While you may find our position in relation to for-profit unacceptable, that is what our membership believes is the situation and that is what we have decided.

**The Hon. Dr PETER PHELPS:** My final question is: If the donation cap was set at $250, would you still believe in cohort prohibitions?

**Mr MALTBY:** In relation to those sorts of for-profit entities and so on?

**The Hon. Dr PETER PHELPS:** To tobacco, property, gambling, liquor. Would you still agree with cohort prohibitions even at the $250 cap?

**Mr ASH:** That is our policy.

**Mr MALTBY:** That is our policy, yes. I do not think that is a likely outcome, Mr Phelps.

**The Hon. Dr PETER PHELPS:** So the reality is it has nothing to do with it. It is who you do not like rather than an actual philosophical position. It is: "Let us find an industry we do not like and prohibit them from having any say or any material effect whatsoever."

**Mr MALTBY:** No, I think it is important for public governance. The ICAC and others have clearly indicated that there is a severe conflict of interest and the potential for corruption when people who stand to benefit in substantial ways from government decision-making at all levels are also the gatekeepers to the capacity for people to get elected.

**The Hon. Dr PETER PHELPS:** So they could not even donate $250?

**The Hon. ROBERT BORSAK:** That being the case, why would you not exempt small parties who are never going to be in power from those caps?

**Mr MALTBY:** They may be one day.

**The Hon. ROBERT BORSAK:** I mean, what chance does the Shooters and Fishers Party—unlike The Greens who do go into coalition with Labor from time to time—have? What chance have they ever got? Why should we be restricted at the same levels as you?

**Mr MALTBY:** It would be wrong to say that the Shooters and Fishers have not had influence over decision-making.

**The Hon. ROBERT BORSAK:** No, I said "in government".

**CHAIR:** Thank you, Mr Borsak, and thank you, Mr Maltby. I have one last question and I hope you can give a very quick answer. In relation to caps on third party campaigners, would you support the reduction of those caps?

**Mr MALTBY:** Yes.

**Mr ASH:** We do, but we think there should be a commensurate reduction with parties and candidates.

**CHAIR:** In line with everything else.

**Mr ASH:** In essence, yes.

**CHAIR:** Thank you very much, Mr Ash and Mr Maltby.

**Mr ASH:** Thanks.

**Mr MALTBY:** It has been a pleasure.

**CHAIR:** I am sure you, Mr Borsak and Dr Phelps can organise to catch up on the weekend to discuss further matters. We very much appreciate you turning up today to give evidence.

**(The witnesses withdrew)**

**KAILA MURNAIN**, Assistant General Secretary, NSW Labor, affirmed and examined:

**CHAIR:** Before we proceed, do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

**Ms MURNAIN:** I do not.

**CHAIR:** And you are the only person giving evidence?

**Ms MURNAIN:** I am, but I would like to introduce my colleague, Dom Ofner, who will be sitting with me today.

**CHAIR:** Before we commence questioning, would you like to give a brief opening statement?

**The Hon. COURTNEY HOUSSOS:** Before she does, I should just declare that prior to my election in March I was an elected official of the New South Wales branch for 9½ years and worked under Kaila.

**CHAIR:** So you will be nice to her then?

**Ms MURNAIN:** Maybe.

**CHAIR:** That is fine. Thank you, Ms Houssos. Ms Murnain, would you like to make a brief opening statement?

**Ms MURNAIN:** Thank you very much for having us here today. We welcome the opportunity to comment on the Schott report and the potential legislation that will come as a result of the recommendations in that work. Before I begin I would like to acknowledge the work that they have done in particular on trying to improve transparency in this space. We believe that any moves to improve transparency are important, particularly for the longevity of political parties in this State. There are a few issues that we would like to draw out of our submission and draw to your attention that we think are very important to our cause and to improving transparency for the future.

The very first one for us is administration funding and putting on the record that we do not support a reduction in administration funding, given the complexities of new legislation that gets introduced year after year. You would have seen from the Australian Electoral Commission [AEC] submission the number of times legislation has been introduced in the last five years—I think it was part way through their submission—and you would be well aware of the different legislation that has come into play.

What that has meant practically for political parties, particularly for the Labor Party in New South Wales, is that there is a requirement for us to continue to hire staff, provide training for our members of Parliament and our party members. We must remember that the Labor Party is a broad grassroots structure with over 690 party units, for which there is an executive for each one. We have a party membership of more than 20,000 members and more generally in New South Wales the issue of trying to keep up to date with our regulative requirements means we have to invest pretty heavily in making sure that our elected members and party members understand their full responsibilities about disclosure. I acknowledge that the administration funding has been very helpful in that. I would like to place on record that we are building a system at present into which we are investing a significant amount of money to ensure that we are able to, in real time, disclose our donations and come up with ways to create approval mechanisms for expenditure.

Expenditure has become a large component of disclosure in the last decade and it has required a lot more oversight from central party officers as opposed to being the responsibility of candidates. We accept that responsibility but also note that with that responsibility comes a requirement to invest in those structures, in software, and in staff, which is a significant cost to political parties. At the moment we are taking our time to introduce them because the money that is available for that process obviously comes in on a year-by-year basis. We are in the first stages of introducing one for the next election to keep up to date with the changes in legislation.

In addition to that, we also agree with the Schott report recommendation that a cross-party purpose donation system to allow for online real-time donation disclosure is very important. We believe there is a lack of

coordination in this place at the moment because there has not been financial investment in this to date. The legislation has moved far quicker than expected and technology has moved even faster, but the changes in technology have not caught up to where the legislation is at the moment. To avoid duplication and public funds being spent on various systems in various political parties, we fully believe that there should be a coordinated response in this space and will ensure that there are fewer issues about disclosure going forward. We believe this is integral to ensuring transparency in the system in the future.

We obviously have put our submission in, which we hope you have taken the time to read; I am sure you have. We took note of the Commissioner's response, particularly in relation to the Auditor-General. While we supported the original recommendation of the Schott review in principle, and in many ways still do, we believe that the Commissioner's recommendation about requiring additional resources for completing their own auditing and having that service come from the commission was actually a compelling argument, particularly in respect of avoiding double auditing and putting more hands on a procedure that, in all honesty, requires a little more definition. Rather than create double auditing standards and to ensure transparency, we believe that the Commissioner's submission on this front was quite compelling from our perspective, although we did not take an initial view on this. I am interested to take questions more generally. Obviously we welcome this report and its attempts to make funding and disclosure in the State more transparent, which we believe is very important.

**The Hon. Dr PETER PHELPS:** Recommendation 16 suggests that candidate funds be paid directly to the candidate. Do you have any view on whether that is a good procedure or do you believe it should still go through the central funding arrangements?

**Ms MURNAIN:** My understanding of the current system is you can indicate on the form where you want to direct funding. In many ways it worked with ease at the last State election and was very helpful. We believe it was quite transparent. Our candidates are aware what their funding requirements are, but in respect of the Schott report we support it in principle and did note that the form allows for choice in terms of where you want funding to be deposited. I note when Labor was in government the original intention of the legislation was to try to avoid handling from candidates as much as possible—

**The Hon. Dr PETER PHELPS:** That was my next question. Do you still agree with the view that candidates, if you like, should keep a hands-off approach to campaign funding and to continue the existing party agent system?

**Ms MURNAIN:** I might address the first part of that and then the party agent question; they are quite separate. Yes, we believe that it encourages transparency to keep candidates' hands away from their direct day-to-day relationship with the donations that are submitted to their campaign. On that point, it is not that they are not responsible for the disclosures and returns that are put in. The Labor Party in New South Wales has put in strict measures to ensure that the candidates are not only aware of disclosures that are in place, but over several communications with our office they have to sign off on everything that goes into a return and they are fully aware of what goes in. We do not want to take any more responsibility away from a candidate. We believe that responsibility is important for somebody who is running for Parliament. They should not be able to say that they are not responsible for the final declaration or for any issues with the disclosure. Ultimately, it should be their responsibility, but we fully support the idea that candidates should not be dealing day to day with their donations or their accounts. When we were in government we felt that that separated any potential for corruption and we believe any move to reduce that or bring it back to the way it was before we introduced the legislation would be problematic.

On the party agent front, this was a really interesting question and we toyed with it a lot in respect of the Schott report recommendations. We acknowledge the issues that were raised in the initial interviews with the Schott panel that those who are ultimately responsible in a political office should be the ones who are signing off, whatever declarations are given to the commission. Ultimately, those officials, in whatever organisation, are responsible. We noted, however, that the role of the party agent has been helpful for the party more generally because it provides one point of contact. We noted that in our submission. That allowed for one point of contact. We get in touch with the disclosure officer or the people who are in charge of auditing at the Commission. This is one person who ultimately passes information down the line from the Commission to the party office.

If there are multiple people who are ultimately responsible—I believe they are responsible anyway, and certainly advice from our lawyers tells us that our party officials are ultimately responsible for the disclosures in any case—but having a particular person who is responsible for ensuring compliance with the Act has helped to streamline some of those issues where you might have multiple people in an office dealing with the

Commission. For example, in the past we may have had a finance officer, a disclosure agent, and an executive officer all dealing with the Commission. The Commission is now very strict. If it is having discussions or it provides written advice to our office, they make sure they are communicating through that person. I would be wary of getting rid of that role altogether in respect of the important contact they provide and the point of communication between the two organisations. I would say that the responsibility does ultimately lie with the executive of whatever organisation it is. I note that every political party is different in structure and size and we have to acknowledge that in this fit.

**The Hon. PETER PRIMROSE:** I want to ask you about the recommendation about caps on donations for local government. Can you elaborate on your reasons for supporting that?

**Ms MURNAIN:** We have been very clear about this from the start. The Labor Party supports any moves to improve transparency, including local government. I certainly support it. I note the comments of Labor leader Luke Foley in this space as well. He has been strong in calling for caps on local government. It is more about consistency and ease. It is very confusing for our party membership—our candidates and our volunteers. Candidates who run in local government and then run for State government as well, within a short period of time, are dealing with two levels of funding and disclosure mechanisms but do not have the same caps on donations that there are at a State level. It has caused confusion for members, who are ultimately responsible for overseeing those donations. That has been a big issue in terms of our communication and training of people.

We believe that some transparency and consistency across levels of government would not go astray. We believe that any move to reduce corruption risks is also very important. We know that caps on donations and the reporting structures around that provide cover and protection for the people of New South Wales. We supported the issue of the prohibited donors as well. We fully supported the decision of the High Court and their various reasons—which I do not need to go into because you have all read it—in terms of why they have kept that in place. If you have rules like that for local government you should have caps as well.

**CHAIR:** In relation to third party campaigners, I note that you do not support recommendation 31. Given that in 2011 the highest was around $400,000, why would you not support a reduction to, say, half a million dollars?

**Ms MURNAIN:** We made it clear that we definitely support the current levels of funding. They were put in place in consultation with third parties. You have some third parties appearing before you today. We are not a third party so we are providing an opinion on this rather than facts in terms of our organisation, because we do not donate in that way. Just because they have not reached the caps does not mean that it is not appropriate level. The initial reason for setting those levels was a decision for those third parties. We would not want to restrict them any more than they are currently restricted, as long as the current levels of disclosure and transparency obligations are not only maintained but improved. I believe that they play an integral role in our democratic system.

We also have increasing costs in terms of campaigning. On 1 January postage fees will increase, which will increase the cost of some mailing by up to 40 per cent. Although they did not reach the cap last time there will be considerations for expenditure that should be taken into account. I believe that this committee is a good place to discuss that. We acknowledged the issues around setting those levels later in our report.

**Mrs MELINDA PAVEY:** Thank you, Ms Murnain. I am very impressed with your testimony—why are you with Labor? I see that you do not support recommendation 18 with regard to administration funding. Would you prefer to stay with the current model? Can you elaborate on that for our committee?

**Ms MURNAIN:** We support the current model. I note that there are requests from some of the minor parties. I will not go into those requests because I think they are better placed to discuss them. From a purely practical point of view for our party, and our budgeting purposes, the level of funding at the moment has allowed us plan better in terms of building the system that I was speaking about before. That level of funding gives us more certainty to hire more staff on a permanent basis. If we were to revert to lower levels of funding—I believe the recommendation was to take it to the 2014 level or lower—we would not have the funding necessary to build the online component of our funding and disclosure system. I also note that we are currently in the process of expanding our disclosure team.

We have hired someone in addition to our finance team. That person's job has been about educating, and completing our disclosures. It would be our preference to continue that person's role in our office—not only

in terms of systems development. At the moment we make sure that, over time, we have enough money to hire additional staff in the period of disclosure. We firmly believe that we would avoid a lot of the issues that all parties have in this space if we could keep a staff member on for a longer period of time to allow for educating our Members of Parliament, potential candidates and, more importantly, our 692 branch party units, which create significant demands on our time. In all honesty, I feel that we could do more to educate those people. In terms of developing an online system and software to enable us to improve the expenditure approvals process, we need the current levels of funding. It is that simple. We have done the budget.

**The Hon. Dr PETER PHELPS:** Early in testimony The Greens indicated that they would like to move away from the current system of dollars per vote subject to a cap of expenditure, to a system of straight dollars per vote. Do you believe that the requirement to justify expenditure poses a regulatory burden upon you which you cannot meet?

**Ms MURNAIN:** That is why I have advocated for keeping the administration funding. Before 2014 it was very difficult because the levels did not allow us to put as many resources towards that process as we would have liked. With the current levels we are more easily able to do it. It is still a pretty significant requirement on our resources. The disclosure of expenditure does take a period of months for our office, as most political parties know. Often the issue is expenditure, because we have 93 candidates across the State whom we require to let us know what they have spent and when. It can be pretty draining on our organisation. Again, that is why I reinforce the need for administration funding. We support transparency in this space. Where and how money is spent is important in terms of ensuring transparency. It was the Labor Government that advocated for this in the first place, when it was in power. We have not shifted our position from that time, but we have sympathy for the smaller parties in this space.

**The Hon. Dr PETER PHELPS:** Would it be fair to say that the position of the Labor Party and Labor Party members is that minor parties—I am referring particularly to Pauline Hanson—should not be able to make windfall gains simply by running for the Parliament, then parlaying their personal popularity into a cash benefit, which is completely divorced from their actual expenditure.

**Ms MURNAIN:** Absolutely.

**The Hon. ROBERT BORSAK:** I would like to talk a little more about administration funding. Given the complexity that you are trying to deal with—because of the complexity of the organisation and the increasing levels of accountability that will be required if and when the changes mooted by the expert panel are taken up by government—would you need an increase in funding rather than a reduction in funding?

**Ms MURNAIN:** We believe that the current levels are sufficient but we believe that the levels need review every year. Without seeing new legislation it is impossible for me to speculate. I would always advocate for more funding to allow for improved disclosure responses and improved transparency. With that come additional requirements to ensure that we adhere to the current Act. We would have to see a new draft of the Act to determine exactly what sorts of levels of income would be required to adequately deal with the disclosure mechanisms required under the new Act. This group is about—

**The Hon. ROBERT BORSAK:** On another tack, there seems to be an inference in the panel's recommendations that somehow the structure of governance—the Labor Party is not the only party I am talking about—is somehow inadequate. Do you have any comments to make about that, especially in relation to recommendation 34? Recommendation 34 dealt with the veto power that the Commission was going to have about who can and who cannot be senior officers. They would be regularly reported, according to the recommendation.

**Ms MURNAIN:** I acknowledge that there is a need for senior members of any political party to be ultimately responsible for what gets submitted in terms of disclosure of donations and expenditure. What we suggested in our original submission was pretty clear. We believe that a better tack would be to set out a series of requirements of someone in one of those senior positions. It does baffle me that you would provide a list of people and then potentially be knocked back on a set of criteria that you are not aware of. You should be provided with that criteria prior to having to submit those names.

In terms of our party and in terms of our governance, I am pretty confident that the reviews that we are doing into our own governance are very transparent. We have two independent directors that were appointed to our administrative committee during the Kevin Rudd reforms. We also have two ombudsmen who oversee any

of the challenges that we see in terms of individual party members on any of these fronts. The independent directors have been very helpful in terms of interpreting the recommendations of the Schott review and actually coming up with our own list of internal rule changes that we intend to take to our State conference next year to enable us to pre-empt any changes that may come as a result of that review. We already adhere to the strictest requirements in terms of our financial reporting. We do what is required of unincorporated associations and in fact we over-disclose in most of our cases.

**The Hon. ROBERT BORSAK:** I will just stop you there. Really, that recommendation is going to character, is it not?

**Ms MURNAIN:** Yes.

**The Hon. ROBERT BORSAK:** Also it goes to the power that those people who are holding those positions will have, or will not have. I am not asking you to comment on what is going on at the Federal Royal Commission at the moment, and I would expect that where the Labor Party draws its obvious, not just financial support but day-to-day, support is from good people coming out of the labour movement. Some of those people may potentially in the longer term be tainted or not tainted; I do not really know. But the point really is this: Do you think it is wise for bureaucrats to be drawing a line across the quality or the lack of quality of people that you may need within your organisation because of, or potentially because of, their background?

**Ms MURNAIN:** In politics, people come from all walks of life. If we were not to acknowledge that, then we would be kidding ourselves. But there is a higher requirement on not only publicly elected officials but on those people who run political parties. As I said before, the better way, or the way that we would be prefer, is a minimum set of standards in terms of training, understanding of legislation and in terms of governance and understanding the way in which organisations run.

**The Hon. ROBERT BORSAK:** Really what you are saying is that they should not have a right of veto. The governance has got to be strong and the measurement of that process has to be strong. That is what you are saying.

**Ms MURNAIN:** I would prefer the Commission to set a set of standards for us prior to having a right of veto.

**The Hon. ROBERT BORSAK:** Should that be run through an incorporation of the Labor Party?

**Ms MURNAIN:** I am sorry, now you are talking about the status of any political party.

**The Hon. ROBERT BORSAK:** That is where we are going.

**Ms MURNAIN:** I understand that. My first thoughts on this are that to impose a set of standards in terms of governance of political parties, in terms of one particular way or one particular structure suits all, would be sort of taking away the power from our members who have set up these structures to begin with.

**The Hon. ROBERT BORSAK:** But that is what you are asking. You are asking the Government or the legislation to do that for you de facto.

**Ms MURNAIN:** We are not asking for that specifically. You can still define an entity under the law without forcing political parties into a particular structure.

**The Hon. ROBERT BORSAK:** Okay.

**Ms MURNAIN:** We understand that every political party is different. We know that some are incorporated. We know that some Federal levels are incorporated and some are not; State levels are unincorporated or incorporated associations limited by guarantee. It is different per party. We do not contend that we should not have additional requirements in terms of governance or structures. We just believe that—or I believe that—the party members do have a right to determine the way that their party is structured, and our conference is the way to do that. You can still simultaneously have improved governance and improved transparency without forcing a system on a political party.

**The Hon. BEN FRANKLIN:** Picking up from Dr Phelps' point about the public funding of election campaigns and going to recommendation 14, it seems that from your submission that you are quite comfortable about what happened in 2015, and I guess I am just checking. Do you feel that the public funding model in 2015 was an acceptable one? Do you prefer it to what was done in 2011, which was obviously a percentage of expenditure rather than a dollar per vote, but still having to vouch for expenditure?

**Ms MURNAIN:** I think there are two parts to this question. The first part is the legislation itself and then the second part is the interpretation and how it is actually implemented within political parties. When the Labor Party was in government we did opt for the expenditure model, and we do note the large report from the Schott review and the committee about returning to that model and, indeed, the Commission's own recognition that the vote per dollar model was only for the 2015 election and actually reverts automatically for the next election until new legislation is introduced.

We support the 2011 model but do note that the 2015 model was introduced with relative ease. This might be the way that the Commission implemented it, but it meant that our public funding was returned much quicker after the election. That did allow us to pay those people who had outstanding bills with our political party. It enabled us to pay those people without extending our finance. In addition to that, it did mean that our disclosure, in terms of putting forward our claim for payment, was a lot quicker. In 2015, I guess because it was new legislation, it did take a very long period of time to get back candidate-specific funding. If there was a way to ensure the current interpretation and proactiveness in terms of understanding that political parties cannot wait a year and a half for public funding to be able to settle its debts, so to speak, then we do not necessarily take a view either way. But we do note the merits of both systems.

**The Hon. Dr PETER PHELPS:** Continuing from Mr Borsak's question in relation to recommendation 34, presumably you are an elected position as Assistant General Secretary?

**Ms MURNAIN:** Yes.

**The Hon. Dr PETER PHELPS:** What is the efficacy of a bureaucratic department or a bureaucracy saying, "I am sorry, but we don't believe that you have the talent to run your organisation to the extent that we would be confident about funding and organisation."? To elaborate on what you were saying, I think you are moving to a situation where you said the Electoral Commission may well provide guidelines, or guidance, on what various levels of officials should be able to do, but there is something fundamentally wrong with an assertion, as in recommendation 34, that the internal operations of a political party should be subject to, effectively, an external veto.

**Ms MURNAIN:** As I said before, I completely understand the merits of that argument and, as I said before, our membership has control over our rules and certainly elects my position and others in the office in terms of those people who ultimately are responsible for signing off on our disclosure. I have raised concerns about that in what I have just said, but I do not believe you can throw the baby out with the bathwater on this one. The commission should provide a list of roles and responsibilities—and training, I believe—for people at the top of political parties in terms of governance and procedures around and in that space. As I said, people from all walks of life constitute political parties.

**The Hon. Dr PETER PHELPS:** Do parties not provide that themselves?

**Ms MURNAIN:** Parties do provide it as well, but I believe that if you are going to get uniformity and transparency across all parties—particularly I might add for those smaller parties that may not have as many resources as we do—give them some of the training required to understand the legislation better and come up with criteria of things that you would need it to complete to be the person to sign off. Yes, of course it is an issue if an elected official, who is ultimately responsible—and we believe our party officers and our administrative committee ultimately are responsible—is overruled if at some point the Commission has the authority to be able to say that we should not be responsible because of an opinion it has reached without any criteria.

**The Hon. Dr PETER PHELPS:** But it is worse than that. It is saying that your party should not receive any funding "Because we don't believe"—and it lists, for the Labor Party, President, Deputy Presidents, General Secretary and Assistant General Secretary. Presumably if they develop a dislike for the Left's Assistant General Secretary, they are going to go, "Sorry, no money for you. Sorry." Really, that is a step too far.

**Ms MURNAIN:** I think we are on the same page, but I would also add an additional recommendation that I do believe the Commission should provide additional training and even a list of things that they believe in terms of governance and procedures that the leadership of a political party should work through when they get these positions.

**The Hon. Dr PETER PHELPS:** Should is different to must.

**Ms MURNAIN:** You will not find disagreement from me on that point.

**The Hon. ROBERT BORSAK:** They might not even get to training because they will be vetoed before they get there.

**Ms MURNAIN:** And we would be greatly concerned about that.

**CHAIR:** On behalf of the Committee I thank Ms Murnain for appearing before us. No doubt we should look forward to seeing you in this place one day.

**(The witness withdrew)**

**(Short adjournment)**

**TONY NUTT,** State Director, Liberal Party of Australia (NSW Division), sworn and examined:

**CHAIR:** Before starting proceedings, do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

**Mr NUTT:** No.

*[Due to technical issues, the opening paragraph of Mr Nutt's evidence was not recorded.]*

…I think they make some goods points about its inadequacies. I go further and say that it needs a full redesign. As well as the criteria of simplicity and effectiveness I think it needs to be thought through in a system design sense. Merely taking the existing legislation, tinkering here and there and adding things in is not the best use of the work of the Committee. I think there is room for improvement of the architecture for the conduct of elections and framework for democracy in New South Wales in so far as the parties and electoral system impact on it. The reason I say that is that I think system design is crucial. It is 3½ years to the next election, so there is enough time for the committee and for people in Parliament to think through the broader issues of the system to see how it can be made more effective with a best practice approach rather than adding on bits and pieces, a tidy up, and saying, "Haven't we done well?"

I will give you some examples. You need to review more than the regulatory framework and compliance laws. In particular the framework can be affected by incentives within the system as well as compliance issues. You obviously need compliance and a legal regime to deal with people who are seriously attempting to do the wrong thing. You can use incentives to build a better election system for New South Wales. It is my submission that the combination of the overall cap on electoral expenditure per party and the increase in public funding introduced by the Government last year has been a significant factor in improving the integrity and effectiveness of the system. That is a system design issue.

You have a cap that is designed to limit the arms race. Other jurisdictions in other countries, such as the United States, have a situation where the drive for ever larger sums of money can create problems. By having an overall cap, that limits the arms race. When I look at the submissions, the system that I think some parties had some reservations about, but are perhaps prepared to wear, if not enthusiastically, has had the effect of making the payment of X dollars in the Assembly and X dollars in the Council acceptable. It has raised the amount of public money, but not hugely. That means that between the cap and the money available to parties on a dollar per vote for both Houses, with particular arrangements for independents and smaller parties, it has the effect that you can still do fundraising.

You cannot have 100 per cent of public funding for all sorts of constitutional and legal reasons. Far more eminent persons than I will have said this to the panel and this Committee. What you can do is have fundraising taking place at a level and in a way that allows—different parties do it in different ways, I recognise that—parties in the normal course of business to raise the money they need. Public funding comes in on top at a level that allows the system to work well. You have an overall cap so you do not have an arms race. The tendency of any party, MP, candidate, office bearer, whoever, wherever or whenever to wander around, shall we say, the back alleys looking for other ways of getting money is obviated.

My broader point is that system design can help you as much as regulatory or compliance regimes. You need those. You must have a regulatory framework and a compliance regime, but system design has made a significant impact on the electoral system in New South Wales and it is to the credit of the Government for doing that. That is a good example where standing back and looking at some of the problems across the spectrum and identifying structural change that might offset those changes, introducing that as an incentive and as a way of making the system work better, has been effective; provided you have the other aspects of the system including the overall cap.

I start off by saying that you need to have a look at the whole Act and look at it from a smart perspective. I think there is a lot of opportunity for state-of-the-art or best practice review of processes right across the spectrum, whether it is public funding, compliance, or the operation of the Act as it affects the conduct of elections. Whatever the particular activities you have enough time to do it and it is worth doing in a sensible and careful way, which will assist the overall system in New South Wales. I use that as an example. I think that the Committee and the panel have done a lot of good work. There are some aspects of the panel's work that need to be tested as the Government's response said—when it brought down its response—against the practicalities.

This Committee is well suited to look at the practicalities of what a good, efficient, transparent, accountable democratic system requires and for you, as MPs from both Houses, to assess that and to take counsel in coming to those views. There are a number of areas where there can be further improvements. In concluding, I am happy to take questions from the Committee. I think that it is an excellent document. They are to be commended for all the work put into it. It will be enriched as part of a wider process in which the practicalities and the system design are tested by the committee and Parliament. That will add value so you end up with an electoral Act that is better suited to the people of New South Wales going forward.

As you know, I have examples to deal with in questions. The current regime can be quite challenging for the people who have to administer the system or who are administered by it. You, as MPs, know the challenges you face. Party officials have all sorts of challenges, whether they are the staff of the party, like me, or elected office bearers of parties. Whatever the structure of the party, however each party works, there are challenges there. There are challenges for the commissioner and his officials. As a matter of record I think the commissioner is an outstanding public servant and he and his officials perform their duties with distinction and very professionally.

The legislative regime they work in imposes obligations on them, the parties, you as MPs, and officials. There is a lot of opportunity for improvement. There are specific areas that we may touch on when we come to questions. The broad point is that there are a lot of areas in each of the key aspects of the Electoral Act that could do with clarification. The Panel recognises that the law must be clear and applied fairly. Where it imposes obligations on people, those obligations are clear; where it imposes penalties, those penalties are fair and proportionate. The way in which people are dealt with in the system reflects the needs of the system and the challenges in the system.

With respect, you do not want a situation in which laws are extensive and unclear, and people do not know their obligations, but there are severe penalties for breaching laws you cannot understand or understand easily. While you can say that the larger parties might have the capacity to employ people—and the public administration funds assist in that—independents and smaller parties face these obligations. However, even for a major party such as the Liberal Party there are the costs associated with and uncertainties about the law. I do not want to go into specific examples, but I can assist the Committee by saying that even when I or my party agent contact the Commission to ask specific questions of intelligent, hardworking and efficient officials—I make no criticism of them—it is disheartening to know that they cannot provide the answer.

However, if you get it wrong you might be subject to rather severe penalties. Some Members may have had that experience. That is a small issue. The Parliament might, for good public policy reasons and in response to particular issues, expand the regulatory aspects, place more responsibilities and obligations on people and apply significant penalties. I will provide a particular example of that in a moment. However, it might not be clear what you should do, how you should do it and how any honest intelligent person can comply. You might subsequently—sometimes quite a while later—be called to account in situations where you have sought to comply but made honest errors, and the threshold for punitive action might be quite low. As Dr Schott and her colleagues say, an Act that is as simple as possible, given the nature of regulatory environments, and that allows people to work out their obligations—whether it is an Act and regulations or whatever—is important.

My other observation is that certain aspects of these recommendations will impose additional obligations on individual Members of Parliament and candidates, and they carry significant penalties. Notwithstanding the thinking behind the report and the methodology of improving integrity, transparency and accountability, I wonder whether that is the best for parties, independents or smaller parties in dealing with members of Parliament. Not being a Member of Parliament, I put it to the Committee that members have many other things to do rather than endlessly keeping records and ensuring absolute compliance with every aspect of the law. There are other mechanisms by which compliance should be required, and I agree with that. However, I am not sure whether having individual Members of Parliament and candidates as the primary compliers is a good use of your time, or the people's time and money.

As some Members know, I have worked in alot of States and at the Federal level, not only New South Wales, and principally elsewhere. Overwhelmingly, and notwithstanding any occasional commentary in opposite directions, the men and women who come into Parliament from all parties—small parties and big parties from across the political spectrum—do so for good and honest reasons. They comply with the law, as do their staff and party organisations. While errors, mistakes and sometimes transgressions occur—we should be alert to that and have a regime to deal with it—we need to keep things in proportion when it comes to tackling

responsibilities and obligations. There must be system integrity, but also common sense and recognition of the challenges actually faced as opposed to challenges that are intellectually interesting to discuss.

**CHAIR:** I remind members that the Committee has five more witnesses to hear from today, so I will keep proceedings moving according to the timetable. We are scheduled to hear from Mr Nutt until 11.45 a.m., so Members should stick to questions rather than comments.

**The Hon. Dr PETER PHELPS:** It is recommended that the Auditor-General rather than the Electoral Commission be responsible for auditing of political parties that receive public funding for administration expenditure. My view is that that is unnecessary and that the Electoral Commission does a good, thorough job. Has it been your experience that the Commission has been thorough and diligent in its auditing processes?

**Mr NUTT:** The Electoral Commission is thorough and diligent within an inch of your life.

**The Hon. Dr PETER PHELPS:** Taking what you said previously, one of the recommendations seems to broaden the desire to have strict liability offences without a substantial rewrite and clarification of the Act. That seems to me to be a massive recipe for disaster in that strict liability is fine if everything is neatly and clearly defined or if you can obtain legally binding advice from an authority that can give it. Failing that, would you agree that the extension of strict liability under the existing legislative framework is fraught?

**Mr NUTT:** That is absolutely right. As I said earlier, you want laws that are clear and that are easy for the participants to understand, remembering that a legal regime always has its complexities. You want people to understand through the law, regulations, handbooks and guidelines what they can and cannot do. That affects the life of every Member around this table, other Members of Parliament and parties. People should have a pretty good sense of what they can and cannot do. They might be uncertain about where to go and whether they will get an answer that will not get them into trouble. For instance, and using an example from other jurisdictions rather than New South Wales, there are issues with parliamentary entitlements at the Federal level and in other States where I have worked. I have seen honest men and women from across the political system get traduced, abused and find themselves in enormous trouble because of unclear systems and guidance. As a matter of principle, the law should be clear and you should be able to get guidance. Where obligations are imposed, there should be guidelines.

The Liberal Party is overwhelmingly a voluntary body. We have thousands of volunteers, 550 business units, but we do not operate all accounts from head office. There are many people in electorates across the State, branches, conferences and so on, and other parties have the same arrangements; it is not something peculiar to the Liberal Party. Overwhelmingly, those people are volunteers. They are doing something other than working full-time for us for a living. I do not know about other parties, but our people do not spend four a days a week on 100 per cent compliance. That is not what they do; they run their businesses and have families and do whatever they are doing. There needs to be a bit of common sense when it comes to compliance. Of course, you do not want that to be an excuse for inappropriate conduct that could distort the electoral system. However, the first point is that a bit of common sense is important.

The second point is that where breaches are apparent, common sense should be applied about whether it is an error or omission made in good faith, or whether there is a pattern of conduct or behaviour that raises legitimate questions. For instance, the Commission could say, "Tony Nutt has been up 19 times before." To use a phrase from Gareth Evans, "He's an old lag and not a young mistake-maker." That is fine. If you get a pattern of activity that is clearly a problem, you take strong action. However, with volunteers, new people or small errors where it is clear they were made in good faith and are not a pattern of behaviour, that would raise questions about serious attempts to rort or to misuse the system where there are issues and the laws are unclear. As all Members know, the law is unclear. For all those reasons, to introduce a regime that says you will comply 100 per cent and there is no excuse for noncompliance, the merest noncompliance will bring down the devils from hell and that seems disproportionate to the task.

Just to emphasise this point so no-one misunderstands—I am sure the Committee does not—of course you need a legal regime; of course you need compliance. It needs to be proportionate and it needs, again, a bit of common sense—I say "common sense" but I think you know what I mean. I am sorry for the long answer, Dr Phelps. The final thing is I think that people in political parties should be treated by the law in the same way people in other institutions, organisations or businesses, wherever they are in society, should be treated. I do not think that political parties require lower legal thresholds or mechanisms designed to put heads on poles just to have heads on poles, as against if there are people who have done the wrong thing, they should be dealt with.

I refer to the suggestion that you need to strip away the rights that citizens would have if they went to a court or were dealing with a tribunal or a body in any other capacity and that they have much lesser rights if they happen to be an MP, a staffer or the vice-president of a branch who took $50 from someone and no-one told them that they were building a house three towns away that no-one knew about and they came to the barbecue. I am giving you a particular stylised example but that person is not really what we would call a serious criminal. I think a bit of proportionality needs to be applied. The tests that are applied—I am sorry for the long answer—should be the same as for any other Australian in any other set of circumstances.

**CHAIR:** Thank you, Mr Nutt.

**The Hon. BEN FRANKLIN:** Do you think there are any specific recommendations to which the Committee should pay particular attention? It is obviously a fairly exhaustive list.

**Mr NUTT:** I will make a couple of observations that are meant constructively. I think overall the report and the Panel are to be commended for the work that was done. I am not sure that it is wise, for instance, to look at cutting administration funding at a time when the Panel is also recommending a substantial increase in the obligations on people. I mean no disrespect; it is just that I am not sure that I see the connection; that is the point. I do not think that there should be a cut in public funding for campaigns. On the contrary, it is my view that with the Government's improvements last year to the method of payment—I appreciate there were different views and in particular the Labor Party had its own views and I do not say this in a partisan way—if you look at the submissions now before the Committee parties are adjusting into the new system.

More importantly, as I said right at the beginning, caps are crucial for the arms race. An adjustment in public funding is a useful incentive and that means for all parties. I can tell you as a campaign director myself—I will not speak for Jamie but I suspect that the same applies for Jamie and perhaps for Mr Franklin in his previous life—there is a sense that you know you can reach the level of money you need without being wasteful or extravagant with public money or party money, so what you can properly raise in an ethical and appropriate way plus public funding money. That system design would do more toward integrity because, for example—there are a couple of Liberal MPs present and I will not speak for MPs of other parties—the State director is not ringing you up all the time and saying, "Mate, more money."

I think that reform was a very important reform. It is what I call an incentive reform, within limits and properly audited by the Commission, et cetera, I hasten to say. I do not know why you would want to cut that back and save a couple of million dollars a year over a four-year cycle but then go back to a system in which there were pressures on people to jack up for the money. I think, as I said before, the move to a system of dollars per Legislative Assembly and Legislative Council works quite well.

With due respect to the MPs present, I do not favour paying it to candidates and MPs. I detect—and I say this very respectfully—a slightly wistful desire to return to an earlier system. Perhaps it was known to the two former MPs who served on the Committee. I will make no observation about the former distinguished Labor MP. But perhaps some of the thought patterns were about an earlier era in which campaigns were run. MPs and candidates are not now semiautonomous individuals who get together with a few friends, raise a few bob, publish a brochure, have three meetings, the leader comes and visits once, maybe there is a TV advertisement, perhaps something on the trannie, maybe a brochure from head office, and they pretty much wander around just campaigning locally. I know that is a caricature, but I do detect this idea that campaigns are to be—

**The Hon. Dr PETER PHELPS:** The good old days.

**Mr NUTT:** Yes, that is right—with undisciplined, constant tweeting.

**CHAIR:** Thank you.

**Mr NUTT:** But that is meant very respectfully.

**CHAIR:** I am conscious of the time. The Hon. Courtney Houssos has a question and the Deputy Chair has a question, but please respect the time that we have.

**Mr NUTT:** My apologies for the long answers—I will try to be crisper.

**The Hon. COURTNEY HOUSSOS:** I appreciate your time, Mr Nutt. We appreciate your extensive knowledge and your honest and frank advice to the Committee.

**Mr NUTT:** Thank you.

**The Hon. COURTNEY HOUSSOS:** What is your view on the incorporation of political parties? The report recommends incorporation. The Labor submission is in favour of just deeming political parties as legal entities for the purpose of the Act. I am interested to get your thoughts.

**Mr NUTT:** I will try to be quick. I look at all these things from a democracy point of view. Civil society has politics. It organises its politics—not entirely, because there are obviously Independents and smaller parties, but overwhelmingly—in a Schumpeterian way. That is to say most electors in New South Wales aggregate behind the Australian Labor Party and its cluster of people and institutions and the structures in which it runs, and the Liberal and Nationals parties. Now, respectful of other players, there are Greens, there are Independents, obviously there is Fred Nile and there are the Shooters, et cetera. So it is healthy in a democracy to have parties.

Parties should be structured in a way that promotes their primary purpose, that is, to motivate people, to aggregate people, to identify people who might be suitable for public life, to develop policies, to run campaigns, to argue, to articulate and to be a clearing house—as Paul Keating once said, for the democracy. That is their primary purpose. The rules and procedures—the governance—around parties, while recognising that you need a regulatory framework and that if you have public money being paid it must be accounted for and must not be misused in the broader sense of the term, must be sufficient but not excessive.

I am not sure what the principal requirement really is for some of these changes. If I can express it this way: I do not think that volunteers serving on a management committee are best treated as if they were directors of Rio Tinto, unless the State would like to pay us significant sums of money so they can all have lawyers. Parties should run honestly, openly and transparently. They should spend public money properly, they should obey the law and all those things—I just want to emphasise that so I am not misunderstood—but the regime in which they work should be a practical regime.

I am not sure precisely why we need some of the changes that have been suggested. If there are practical changes to be suggested, I think they should build on the work of the Panel through this Committee and be the subject of some consensus amongst people as to what works. Just to give you a practical example, some years ago one of the divisions I worked in when I was a much more junior officer was subject to the Associations Incorporation Act. There was a minor legislative amendment to the Associations Incorporation Act in that Parliament—not the Parliament of New South Wales—many years ago, and they woke up to find that it was almost impossible to change the constitution of the division concerned because it had gone from two-thirds to 75 per cent because of a legislative amendment designed to deal with all sorts of voluntary organisations right across the spectrum.

As you know—and I can only speak for my own party—issues of constitutional amendment are quite important. You do not want a situation in which things just happen. I am open to speaking on behalf of the Liberal Party to change that is necessary, change that is workable, change that enhances integrity and accountability, et cetera, but I am not always sure what some of these changes are designed to achieve as against perhaps making a point.

**CHAIR:** Sixty second question, 60 second answer.

**Mr NUTT:** My apologies.

**The Hon. ROBERT BORSAK:** Mr Nutt, to follow on from that, I take it that you are not really in favour of the Commission having a right of veto or detailed examination of potential party officers and whether they are senior or junior as a prescriptive way of dealing with the so-called governance of political parties?

**Mr NUTT:** You are correct and there are two reasons for that. I will try to be quick, Chairman; I apologise for giving long answers. First, if what is required is a public register of who is the director and the president and the vice-president and the treasurer, that is fine. Other parties, I am sure, will agree with that. It is very straightforward. Most people have it on their website now. For instance, it is not much of a secret who is

the Acting State President of the NSW Division of the Liberal Party. There is a certain level of information. If that is thought helpful to the community, that is fine. I do not agree with this because I think it will have a bad impact on the Electoral Commission. The effect is to ask the Commissioner—and we have a Commissioner; he is a very fine Commissioner—whoever that person is, to enter into a world of hurt in which they are going to make judgements, not on a very limited technical sense about a breach of an Act or something like that, but much more widely as to who is a fit and proper person. It will not come as news to anyone in this room who is an elected person that there is sometimes debate even within parties let alone across the spectrum as to who might be a fit and proper person. That is the first thing. I think it is unwise to ask the Commissioner, other than in extremely limited cases where someone has committed criminal offences or something, to have this broader view of entering into that.

Secondly, this idea to have internal party governance issues, which have been justiciable since *Baldwin v Everingham*—for those of you who follow the intricacies of justiciable arrangements relating to political parties—to be able to be raised with the Commission would indicate that the Commissioner will need a lot more staff and will spend a lot of time arbitrating, dare I say, internal disputes in parties in dealing with numerous allegations, which occasionally may have some element of truth to them, but are usually confected for other purposes within parties, and will inevitably politicise the Commission. I do not think it is practical. I am not sure it is necessary and I think it will have an undesirable impact on the commission as an institution.

**The Hon. ROBERT BORSAK:** Does it not also fundamentally get the servant over the master in respect of the political process?

**Mr NUTT:** I think—and the current Commissioner is a good example of this—an astute, experienced, knowledgeable commissioner keeps the system honest and keeps us all honest, which is a good thing—members of Parliament, staff, everybody—but when you try to pull the Commission into tasks that it is not really there to do and that inherently politicises them, that is a problem. To pick up your last point, and I am not saying necessarily this is based on my New South Wales experience, this is based on my wider experience over 35 years—in particular I worked for a Prime Minister for more than 10 years—the idea that there are platonic guardians who are antiseptic and removed from any potential fault—

**The Hon. ROBERT BORSAK:** Corruption.

**Mr NUTT:** —to whom so many things can be sent and who will be antiseptic in their management of issues is favoured by some lawyers and some other people because it tends to transfer power, generally speaking, from the elected people to other people, who often are lawyers. It is based on a false assumption that there is the antiseptic world in which there are nice people with clear rules who can do these things and they will make wise judgements—the platonic guardian model—as against the parliamentarians or other actors within the political system who are inherently inferior. The truth is that a lot of issues should be cleared through the Parliament. They should be in the hands of the elected people, Ministers and parliamentarians. They should be publicly accountable, and they are publicly accountable through the Parliament and through the Executive Government process.

That is a better way of dealing with a lot of the challenges. For instance, to finish on this note—and I apologise for my long answer, Chairman—I do not agree with the suggestion that public funding be set by somebody else. It should be set by the Parliament. If Parliament wants to put up the dollar per vote or change the laws, or whatever, it should do that. It should be subject to public accountability, scrutiny by the media, go through both Houses so all the players in the system can see it, participate in it, campaign for or against it, whatever they want to do, but accountability and transparency in that sense is far better than sending things off to the illusion of antiseptic decision-making by others because in many years in public life, albeit as a staffer and party official, I have not seen too many platonic guardians.

**CHAIR:** Mr Nutt, thank you. We appreciate the time you have given us today and your honest and frank answers. No doubt our paths will cross very shortly.

**Mr NUTT:** Thank you, Chairman. My apologies for being slightly longwinded.

**(The witness withdrew)**

**ANNE TWOMEY**, Professor of Constitutional Law, University of Sydney, sworn and examined:

**CHAIR:** Before we proceed with questions, would you like to make an opening statement?

**Dr TWOMEY:** No. To save time it is probably better to say I am here to help the Committee. I have constitutional expertise, as much as you can use it. I put one caveat on it. As you are well aware, the political donations area is full of an enormous amount of highly complicated provisions and information, and although at various stages I stuff it all inside my head when I am dealing with something—writing a submission, whatever—it inevitably goes straight out of my head afterwards. I apologise if I am not completely up to speed on this. I have been up to speed in the past, but I cannot always keep all that stuff in my head, otherwise I would never be able to do anything else. That is the small caveat. If I have forgotten something, that is the reality; I cannot keep it all there at once. You probably have similar problems.

**CHAIR:** I think we all suffer that more than you.

**The Hon. PETER PRIMROSE:** I have one question about recommendation 7 of the report. I will read out my note. Do you think there would be any constitutional issues with introducing caps on political donations for local government? The obvious question is: Would you support that?

**Dr TWOMEY:** To the best of my knowledge I cannot think of any reason there would be a problem with caps on donations at the local government level. I may be wrong about this, but I had always assumed that the reason we do not have them at the moment is more of an administrative issue, that it would be incredibly difficult and costly to administer at the local government level because you have a far greater number of Independents and less political party structure; there are a vast number of people involved. That was my assumption as to why it had not been done in the past.

In regard to the potential for corruption, given that local government in particular is involved in making critical decisions about property development and those sorts of things, I suspect that the potential for corruption is greater at that level than it is at the State level. Therefore, being able to put those sorts of caps in place would be useful if it is practical. I think the real issue is how practical it is and whether the Electoral Commission is able to effectively administer and enforce it. There are always dangers in setting standards that are not enforceable and are not enforced. That tends to bring the law into disrepute. The practicalities of it are the real issue.

**The Hon. Dr PETER PHELPS:** I want to refer to the cases of McCloy and Unions NSW. The decision in the Unions NSW case was that the prohibition on unions is unnecessary because the caps act as an effective deterrent to corruption. The McCloy case reiterated that you can have cohort prohibitions. Those two things seem to be in contradistinction. Could you elaborate on your views on what is the better ratio and what you would have done?

**Dr TWOMEY:** I do not know what I would have done. I think you can read the two together.

**The Hon. Dr PETER PHELPS:** You would have very fuzzy glasses.

**Dr TWOMEY:** It is interesting. I will put it this way: the outcomes were partly a result of how the cases were run. Mr McCloy was not taking his best point. His best point would have been that there was no need to ban the donations from property developers because we have a system of caps that reduces the risks of corruption and that the $5,000 of a property developer is worth exactly the same as the $5,000 of anyone else, so why do you need special bans on property developers? That would clearly have been his best point. If he had taken that case to the High Court it is possible that the outcome would have been different. The problem that Mr McCloy had, however, was that the allegations against him were that he was exceeding the caps by making his $10,000 donations in the back of the Bentley.

**The Hon. Dr PETER PHELPS:** They were in an envelope.

**Dr TWOMEY:** They may have been in a paper bag; I do not know how big $10,000 is. The consequence was that he tried to argue that the whole system of donations was invalid. The High Court said that, no, you could have a system that placed caps on donations. Mr McCloy was not arguing the point which you are trying to make, which is about how you reconcile the two. Having said that, some comments made by the High

Court suggest that the court did take into account other considerations. One consideration it took into account was the evidence about corruption arising from the ICAC reports in relation to property developers. It took into account that property developers gain profits through decisions made at the local government or State government levels. The big money and their profit motive is a consequence of government decisions. That may well be very different to what happens with other organisations—so that was taken into account.

The third thing that the court took into account was the local government issue that was raised before. If you knocked out the ban on developers donating—which applies at the local government and State level—the fact that you did not have caps at the local government level would mean that property developers could make donations of any size at the local government level. That would raise real risks of corruption. The fact that the court took into account those three things—along with the fact that it also, in the majority judgement, mentioned that Mr McCloy was not arguing that point strongly—had an impact on the decision. Distinctions can be rightly drawn between property developers on the one hand, who have those particular profit interests, and unions on the other hand, that have a pre-existing status outside political parties and have particular interests that they have a legitimate right to protect and present in the political discourse. Those are the points that are being made in the case of Unions NSW, and they were distinguishing that from the property developer category.

I think that the Committee should be careful if it ever proposes to ban donations from any other group. I think the Committee also needs to look very closely at the other groups where donations are banned. The court did not extend to looking at the alcohol, gambling and other groups whose donations are banned. If I were in government I would be looking at those groups to see whether they fall within the same category as property developers. It might well be that there is much better evidence and reasons for banning property developers and not the others. I would be very wary about extending it to any other categories. You can see that there is a tipping point. The Unions NSW case shows you the tipping point, after which you end up in trouble. You can stick with the property developer ban, and it is probably safe enough to stick with the other for the moment—unless somebody challenges it—but the Parliament should be careful and watch. It would be my advice that the Parliament should be very careful about moving further into another area.

**CHAIR:** Are there further questions?

**The Hon. COURTNEY HOUSSOS:** I have a quick question, leading on from what you were saying, which was excellent advice for the Committee. Are there any other constitutional implications from the report, more broadly, that we should be taking into consideration when giving advice to Government?

**Dr TWOMEY:** I think the McCloy case was quite heartening. The High Court did not go down the United States route. That is a good thing. We no longer have concerns about caps on donations or caps on expenditure. But you need to be concerned that any caps that are imposed are reasonable. The High Court seemed to accept that the types of caps you have on donations are reasonable but if you made the caps—particularly in regard to expenditure—so low that people could not put across the political points that they need to make, and it limited political communication severely, I think you would end up in trouble. That is one thing to keep in mind.

The one thing that worried me a little in regard to the Expert Panel's report was the cutting in half of the caps on expenditure for third-party campaigners. I saw in a case in the United Kingdom—or maybe it was Canada—that you need to know what the proposed cap buys. I think they were proposing $500,000. You would need to know what $500,000 buys. In another case—I cannot remember the name of it—I remember them saying that the limit, whatever that was, would only buy one advertisement of the size of one-quarter of a page in a newspaper.

**The Hon. Dr PETER PHELPS:** That was in Canada.

**Dr TWOMEY:** Yes. The court in that particular case looked at what the amount would buy. The question is: Is it enough for an organisation—a third-party campaigner—to reasonably be able to present its case to people? If it can do that, that is fine—you do not need to go to excess—but if the cap is not high enough for a third-party campaigner reasonably to alert people to its concerns then you might find yourselves in trouble. The main thing is that the courts have said that caps are fine if the caps are for the purposes of preventing corruption and all those sorts of things, but you have to make sure that the caps are reasonable and that they do not prevent the free flow of political communication. So be quite careful about where you set the caps.

**The Hon. COURTNEY HOUSSOS:** Given the context, where the cost of postage is constantly increasing and the fact that we live in Sydney, which is one of the most expensive television markets in the country and quite expensive by world standards, making such a dramatic cut to the cap for third-party campaigners probably would not be good.

**Dr TWOMEY:** It might or it might not; I just do not know. In justifying that, a government should present evidence to say, "This is what you could do with that money. That is sufficient to ensure that third parties can have a genuine voice in an election campaign without swamping others." That is really what you are trying to say. So long as $500,000 gets you there, that is fine. I do not know enough about advertising costs. If $500,000 is not enough to allow a reasonable ability to get onto electronic media—as opposed to being stuck in the local newspaper—then maybe there is a problem with it. You would need the evidence.

**The Hon. Dr PETER PHELPS:** I do not want to hog the questions, but I love asking questions. One of the recommendations posits the idea that the actual funding for political parties be removed from consideration of Parliament and given to a panel of experts. What is your view of that?

**Dr TWOMEY:** That is a really interesting question because I am a bit torn over that.

**The Hon. Dr PETER PHELPS:** You see yourself on that very panel?

**Dr TWOMEY:** God no! No, no, no. The reason I am torn by it is because I can see the concern, and there is a legitimate concern, that all the people who get to decide about the funding of political parties are incredibly self-interested. We have the same issue in relation to superannuation. You might remember there was a kerfuffle about parliamentary superannuation at one stage some years ago during the Carr Government. There were headlines all over the newspaper that changes had been made in the dead of the night.

I had to try to explain to people that that is actually when most of the legislation is enacted, in the dead of night—nothing conspiratorial about that. But, nonetheless, in the dead of night these changes are made to parliamentary superannuation and as a consequence the Premier—and I think this happened while all the lawyers, including me, were on holidays at the time; it was during January—made a rather ill-considered statement to the press that in future, before the Parliament was able to make any decisions about parliamentary superannuation changes, it had to get the approval of the remuneration tribunal, whatever it was called. When I came back from holidays, I had a fit about this, as did all the other lawyers, and said, "Actually, that doesn't work because Parliament cannot abdicate its legislative power."

**The Hon. Dr PETER PHELPS:** But, more importantly, Parliament should not.

**Dr TWOMEY:** Not only it should not, but it cannot. From a legal point of view—I use these provisions in my class when I teach manner and form. I show them this provision and I say, "I am embarrassed to say I am responsible for the enactment of the provision", but it is a provision that is ineffective because, legally, you cannot abdicate to another body, independent or whatever, the decision of Parliament to enact legislation. From a legal point of view, even though the legislation says that you cannot change this law about parliamentary superannuation without the approval of this body, it actually does not work. You could change the legislation without the approval of that body.

When we enacted that legislation, having explained to the Premier that what he was doing was trying to abdicate legislated power and it did not work, the justification we put up for actually enacting the law was, "Well, it doesn't cause any harm. It's just ineffective, but it is politically powerful." From a political point of view, if he did not get the approval of the superannuation body, then people would scream on the front page of the *Daily Telegraph*, and that would have a political impact. In fact at the time—I am not sure I should be admitting this—we were quite concerned that the Governor would refuse to assent to the legislation because the Governor was Gordon Samuels and he was a stickler for constitutionality. He would have known as well as we did that this is a purported abdication and that, you know, it does not work.

We were marshalling ourselves to try to explain to him that, even though we all agree it does not legally work, it is not actually unconstitutional to the point that you are putting up something that is invalid—it is just ineffective—and, secondly, it has political force and it is consistent with the Premier's promise; therefore, it was justifiable. Having explained all that to you, let me say that from a technical-legal point of view, if you tried to have legislation that said you cannot change the rules about public funding unless you get the agreement

of this other body, that legislation would be ineffective. You could still legislate to change without the approval of that body.

**The Hon. Dr PETER PHELPS:** But it is a public relations exercise.

**Dr TWOMEY:** It may, however, be politically effective because it would put political pressure on the parties not to change without the approval of some independent body. That is the technical answer.

**CHAIR:** There are no more questions. Thank you very much. We very much appreciate your time.

**(The witness withdrew)**

**FILIP DESPOTOSKI**, State Director, Shooters and Fishers Party, and

**GRANT LAYLAND**, Treasurer, Shooters and Fishers Party, sworn and examined:

**CHAIR:** Thank you very much for attending today's hearing. Before we proceed, do have any questions relating to the procedural information sent to you in relation to witnesses or the hearing process?

**Mr DESPOTOSKI:** I do not.

**Mr LAYLAND:** No.

**CHAIR:** Before we commence questioning, would you like to provide an opening statement to the Committee?

**Mr LAYLAND:** Sure. In general, the Shooters and Fishers Party supports the recommendations of the Expert Panel. We agree that the political parties form the backbone of our democratic system. The expert panel report came about due to the actions of two major parties, and the Panel's recommendations are heavily directed to attempt to address the behaviour of those two parties, which we believe is appropriate. However, a number of the Expert Panel's recommendations propose an increase in the complexity and frequency of compliance obligations. We argue that this will have an inequitable effect on minor parties, who do not possess the means or resources of the major parties.

The primary matters of contention of the Shooters and Fishers Party with the Expert Panel's report are as follows: We do not agree with the recommendations imposing one size fits all on all parties, given the differences in funds, means and resources between the major and minor parties. We categorically reject State control by veto of who holds positions of office within parties. We disagree with decreased funding while increasing compliance. We support the 2015 electoral funding model and believe any increased compliance be matched by increased administration funding to satisfy the increased compliance. We disagree with the duplication of, say, Corporations Act legislation in the Electoral Act, or other State-based control of political parties.

We do not agree with any restrictions on the use of membership fees below a basic fee. We do not believe that people who join the Shooters and Fishers Party do so to contribute to administration of the party meeting compliance. It is interesting to note that the parties that have not acted in the public interest are those that are not incorporated while the minor parties are incorporated, audited, and are subject to governance legislation requirements, so we believe corporatisation should be encouraged. In conclusion, the Shooters and Fishers Party supports recommendations that do not advantage major parties and The Greens, who have access to vast resources compared to the Shooters and Fishers Party in respect to meeting growing compliance requirements. Should the Government resolve to increase and grow compliance by political parties, we argue this will need to be met with adequate funding to a base level. This is critical to ensure proper functioning of the democracy.

**CHAIR:** The last time I was Chairman of this Committee, we looked into funding of minor parties. A product of that for all parties was increased funding on the administrative side. Firstly, how has that helped? Obviously, is it sufficient enough? I think you touched on that in your opening submission in line with potential changes as recommended by the Committee. How much of an impact do you see that having on your party?

**Mr LAYLAND:** From the funding that we have had and going forward, the party has moved from what I suppose we would describe as being a cottage industry to a more professional operation through the funding. We see that as giving our members better representation, plus it helps us to meet all the compliance requirements.

**Mr LAYLAND:** We think that—

**The Hon. Dr PETER PHELPS:** You are asking a treasurer if he thinks the party is getting enough money!

**The Hon. ROBERT BORSAK:** Do you want me to tell you what the answer is?

**The Hon. Dr PETER PHELPS:** Hold on—let us get the Ouija board. Say no.

**Mr LAYLAND:** We can always use more money. From our party's perspective, we have a lot of volunteers still doing compliance, like myself. I do it at the weekends or at night but we would like to have people employed to do that. Sooner or later the volunteer labour will dry up because of how much we are calling on them to meet compliance.

**Mr MARK TAYLOR:** Recommendation 16 is candidates' entitlement and for election campaign funds to be paid directly to the candidate rather than their party. Do you have a position on that?

**Mr LAYLAND:** We agree with that recommendation on the basis that candidates themselves are held accountable for donations and expenditure so the money should go back to them if they are being held accountable, rather than through the party.

**The Hon. Dr PETER PHELPS:** Following on from that, could you not, under the existing arrangements, make a reimbursement to the candidate yourself?

**Mr LAYLAND:** Yes, we could.

**The Hon. BEN FRANKLIN:** You made a comment in your opening address about growing complexity and compliance. You are one of the small parties we are hearing from today, so please tell us how you deal with that.

**Mr LAYLAND:** As I said, through volunteers. We also have ongoing development of systems. We are trying to move our systems so we automate a lot of the compliance. We have commissioned someone to write software. It is quite hard for a political party because of all the legislative requirements. You cannot go out and buy something off the shelf and so we are getting people to build software to help us with that. If you keep changing the requirements, we will have to keep changing that software and that adds more cost. We rely heavily on external accountants for the compliance, whereas we would rather have that in-house because it is becoming close to a full-time job to keep up with it. Obviously, paying external people is a lot more expensive than having someone you have employed.

**The Hon. BEN FRANKLIN:** So in terms of both the physical software and employment, it is going to add significantly to your costs of running the organisation?

**Mr LAYLAND:** That is our position, yes.

**The Hon. PETER PRIMROSE:** I might ask a couple of questions now and some later, if there is time.

**CHAIR:** I am sure there will be plenty of time.

**The Hon. PETER PRIMROSE:** I note that in your submission you disagree with the governance recommendations in the report. Do you have any suggestions for how to improve governance?

**Mr LAYLAND:** On the governance side, that is where we think one size fits all will not work from a minor party perspective. I work in the private sector and looking at governance there, it is applied as a principle base—for example, from the perspective of a listed company, say, there is a set of good corporate governance and you report against that. At the top end of that, major parties like Liberal and Labor would meet all the points for good governance, where a minor party would report against them and believe the cost-benefit of that is not really met for a party like the Shooters and Fishers Party. You also do that publicly, so you are holding the Liberal and Labor parties' reporting publicly against good governance and everyone can see the Liberal Party, say, has better standards of governance than the Labor Party or vice versa and it is publicly reported, rather than legislating—

**The Hon. PETER PRIMROSE:** I prefer the vice versa.

**Mr LAYLAND:** Rather than legislating and having all those rules, you have principles and apply those.

**The Hon. PETER PRIMROSE:** So principles rather than specific rules?

**Mr LAYLAND:** Yes, legislated rules and then it is fully transparent and reported publicly to the Electoral Commission and put up on websites—this is how the governance of the party works.

**The Hon. PETER PRIMROSE:** I think we have addressed this issue in part, but what are your views on the effect of the donation caps?

**Mr LAYLAND:** From what the previous witness said, I think that really negates bands, for instance. So if you have a cap of $5,000, a $5,000 donation is not going to get a developer or a tobacco seller what they want. We think the caps are good; they work. We believe they still discriminate against small parties. Being a party that is not going to form government, we think a higher cap could be there on a sliding scale to a lower cap for a major party.

**Mrs MELINDA PAVEY:** As one of the smaller parties in New South Wales, what is your view on the performance of the Electoral Commission? What interaction do you have with the Electoral Commission?

**Mr LAYLAND:** I was down there this morning. I ticked some boxes. We find them very helpful on a one-on-one basis. I deal with them as party treasurer and agent. We do not have an army of advisers or an army of lawyers to consult, so when we need to consult them they are very helpful. We find they are procedural. Noting some comments in the recommendations that they should be moving to a risk-based approach, I am dealing with their auditors as well. For them to come around and do a 100 per cent check on every cent the Shooters and Fishers Party spends is not going to achieve much. If it was risk-based they would not do that; if they wanted to check us they would pick samples and not do a 100 per cent check after we have been audited. We find it very frustrating that we are paying an auditor and then the commission does a 100 per cent check. That does not achieve much from a risk perspective. The risk in the system is what you are not seeing in related parties, special vehicles and things like that. It is not as if you can see that we have spent a dollar here and here is the invoice.

**Mrs MELINDA PAVEY:** The Commissioner in evidence earlier today said they were going to take an approach that is more risk management. Do you agree with that?

**Mr LAYLAND:** Yes.

**Mrs MELINDA PAVEY:** Do you have any other views on the direction of the Electoral Commission?

**Mr LAYLAND:** We would like to see a lot more educational output and working with the parties. For instance, when there are changes there should be an opportunity for us to talk to them and not find out about the changes when we are submitting disclosures. Because we are not a major party we do not have people following changes and telling us how they apply. We have to work that out ourselves. It would be helpful if we were told about the changes and there was an open forum to talk to them about it so they could explain the changes, rather than finding out things have changed after we have put in documents or getting letters after the fact. The education part is very important.

**Mr ADAM CROUCH:** Recommendation 41 is about the Commission approving office holders to lodge disclosures and claims for payment. In the submission from the Shooters and Fishers Party you agree with that recommendation in principle. Please elaborate on that position.

**Mr LAYLAND:** We believe that as a party we should be able to appoint the officers we want to appoint but we think the office holders in the parties should themselves take responsibility for what is being disclosed, what is being lodged and so forth. There is the agent's role, for instance. As a party we appoint our treasurer as an agent. So an office holder is the agent. We think that is a good idea. That office holder reports to the governance board or committee of that party rather than having a separate role or separate outsourced person.

**Mr ADAM CROUCH:** A concern raised today is that the Commission would have the power of veto over those appointments.

**Mr LAYLAND:** We disagree with the veto position. That is bringing the party into the State and the bureaucracy. The party itself has to be able to appoint its own office holders. I cannot think of anywhere else

where a regulator would have veto power over officers—apart from legal reasons that they are criminals and so forth. I would stop it at that point.

**Mr ADAM CROUCH:** A veto by the Commission would not be acceptable to you?

**Mr LAYLAND:** No.

**The Hon. Dr PETER PHELPS:** Whether you agree or not with professionalisation of the parties would you say the provision of administrative funding has increased the professionalism internally of your party?

**Mr LAYLAND:** Certainly. It has allowed us to employ people full-time and moving from all volunteers to someone coordinating that is employed.

**The Hon. Dr PETER PHELPS:** Another recommendation in the report is that the Auditor-General take over the audit function of the parties that receive administrative funding. Have you found the Electoral Commission to be inadequate, tardy or in some way less than capable of doing audits of campaign expenditure?

**Mr LAYLAND:** No, I have not. They are very thorough.

**The Hon. Dr PETER PHELPS:** Yes, Mr Nutt said they were thorough.

**Mr LAYLAND:** They seem to be adequately funded and resourced to do that. I would like to see it risk based. As a party we are audited, our financials are audited and we lodge them. I do not see the point. We go to market to get those resources rather than having an auditor appointed for us. The audit office may outsource it anyway.

**The Hon. Dr PETER PHELPS:** The Greens indicated they would like to move to a system of purely dollar per vote for campaign election funding. Do you have any problems with the current system of dollar per vote subject to a cap on what you have actually expended during a campaign?

**Mr DESPOTOSKI:** Is that in line with recommendation 14?

**The Hon. Dr PETER PHELPS:** The Greens raised it earlier in the day.

**CHAIR:** It is relevant to 14.

**Mr LAYLAND:** We will take that on notice.

**Mr DESPOTOSKI:** I will take that on notice. In relation to recommendation 14, as we said in our submission, we categorically reject that recommendation. We have been consistent in making that submission when appearing before other committees. Funding is more difficult for the minor parties as opposed to the major established parties who can pool their resources and spread their administrative costs around each candidate. That would hit us harder and be more inequitable than for the major parties. Just on that, the increased compliance regulations flagged by the Expert Panel, in our opinion, would warrant a significant increase in funding as opposed to a decrease.

**CHAIR:** I do not think you need to take that on notice, you answered that well. We will not give you any homework. Recommendation 15 states that advanced payments to parties from an election campaign fund be increased from 30 per cent to 50 per cent of a party's entitlement at the previous election. In your submission you agree with the recommendation in principle. What is your opinion of the proposed increase from 30 to 50 per cent?

**Mr LAYLAND:** As you said we agreed with that. It is a good idea. The only caveat that we have is that is obviously available to parties based on expenditure at the previous election. A minor party like ourselves, or other minor parties, from one election to another we get advanced funding for the campaign. If the candidate does not get elected then the actual amount is still there owing, there is no reimbursement. Where that happens we think the advances that are not repaid should be forgiven because the funding is not coming back or the reimbursement for it.

**The Hon. Dr PETER PHELPS:** Would you agree that smaller parties have post-election cash flow, not so much difficulties, but it is certainly harder for a smaller party to manage the cash flow in the immediate post-election period than it is for a major party? Any increase in early reimbursement offers a material advantage, does it not?

**Mr LAYLAND:** As treasurer I agree with that. You get to the end of the election and the last bills and then post-election you have the GST [goods and services tax] to pay and so forth.

**Ms ANNA WATSON**: My question relates to local government elections and your party's view on the caps on those donations. Where do you stand on that?

**Mr DESPOTOSKI:** The Shooters and Fishers Party have rarely contested local government elections. We have only contested Wollongong once. In principle we support the cap on donations on local government. We would expect in the spirit of accountability, integrity and furthering the democratic model, without impeding a minor party's ability should they choose to run for local government seats, that some sort of cap should be implemented at a local government level.

**Ms ANNA WATSON:** Given some of your constituency would be across those areas it would make sense that would be the position of your party?

**Mr DESPOTOSKI:** In principle, yes.

**The Hon. PETER PRIMROSE:** In relation to your position with regard to recommendation 8, your last paragraph states:

> Shooters and Fishers Party believes that a minimum annual membership fee should be mandated.

Could you speak to that?

**Mr LAYLAND:** That was from the point of view that our membership fees cannot be used on campaigning. We were looking at our constituents, our members, and when they join our party they do not expect their membership fees to go towards compliance costs. We are looking at how you can make a situation equitable for all parties where some of the membership would go to campaigning. We are looking at a basic level of membership and under that level you could use it for campaigning and above it would go to admin funding. You could just as easily charge $1 for membership. Our membership is $30. You could charge $1 for membership and $29 as a donation. We have not gone that way, we have kept it at $30, but the $30 goes into admin and we do not think our members are contributing for that.

**The Hon. Dr PETER PHELPS:** That is a philosophical question. You join an organisation to be a member. Above and beyond that if you wish to donate to a campaign you can donate to a campaign. We might be on different philosophical tracks. But I would have thought you can join an organisation and the necessary machinery within that organisation to do what that organisation does is met from that, and beyond that if you want to donate for a specific campaign that is dealt with by the donation route.

**Mr LAYLAND:** From our perspective, from our members, the donations are small anyway and it really restricts us with the campaign funding that we cannot use that membership.

**The Hon. ROBERT BORSAK:** What has been the impact on the party of the detailed accounting, even for small donations? In other words, should there be a threshold below which you do not have to report any of the detail?

**Mr LAYLAND:** It is difficult for us. We use volunteer labour to check the donations. The requirement to make sure they are on the electoral roll for a $20 donation is over the top. We think there should be some minimum level of donation that you do not have to check on the electoral roll. You get $5 and you have to check, otherwise you cannot accept it.

**The Hon. Dr PETER PHELPS:** Is part of that problem the cohort prohibitions on developers on alcohol, tobacco and gambling? Is part of that problem the existence of cohort bans on donors?

**Mr LAYLAND:** I suppose that with the cohort bans we do not have developers lining up wanting to donate to the Shooters and Fishers Party.

**The Hon. Dr PETER PHELPS:** How can you know that?

**Mr LAYLAND:** That is a difficult part.

**The Hon. ROBERT BORSAK:** From the size of their donations—$5.

**Mr LAYLAND:** A developer with $5 will not influence much.

**The Hon. Dr PETER PHELPS:** But is that not the whole point? The cohort ban is ineffective. The cohort ban is a belts and braces approach when you have a $5,000 cap.

**Mr LAYLAND:** Yes.

**The Hon. ROBERT BORSAK:** What is the Shooters and Fishers Party position in relation to caps per se?

**Mr LAYLAND:** I touched on that earlier. We believe in the caps. We believe that they should be increased with CPI and should not be stagnant, obviously. Their value keeps decreasing. As I said previously, the bans do not make sense when you have the caps.

**CHAIR:** If there are no further questions, thank you for appearing before the Committee. We appreciate your time.

**(The witnesses withdrew.)**

**(Luncheon adjournment)**

**Reverend the Hon. FRED NILE**, Member of the Legislative Council, Christian Democratic Party, and

**The Hon. PAUL GREEN**, Member of the Legislative Council, Christian Democratic Party, before the Committee;

**GREG BONDAR**, State Manager, Christian Democratic Party, and

**IAN SMITH**, Treasurer/Party Agent, Christian Democratic Party, sworn and examined:

**CHAIR:** I thank the Hon. Fred Nile, the Hon. Paul Green, Mr Greg Bondar and Mr Ian Smith for attending this afternoon's hearing of the Joint Standing Committee on Electoral Matters. Do you have any questions about the procedural information sent to you in relation to witnesses or the hearing process?

**Reverend the Hon. FRED NILE:** No.

**The Hon. PAUL GREEN:** No.

**Mr SMITH:** No.

**Mr BONDAR:** No.

**CHAIR:** The Committee has been meeting this morning and has heard from a range of political parties and other people about its current inquiry. I offer you the opportunity to make opening statements before we proceed to questioning.

**Mr BONDAR:** I will make a brief statement on behalf of the Christian Democratic Party. The party supports in principle the Expert Panel's review, findings and recommendations. The party makes the point that the current system entrenches the two-party political system. Our overall position has always been that further regulatory and compliance impositions might not be in the best interests of the people of New South Wales. The recommendations and whatever the Committee comes up with should not disadvantage the Christian Democratic Party or the existing minor political parties and should not favour the major political parties. We welcome the opportunity and are delighted to be here to present our case.

**The Hon. PAUL GREEN:** Thank you for the opportunity to appear before the Committee. It is a headline comment, but in all fairness, and given the size of the different parties, in order to treat people the same sometimes you have to treat them differently. Ours is a smaller party than the major parties, thus we urge the Committee to err on the side of caution with anything that would disadvantage our operating and participating in democracy. Funding may dry up or be curbed and that might mean we cannot comply with the Act or at least deliver a fair outcome to the people of New South Wales in a way that does not disadvantage any party.

**Mr SMITH:** I draw the attention of the Committee to the appendix attached to our submission relating to expenditure during the past couple of financial years directly related to the administration expenditure. Members will see that that involves significant expense because of compliance requirements. Given many of the recommendations being put forward today, that compliance requirement will increase and, naturally, that would result in expenditure being forced on a minor party in order to comply with those requirements.

**Reverend the Hon. FRED NILE:** We are particularly concerned with recommendations 14 (a), (b) and (c). We do not support these recommendations because they disadvantage the Christian Democratic Party and other minor parties. We strongly support the retention of the 2015 entitlements. The party agrees in principle with recommendation 15, but stresses that the operation of the current arrangement causes a disadvantage to minor parties. If the prepayment and/or balance is unable to be paid, tier one parties should be exempted.

**The Hon. ROBERT BORSAK:** I refer to recommendation 34 and the issue of the control of political parties and their officers by the Electoral Commission. A number of questions were asked about that this morning. What is your party's view of the recommendation regarding the Commission being able to vet party officers? That is obviously coming from the Government's position.

**Mr BONDAR:** As can be seen, the Christian Democratic Party does not support this recommendation for a number of reasons that have been pointed out in our submission. Parties are themselves best placed to appoint their executive officers. They are also best placed to determine their capabilities in meeting both regulatory requirements and compliance. The Christian Democratic Party believes that it is in the party's interests to retain that right. It is awkward to ask a third party or regulatory body to tell us who we can and cannot employ. That would be a huge restriction. Would the regulator be a member of the interview panel when we start appointing these people? A number of issues need to be examined. In essence, we would be opposed to that for the basic reason that we are best placed to choose our own party executive officers.

**Reverend the Hon. FRED NILE:** The Christian Democratic Party is also strongly opposed to any veto power being given to the Electoral Commission to determine how the executive is structured or its qualifications, skills and experience. The parties are well equipped to make those decisions and spend a great deal of time ensuring they make the right decisions in those appointments.

**CHAIR:** You raised recommendation 14. How would it impact your party if it were changed?

**Mr SMITH:** It would be a significant drop in the current level of funding. I suppose, as I pointed to the expenditure outlay that the CDP utilises, the overheads of a small party are significant in relation to just setting up a party and running an office without even looking to get policy information and party information out to the public.

**The Hon. ROBERT BORSAK:** What is your current level of expenditure for administration? Your attachment A shows what your 2015 expenditure was, I think it is showing, for the record, $....-odd. What is your current level of funding?

**Mr SMITH:** Of funding? It is $...a year.

**The Hon. ROBERT BORSAK:** That is the one I am talking about. What you are saying is that to comply you are spending more money than you are getting from the current arrangement.

**Mr SMITH:** Than we actually get funded, that is right. So we have to make that up through donations and fundraising.

**The Hon. ROBERT BORSAK:** Obviously then you would be implacably opposed to a reduction in funding and an increase in bureaucracy and compliance?

**Mr SMITH:** Exactly.

**Reverend the Hon. FRED NILE:** Certainly.

**The Hon. PAUL GREEN:** It would be a bit of a cost-shifting, legacy-shifting situation where you embrace the new opportunity that that change in funding brought. We are now operating at that level. Then for that to be taken or usurped we would be left high and dry in a number of areas that we have tried to improve that would help us comply with the Act.

**CHAIR:** I remind Committee members that that attachment has been marked "confidential". So members might talk broadly to aspects of that document.

**The Hon. PAUL GREEN:** In our own best interests it is probably not wise to submit those figures, but we want the Committee to get a real snapshot of what it is for a micro-party like ours to work. It is very, very important that you see very clearly what the costs are.

**Reverend the Hon. FRED NILE:** And we are now budgeting in that way. That is the whole point. If suddenly it was cut, that would mean asking, "Can we afford the office space? Can we maintain the staff we have and our whole operation?"

**The Hon. PAUL GREEN:** It would be like cutting an artery.

**Mr SMITH:** And I suppose we have to look at the reasons that that funding was supposedly increased in relation to the submissions by the Electoral Commissioner to enable parties to get their information out in a

sensible, even-handed way. If that funding is cut, then we would be lucky just to run an office without getting any information out there, unless we increased other funding drastically.

**The Hon. Dr PETER PHELPS:** Mr Bondar and/or Mr Smith, would you say that the provision of additional administrative funding over the past cycle of government has increased the professionalism of the administration of your party?

**Mr BONDAR:** I can speak currently but I will leave it to Mr Smith to add to that. Generically, the answer is a resounding yes, because the more funding you get the more professionalism you can have and the more training you can do. It better equips us to meet the requirements of the various regulatory bodies and of course the Electoral Commission. So the answer to that is yes. But Mr Smith might be able to answer in terms of the past.

**Mr SMITH:** Yes, most definitely, just in the ability to employ full-time staff rather than be very dependent on volunteers.

**The Hon. Dr PETER PHELPS:** And presumably those staff then develop skills which can be used over a period of time and others can be trained as well.

**Mr BONDAR:** Absolutely.

**The Hon. Dr PETER PHELPS:** My second question is to Mr Smith. One of the proposals is that the Auditor-General take over responsibility for auditing political parties that receive admin. funding. Have you ever found the current Electoral Commission to have been inadequate, sloppy or unhelpful in its auditing procedures or would you say that they have been diligent and thorough?

**Mr SMITH:** I would say they have been very diligent. I have had no qualms about the quality of their work. As well as you try to submit the information as correctly as possible, they always happen to find something. I understand that the CDP generally does a pretty good job.

**The Hon. Dr PETER PHELPS:** Would you say that their general attitude is helpful or antagonistic?

**Mr SMITH:** Very helpful. They have been most forthright in providing information when required and directing in the right way.

**The Hon. Dr PETER PHELPS:** The final thing is also in relation to the recommendation that strict liability offences be created. Do you feel that the current Act is clear enough or definite enough to warrant the imposition of strict liability offences or do you think that if they were to be introduced you would have to have a substantial clean-up of the Act? Or you may well think that we should not have strict liability offences at all in relation to errors on funding and disclosure.

**Mr BONDAR:** Through you, Chair, I think it is very harsh to be imposing those sorts of conditions on any particular individual. As an ex-accountant/auditor I can tell you, even when you have met your compliance requirements and you are a member of the professional chartered body, you are a member of the CPA or whatever, even then things go wrong. I think it is very harsh and almost unconscionable to have one individual be responsible for an error of judgement or whatever it might be. To answer your question, I think it is very harsh.

**Reverend the Hon. FRED NILE:** I think the penalties that are already there for infringements are sufficient.

**Mr SMITH:** From a small party perspective, we find the time frames very difficult to meet. I have had to request extensions because of all the other activities that are imposed upon the office. Obviously because of the pressure that is put on individuals to get those submissions completed on time, it is quite likely that a small mistake or even a bigger mistake may be made. Okay, it is not deliberate, but the Electoral Commission have been able to highlight those and hopefully we then correct our procedures.

**The Hon. PAUL GREEN:** Can I just make a comment there? Once again, coming to a smaller party, you have someone like Mr Smith doing everything as opposed to a larger party that might have three or four

people of Mr Smith's capacity dealing with the issue. When you are pressured as one person and do not have anyone to support you at that level of training, obviously there is going to be room for error.

**CHAIR:** No doubt you pay him four times as much! I was just trying to help you, Mr Smith.

**Mr SMITH:** I will put in an application tomorrow.

**The Hon. BEN FRANKLIN:** Thank you for appearing and for your presentation. I particularly noted your comments on the administration funding and recommendation 18. We appreciate you giving us the figures in confidence because it gives us a real understanding of the genuine effect it would have on an organisation such as yours. I want to look at another area of public funding, which is recommendation 14. You are quite strong on the fact that you would like the 2015 model to be retained in terms of public funding of election campaigns. Would you like to speak a little more about your reasons behind supporting that model so strongly?

**Mr BONDAR:** On a general perspective, a lot has happened since 2011 in terms of the number of electors, voters, what have you. A lot has changed since then. To revert to the 2011 model would severely disadvantage us because, obviously, the mere mathematics of it indicate that we are going to be disadvantaged, in particular in terms of allowing us to spend on election campaigns. So, I think it is a great disadvantage to revert to the 2011 model. Given the changes that have happened in the electoral climate and the electoral environment, it would be a great error of judgement to be doing that, I think. Mr Smith would have more figures on that, I suspect. As I said, the mere mathematics indicate that it would not be a recommendation we would support.

**Reverend the Hon. FRED NILE:** We were a bit surprised by the recommendation because, from my memory—I gave evidence before the Panel—I do not think those questions were actually raised in our questioning or in our evidence. That recommendation seems to have come out of left field.

**The Hon. ROBERT BORSAK:** I think Mr Green alluded to it earlier. What is your feeling in relation to the fact that you have a current level of expenditure and you may perhaps end up with a much more detailed and complicated legal structure to try to meet and yet they are recommending a reduction in funding? What will be the impact on the organisation of the party?

**The Hon. PAUL GREEN:** Thank you for that expression. Obviously the change from 2011 was for a reason that we are all very aware of. The idea was to tighten things and get things better, operate more clearly, more defined, more compliable, more transparent. There is no doubt that the increase in funding has allowed us to rise to that opportunity, reaching all those things. But there is no doubt that, once again, bigger parties have bigger resources. For our benefit, what 2011 did for us with all that scrutiny was actually give us a better and fairer playing field so we finally got some extra funding, we finally got some understanding and we were able to bring our levels of staffing and opportunity up a couple of levels. If we reverted to 2011, that leaves a whole lot of things that we would have to revisit. That is where mistakes have been made. We have been able to cover those mistakes—not cover those mistakes, sorry. I move that be taken off the record.

**The Hon. Dr PETER PHELPS:** Rectify.

**Ms ANNA WATSON:** Address.

**Mrs MELINDA PAVEY:** Better manage the process.

**The Hon. BEN FRANKLIN:** Better meet the challenges.

**Mr BONDAR:** That is it.

**The Hon. PAUL GREEN:** We have been able to monitor those challenges that we have as a smaller party and better meet them with increased funding. It would not be helpful for us as a micro-party to go backwards. So far as credibility and transparency of the process, which we have stepped up from 2011 with the extra funding, it would be a step backwards. I do not think that is what people in New South Wales want. They enjoy the transparency. We are on the right track to ensure we are doing the very best with the resources we have. We could always do with more, by the way, to go to the next level of compliance. That would be helpful.

**Mr SMITH:** With the election side of the funding, we are still very much restricted in terms of how much we can spend. We are not guaranteeing necessarily that we will win a seat at every election. We have been fortunate enough to achieve that and, therefore, qualify for funding, but if that does not result then it would be quite different.

**The Hon. ROBERT BORSAK:** That raises the issue that came out last time and the Chair referred to it earlier. There is a bias in the funding arrangement at the lower end of the scale for representation. Do you think that should be maintained or augmented?

**Mr SMITH:** I think it should definitely be maintained. The Electoral Commissioner's raison d'être for bringing in the funding was to make a level playing field of making the public more aware of the issues and what different parties bring forth.

**The Hon. PAUL GREEN:** Dr Phelps made a comment earlier. Obviously the more funding we have got, that we are able to achieve, the better we can lift the game on compliance and everything we are doing. If we came in at a higher level, we would be able to achieve a level of information gathering that the Electoral Commission needs and requires of us. Obviously increased funding helps to lift us up to a level that the general public expects us to be at, but we cannot be there at this point in time.

**The Hon. COURTNEY HOUSSOS:** As Mr Franklin did, I thank you for your honesty and for that extra information. It was appreciated and it shows the difficulties for small parties, which brings me to my question. The submission from a number of the small parties is that there is an increasingly complex environment for political parties to be operating in. Whether it is a major party or a smaller party, it is predominantly a volunteer organisation. I would really be interested in your thoughts on what that means for you, as a smaller party, but also for other new emerging smaller parties about how they can conform to these kinds of arrangements.

**Mr SMITH:** From my personal experience it is a very onerous and difficult process to make sure you are doing everything as correctly as possible. I am sure with a new party coming on the scene they are going to find it difficult to comply with all the regulations and the requirements to get things right, especially if penalties are increased and imposed in different ways. It would be difficult.

**The Hon. PAUL GREEN:** That brings up one of our grave concerns. With that difficulty comes the situation that you potentially lose the representatives which make a really fair democracy.

**The Hon. COURTNEY HOUSSOS:** That is the intrinsic intention, is it not? We want there to be openness and transparency but we need to be able to encourage the emergence of new parties.

**Mr BONDAR:** I have to tell you that when I was chief executive of the Tharawal Local Aboriginal Land Council I always had the Aboriginal Land Act next to me because I could not breathe or do anything unless I referred to the Act. Now I have everything in front of me. It is such a regulatory burden because everything we do we have to get it right. It is quite onerous on a small party such as ours because we do not have the resources or the people power to achieve the finer issues that need to be dealt with on a day-to-day basis. It is very much a burden.

**Reverend the Hon. FRED NILE:** The minor party has to respond in exactly the same way as the Liberal Party and the Labor Party do with their financial resources and staff. The requirements are the same whether you are a small party or a large party. That is where the burden comes from.

**The Hon. ROBERT BORSAK:** It is true to say that the Corporations Act recognises the difference between compliance requirements for a large corporation with high turnover—

**Mr BONDAR:** Correct.

**The Hon. ROBERT BORSAK:** —lots of critical mass and plenty of resources down to the smallest private company, which has miniscule requirements, to say the least.

**Reverend the Hon. FRED NILE:** We would support that for the future.

**Ms ANNA WATSON:** My question goes hand in hand with the Hon. Courtney Houssos's question. If all of the recommendations from the panel were to be implemented, in your view, what would be the top three main challenges that your party might face?

**Mr SMITH:** It would be funding, funding and funding.

**Ms ANNA WATSON:** Anything else?

**Reverend the Hon. FRED NILE:** Complying, complying and complying with all of the requirements and carrying out an effective role as a minor party in the whole democratic election process. I think people want to have a range of parties. I believe via the funding we have; that is allowing that to happen in this State, perhaps more than in other States.

**Ms ANNA WATSON:** It goes back to previous answers about funding, ongoing funding and compliance issues?

**Mr BONDAR:** Compliance issues, very much so.

**Mr ADAM CROUCH:** As a smaller party would the Christian Democratic Party support caps on donations for local government?

**The Hon. PAUL GREEN:** I will answer that, given my recent report that arrived in Parliament yesterday morning.

**The Hon. PETER PRIMROSE:** A good report.

**The Hon. PAUL GREEN:** Once again, we do not want to dominate the situation in a way that we do not have further debate about this issue. If we are going to make it fair, it should be fair across the board. No-one should have to jump on another. It depends how caps are applied, what they are, and if they are fair. Like us and the funding we have got as a minor party, we are required to comply at the same level as the major parties. It is no different with the opportunity for funding caps for elections. It depends how you use those opportunities. From memory, so far as caps on local government, one counterpart in my past local government had about 34 candidates. So he was able to write off quite a few dollars under 34 candidates, but mostly the information was about him and his running. We need to be wise and need to be sure that whatever we are doing is fair on all candidates and that they all have a fair shot at winning a wonderful seat in a democracy.

**CHAIR:** Recommendation 16 talks about election campaign funds being paid directly to a candidate rather than a party, unless the candidate directs otherwise. Can you tell us your view of recommendation 16?

**The Hon. PAUL GREEN:** We would agree with that in principle. Once again, it comes back to autonomy of the individual and how they choose to receive the reimbursement and deal with it.

**Reverend the Hon. FRED NILE:** The Treasurer could add to that.

**Mr SMITH:** We basically followed that approach at the last election where particular candidates were entitled to some refund and we have applied on that basis.

**CHAIR:** We are getting close to time. Are there any final questions?

**The Hon. PETER PRIMROSE:** My two questions have been asked.

**CHAIR:** Is there any information you would like to leave with this Committee or make a final statement? I think we have the general tone.

**Reverend the Hon. FRED NILE:** We do not want to go backwards; we want to go forwards.

**The Hon. PAUL GREEN:** With complete boldness, we would look for an increase in funding, not even staying at status quo. Some good work has happened since 2011 with the increased funding that we have had. If we could build on the funding, it would allow our party to lift to another level, which has been expected of us by the Electoral Commission and the Act.

**Reverend the Hon. FRED NILE:** To be more professional.

**CHAIR:** My last question—which I have just remembered—is in relation to third party campaigners. Would you support a reduction in the cap? At the moment it is around $1 million.

**Mr SMITH:** Yes, I think CDP would support that recommendation. That is one area where, regardless of what restrictions or impositions you make to political parties, there is always the opportunity, outside the party system, to circumvent the electoral process by directing funding or advertising—whatever it may be—through a third party. That should not be encouraged.

**The Hon. PAUL GREEN:** I would go further to say that all third party funding should be declared. Whether it is a television ad or a radio advertisement, if it is coming from a third party campaigner it should be acknowledged that they are supporting a cause, and it should be noted.

**Mr SMITH:** It may be a very tight requirement, but I wonder whether a third party's expenditure and donations should be incorporated within the party that they are supporting.

**Reverend the Hon. FRED NILE:** There should be more transparency in that area.

**CHAIR:** I hear you. Thank you for appearing.

**(The witnesses withdrew)**

**MARK ROY ROBERT LENNON**, Secretary, Unions NSW, sworn and examined:

**MARK FRANCIS MOREY**, Assistant Secretary, Unions NSW, affirmed and examined:

**CHAIR:** Thank you for appearing before the Joint Standing Committee on Electoral Matters this afternoon. Before we start, do you have any questions in relation to procedural information sent to you in relation to witnesses or the hearing process?

**Mr LENNON:** No.

**CHAIR:** You would be old hats at this. Before we proceed to questions would you like to make an opening statement?

**Mr LENNON:** As outlined in our submission, Unions NSW has a number of concerns with key aspects of the Expert Panel's recommendations. The two recommendations that are of most concern to us are recommendation 31 and recommendation 32 (c), which seek to further restrict the ability of third party campaigners to participate in the electoral process. Given the line of questioning to the last group of witnesses it is no surprise that recommendation 31 proposes the expenditure cap applying to third party campaigners should be decreased to $500,000, while 32 (c) seeks to prohibit third party campaigners acting in concert with others to incur electoral expenditure that exceeds a third party campaigner's individual expenditure cap. We believe that both these recommendations place an unrealistic burden on the freedom of political communication.

Further, the Panel rejected our recommendation that the donation caps for peak body organisations should be adjusted to account for the nature of our membership which, always collaboratively funded, are centralised campaigns that represent the common position of our affiliated unions. Instead, the Panel has sought to restrict the ability for third party campaigners, including peak bodies, to work with like-minded or member organisations on third party campaigns. I will go to the specific recommendation by the expert panel to halve the current cap. I would like to make the following points. First, the recommendation is based on the premise that third party campaigners could drown out candidates. However, the panel did not provide evidence that this has been the case in New South Wales elections. The current cap of $1.05 million does not pose a threat to the spending of the major political parties which, in 2011, was approximately $18.6 million.

Secondly, the Panel argued that at the 2011 election the highest spend by a third party campaigner was $387,000 by the NRMA, and therefore adjusting the cap to $500,000 would not have an impact. However, this does not take into account the spending of third party campaigners during the 2015 State election. These disclosures have not yet been published so Unions NSW is only able to comment on its own spending, which reached about $850,000. Thirdly, the panel suggested in its reports that the spending rates of third party campaigners in the 2015 election could be taken into account when considering a reduction in the cap. Given that these disclosures have not yet been released it would be premature to set a revised cap based on the 2011 election. It is also important to note that the current cap of just over $1 million means that any third party campaigner has a maximum of only $11,290 to spend in each of the 93 electorates in New South Wales. The figure is further reduced if funds are directed to running an additional campaign directed at the Legislative Council.

There are significant costs in any campaign and, given that Australia Post is significantly increasing the cost of mailing letters in the New Year, I doubt whether Unions NSW or any other third party campaigner could undertake a mail-out to all New South Wales electors under the current spending cap. During the last election campaign in 2015, as I have pointed out, we spent $850,000, which included $380,000 on advertising expenditure; $264,000 on production and distribution of electoral materials; $15,000 on the internet, telecommunications, stationery and postage; $120,000 on staff costs; $8,000 on travel; and $52,000 on research. We believe that the best way to address the concerns of the Panel with regard to third parties is by introducing a more transparent system of accountability.

Unions NSW believes the objective of transparency in the current disclosure requirements are undermined by the fact that disclosures are not known until after the electorate has voted. That is why we support real-time disclosure. That would enable voters to access, well before they vote, information on the donations received by parties, candidates and third party campaigners. Unions NSW also supports the recommendation calling for an online centralised disclosure system for donations by political parties, candidates and third party campaigners, and for real-time disclosure in the six-month period before an election. In order to

ensure that voters have all the information about political donations available to them at the time of elections we have supported a blackout period on donations before and after a general election or a by-election, which would ensure donation disclosure at the time of the election was up to date and accurately identified who financed the parties or third party campaigners.

**CHAIR:** Thank you. Mr Morey, do you have an opening statement?

**Mr MOREY:** No, I am happy with that.

**CHAIR:** We will go directly to questions.

**The Hon. COURTNEY HOUSSOS:** Thank you for coming today, and for your submission. I think it is really important that we hear from third parties, because although the recommendations were small in number there were significant recommendations by the Panel in that respect. Mr Lennon, in your opening statement you touched on some of the increasing costs, including the increase in postage costs, which would mean that a decrease in the cap would be unusual and perhaps unfair. Were there any other increasing costs that you found out about during the course of your campaign? Are there any other statements you would like to make about the dramatic reduction in the cap?

**Mr MOREY:** The dramatic reduction in the cap means that third party campaigners are unable to effectively communicate in an electoral process. We are obviously often competing against free media and the major parties. In order effectively to get a message out, the whole $1 million is not spent on just electoral material and electoral communication. There are obviously research, production and staffing imposts. It is not as if there is a bucket of $1 million that is suddenly splashed on TV advertising.

To reduce that cap further to half a million dollars would burden our right—and the right of third parties—to participate in the democratic process in New South Wales. In 2011 there was $18.6 million spent by the major parties. The $1 million spent by us—most of that was not spent on advertising—is a drop in the bucket in trying to stop or compete with those messages in the media. To cut it further—and given that we ran a High Court case on the right to political communication—we would suggest that such a cut would not enable us to participate in the democratic process and represent the issues of our members in any meaningful way. Any cut would be very detrimental to us and our members.

**The Hon. COURTNEY HOUSSOS:** And that ability to participate in the process has been reinforced by the High Court.

**Mr LENNON:** How many voters are there in New South Wales—3½ or four million? A million dollars is 30¢ per voter, which is not much. You cannot even afford to send a letter.

**The Hon. COURTNEY HOUSSOS:** In terms of recommendation 32 (c), which is what you touched on in your opening statement, as a peak organisation surely that would pose significant issues for you. This idea that third party campaigners are acting in concert, as a peak organisation surely there are a number of your affiliated unions that would be running, or that could potentially be running, third party campaigns with potentially similar messages.

**Mr MOREY:** That is correct. Having sat in on the previous evidence that was given, it is unfair to characterise all our affiliates as members of the Labor Party. We have major affiliates—teachers, nurses—who are not affiliated with the Australian Labor Party [ALP]. In fact, the ALP has been attacked by them in previous elections. They have actually funded campaigns against the ALP and positions taken by the ALP. To characterise all unions as affiliates of the ALP and running an ALP line is incorrect. Our affiliates represent the issues of their membership. Our members are diverse and wide, and they have different positions on different issues. What we do in our funding and in our approach to elections is try to provide an overarching voice that brings everyone together.

That does not necessarily mean that everyone will agree with that or everyone will participate in that, but that is the role of a third party campaigner. Some of those unions that participate have only a small membership, but they want to have their voice heard. The most effective way for them to have their voice heard is to work collaboratively together, to pool resources, so that they have one message that goes out that represents what their membership wants. To actually take that away, or not allow unions to work collaboratively or collectively, undermines the rights of those members to have their voice heard in a democratic process. That is

why we are opposed to that recommendation: It takes away not only the collective right but also the individual's right to have their voice heard in this process.

**The Hon. COURTNEY HOUSSOS:** I have just one final question. Leading on from that, you are the only third party campaigners we are hearing from today, so I would be interested in your thoughts. Some of the smaller parties have spoken to us about the difficulties of complying with the current legislation. Perhaps some of your affiliates might be able to speak to this, but would you be able to speak to the experience of what it is like as a third party campaigner to comply with the legislation? Given our need to foster lots of voices in our democracy, does that system encourage it?

**Mr LENNON:** I think I have said in these forums before and in other hearings regarding electoral funding laws and the legislation in this State, it has become very complex for everyone. For third party campaigners, candidates, individuals donating, it has become so difficult to understand and abide by that it is impacting on the democratic process in the State. I honestly believe that. That is a function of the fact that we have had this legislation since 1981, and there has been amendment after amendment piled upon amendment that has made it unworkable. For third party campaigners to be able to comply, that is just one example of that.

**Mr MOREY:** There is also the financial impost on that on organisations to actually audit. It is a double auditing process. The legislation is very complex. It takes a lot of time to make sure that you get all your documents correct so that you give an accurate account of what you have spent and where you have spent it. It is an impost, not only financially but also in time, for organisations. Small organisations find it very difficult. A lot of our members who spend any money have a lot of questions. We spend a lot of time not only doing it for ourselves but on resourcing other smaller unions in meeting their obligations under the Electoral Act. As Mr Lennon said, it is complicated, it is difficult, and it needs to be reviewed.

**The Hon. COURTNEY HOUSSOS:** And it is a disincentive then.

**Mr MOREY:** It is a disincentive to get involved, absolutely.

**Ms ANNA WATSON:** What is Unions NSW view on caps on donations for local government?

**The Hon. Dr PETER PHELPS:** If you have one.

**The Hon. ROBERT BORSAK:** "I don't have one"?

**Mr MOREY:** Yes.

**The Hon. ROBERT BORSAK:** You can say "I don't have one", Mr Lennon.

**Mr LENNON:** We might take that one on notice and come back to you on that one. It is not part of our submission today. We are happy to come back with a response.

**Mr MOREY:** Yes.

**The Hon. Dr PETER PHELPS:** This question is directed to Mr Lennon. Do you have a view on cohort prohibitions—prohibiting a certain class of donors from donating to political parties?

**Mr LENNON:** I am sorry, Dr Phelps. Could you expand on that for me?

**The Hon. Dr PETER PHELPS:** For example, developers, gambling and alcohol interests cannot donate to political parties.

**Mr LENNON:** I think the High Court has made that clear. They have enforced the legislation here in New South Wales. It stands.

**The Hon. Dr PETER PHELPS:** You spoke about wanting a multiplicity of voices. Do you think it is appropriate that entire classes of donors should be excluded from the process?

**Mr LENNON:** From my understanding of the recently decided case, it is clear that the High Court has found and has basically put in place a set of principles where, yes, that is the case. We can argue about who

should be a prohibited donor, but of the ones you have named, particularly property developers, the decision has been made.

**The Hon. Dr PETER PHELPS:** But also gambling, alcohol and tobacco?

**Mr LENNON:** We can all have an argument about who should be prohibited and who should not. What has become clear from the recent decision is you, as parliamentarians, now have the ability to reflect what is believed to be community standards about who should participate in the political process and who should not through the vehicle of political donations. If you, as parliamentarians, make a call as to what you believe to be community standards and who should be prohibited from making donations, then so be it. They always have the right, of course, to test that in the courts, if it has not already been decided.

**The Hon. Dr PETER PHELPS:** Do you believe it is fair that the Construction, Forestry, Mining and Energy Union [CFMEU] could put in $1 million into a political campaign in the lead-up to an election, but a property developer in Dubbo cannot buy a $1 raffle ticket for his local branch?

**Mr LENNON:** Yes.

**The Hon. Dr PETER PHELPS:** You think that is fair.

**Mr LENNON:** Yes.

**Mr MOREY:** Because the premise on which the High Court made a decision was around corruption and the corruption prevention of the Act and the changes that were made by the Government.

**The Hon. ROBERT BORSAK:** The CFMEU and corruption, yes.

**Mr MOREY:** When we took our case to the High Court, the New South Wales Government argued that part of its case for putting the legislation in place was to stop corruption. The High Court found that there was no corruption, or disincentive to corruption, contained in those aspects of the legislation that prohibited unions from operating.

**The Hon. Dr PETER PHELPS:** But it did it on the basis that the $5,000 cap was an effective barrier to corrupt activities, so the unions did not need to be excluded because the $5,000 cap on donations effectively served as an anti-corruption measure in and of itself. My argument is that if it is good enough to apply that to unions, why should that same standard not be applied, in any revision of our legislation, to everyone else in the community?

**Mr LENNON:** You would have to take that up with the High Court. We are just running on what they have actually told us. We are running on the law and the legislation. We cannot do any more than that.

**The Hon. Dr PETER PHELPS:** I am just trying to get a principle position. If it is not corrupt for a union to donate up to $5,000, why is there necessarily a greater corruption risk for a developer or a publican?

**Mr LENNON:** Because the community has made a decision, right or wrong, and this Parliament has made a decision that political developers—I am sorry, property developers; political developers would be an interesting concept—have more of an undue influence on this parliamentary process than does the Construction, Forestry, Mining and Energy Union. It is as simple as that.

**The Hon. Dr PETER PHELPS:** For example, if certain unions were found to have been corrupt previously, does that then offer an excuse for us to ban those unions from donating, or engaging in the political process?

**Mr LENNON:** Let us not pre-empt anything that may come out of another tribunal; let us not go down that path here. We will see the outcome of the royal commission and then it will be up to this Parliament to make its decisions in that regard.

**Mr MOREY:** You have to be careful about lumping unions and individuals in the behaviour conducted by individuals as opposed to the behaviour conducted by unions.

**The Hon. Dr PETER PHELPS:** I agree entirely, which is why you should not have cohort bans on anyone, in my view—developers or unions.

**The Hon. ROBERT BORSAK:** Mr Lennon, what is your view in relation to the commission having effectively the right of veto over the appointment or authorisation of various officers, not just to political parties but also potentially to third party campaigners?

**Mr LENNON:** Please expand on that.

**The Hon. ROBERT BORSAK:** The Panel made a recommendation that a mechanism should be in place whereby disclosure must be made of senior officeholders to the Commission for approval for funding. I am talking about political parties and that they effectively have to be vetted or—although the word is not used in the recommendation—ticked off by bureaucracy.

**Mr LENNON:** I have another hat, but I am not here in that capacity to give evidence about legislation and political parties. I understand one thing—and I am not necessarily in support of that recommendation—and that is increasingly as a society we are calling people in positions of responsibility more to account and there is more oversight and regulation. I accept that will happen in the future in all aspects of society.

**The Hon. ROBERT BORSAK:** Do you believe that should be carried out by a bureaucracy appointed by the Parliament?

**Mr LENNON:** I would be very wary of that, in the first instance because I am concerned about further bureaucracy having a say in the role of political parties and third party campaigners. I would be very concerned about that risk.

**The Hon. ROBERT BORSAK:** Would you be of the view that that would not enhance our democracy?

**Mr LENNON:** As I said, with the way the legislation is at the present time, it is so complex that in an attempt to enhance democracy another layer would only add to the complexity and probably weaken rather than enhance the functions of democracy.

**Mrs MELINDA PAVEY:** Mr Lennon, in a very eloquent way you explained that the union cap is $1 million and that is only 30 cents for every citizen of New South Wales, or thereabouts. Do you take advice or direction from the Labor Party's New South Wales head office on where to spend that money—what electorates to spend that money in—to get best value return?

**Mr LENNON:** We make our own decisions about where we spend our money. That is the best way to do it because we have, as you have heard, some 60 affiliates of Unions NSW and only about 30 of the NSW Labor Party so we have to take advice from our affiliates as to where we spend our money and where best to spend it.

**Mrs MELINDA PAVEY:** And other parties as well?

**Mr LENNON:** From?

**Mrs MELINDA PAVEY:** Where might you get advice about where to spend your money aside from your affiliates?

**Mr LENNON:** Like everyone else, we do our own polling and research and it is pretty evident where it is going to have the most effect.

**Ms ANNA WATSON:** Would it be fair to say you consult with your broader membership?

**Mr LENNON:** Yes.

**The Hon. Dr PETER PHELPS:** You said you had approximately 30 members who are also affiliated with the Labor Party. Presumably each of those could spend up to $1 million if they had the resources, could they not?

**Mr LENNON:** Yes.

**The Hon. Dr PETER PHELPS:** They could spend $30 million plus your $1 million, so $31 million, on campaigning activities. What is the most a political party could spend if it ran candidates in all 93 electorates?

**Mr LENNON:** What did we say the figure was? It was about $9 million, but the reality is that not all those 60 unions have the ability to spend $1 million—far from it. There are a number who could, obviously, because of their size and they have the right to campaign. They do not just campaign with us on issues. They campaign on issues relevant to their particular members that may sometimes be at odds with the views of other unions—there are differences of opinion. I remember former Premier O'Farrell said the figure was $22 million at the time and that there were 22 Australian Labor Party-affiliated unions. Nowhere near that figure could be spent by the union movement. However, some have the ability to do so and should have the right to spend to the cap of $1 million or thereabouts.

**CHAIR:** How many unions participated in third party campaigning at the last election that you are aware of?

**Mr LENNON:** That I am aware of, at least five but there may have been a few more.

**The Hon. PETER PRIMROSE:** Obviously, as the only third party campaigner appearing before this Committee, you have heard evidence and been involved in the discussion today. Please take on notice why it is necessary to have the cap on expenditure by third party campaigners at no more than $500,000. You have already addressed this issue and we have had the discussion, but there may be other issues you wish to address as we have time constraints on this hearing. Please come back to us with any other ideas or proposals that occur to you.

**CHAIR:** If Mr Lennon would like to afford himself of the opportunity, I am happy for him to do that.

**Mr LENNON:** Thank you; we will do that.

**CHAIR:** Would you like to make any further remarks?

**Mr LENNON:** No, but I would like to place on record our thanks to our research officer, Ms Minter, for the work she did in putting together our submission and opening statement.

**CHAIR:** Thank you for appearing before us. Are you happy to provide a written reply to questions on notice within two business days?

**Mr LENNON:** We should be able to do so.

**The Hon. Dr PETER PHELPS:** We are not being mean, but we have a truncated time frame.

**Mr LENNON:** I know there is a problem with women's bathrooms in Parliament and you obviously have a problem with Committee rooms at the present time. I would be happy to advocate on your behalf.

**(The witnesses withdrew)**

**(Short adjournment)**

**NATHAN QUIGLEY**, State Director, New South Wales Nationals, and

**THOMAS AUBERT**, Deputy State Director, New South Wales Nationals, affirmed and examined:

**CHAIR:** Thank you for appearing this afternoon before the Joint Standing Committee on Electoral Matters. Before we begin, do you have any questions in relation to the procedural information sent to you in relation to the witnesses or the hearing itself?

**Mr QUIGLEY:** No.

**Mr AUBERT:** No.

**CHAIR:** Before we proceed to questions from the Committee Members would you like to make an opening statement?

**Mr QUIGLEY:** Yes. The notion that the ability to make a donation might constitute an important part of our implied right to political communication is a challenging one. It instils into processes such as this inquiry, and the report before us the importance of striking a balance between political donations and other methods of participating in the democratic process. It removes the easy option of complete bans on donations. In the past that balance has not always been found, with the influence of money in our politics appearing to eclipse the will of ordinary voters and the efforts of volunteer participants. Parties have, rightly or wrongly, been too responsive to the voice of their financial backers.

In recent years we have seen the ICAC make findings of corruption in connection with political donations on a number of occasions in different areas. Those findings have increased public concerns about the impact of donations and heightened public sensitivity to the perception of corruption. It is not only actual but perceived corruption that is of concern because those perceptions, even if they are unfounded, sap public confidence in the processes of government. Most of us who work in New South Wales politics abhor this situation. We recognise that much of the stigma surrounding State politics stems from the fact that we have tougher laws and better enforcement than most jurisdictions, but we realise that the only solution is to reach a stable regime of real and lasting donation and funding reform.

We are in the middle of a messy process here but we believe, in the long run, New South Wales politics will be better for the journey. We aspire to assist and where parties and candidates are supported to a modest extent by individuals and organisations who donate because they share common ideals not for hope of direct pay-off and that these donations do not outweigh the views of those who donate to their the party or those who entrust the party with their votes at the polling booth. We believe in a strong participatory democracy and support thorough campaign finance reform as a way to achieve that.

Consequently, we have supported unequivocally a number of recommendations made by the Panel and are generally supportive of the thrust of many more, although we might have reservations about some of the details. Our objective in dealing with this report has centred primarily around increasing the clarity of the regime, identifying the most effective ways of dealing with issues presented by the current system, and fostering healthy and vibrant political parties, which we hold as an intrinsic part of our democracy. We feel the current system is lacking in clarity in a number of areas, which is why we have supported recommendation 7: maintaining a ban on donations from prohibited donors subject to the definitions of each class of prohibited donors being rationalised and clearly determined.

We have drawn particular attention to the ambiguity surrounding the definition of "property developers" and "close associates" under the Act. For the same reason—clarity—we have supported recommendation 9 to bring the caps on indirect contributions into line with monetary donations. We have opposed recommendation 12, which seeks to replace one of the rare concrete definitions in the Act, that pertaining to electorate expenditure, with one infinitely more nebulous. We have welcomed efforts by the Panel to find ways to make the current Act more effective in achieving its aims, including measures such as mid-level enforcement options and online disclosure. At times, while we disagree with their methods, we agree with their aims, such as making senior party figures more accountable for compliance. We suggest that can be done without losing some of the positive aspects of the party agent system.

Finally, we have been broadly supportive of measures that will encourage a healthy culture of party political activity in New South Wales, such as new parties fund and better self-government by established parties. To this end, we have opposed recommendation 18, which reinstates the previous model of calculating entitlements from the administration fund. We support the Electoral Commission's view in this regard, that parties should be financed to do the things that are considered important to the health of our representative democratic system. Administrative funding should be used with appropriate transparency to debate, develop and communicate policy platforms and encourage greater engagement between parties, their members and the community.

This view goes beyond the minimalist approach where such funding supports auditing, governance, IT and financial system, but it should be noted that compliance with electoral laws is a significant and increasing burden on all parties. Indeed, it was the justification behind the most recent increase in administration funding. We feel it inappropriate, therefore, to consider a return to the pre-2014 model at the same time as the implementation of other measures contained within this report that will dramatically increase the compliance burden on parties. I should note, finally, that although we support much of what is contained in the report, we insist this recommendation should only be implemented as part of the wider review of the Act and we note this itself is consistent with recommendation 1. It is a point that needs to be stressed. Whatever the outcome, we do not want to be sitting here in five years going through the same processes. Let us do this once, do it right and create a stable and transparent system that will last us for many years into the future.

**Mr AUBERT:** I start by acknowledging the hard and diligent work of the Expert Panel. This is a complicated area of public policy and we cannot have a cumbersome and difficult to navigate legislative instrument at the heart of it. As someone who must work with the regulatory system and ensure compliance on a day-to-day basis, I understand the difficulty of the task it performed. The New South Wales Nationals support many of the panel's recommendations and the spirit in which they are proposed. There are many practical solutions to some of the inadequacies and inconsistencies in the Election Funding, Expenditure and Disclosures Act, and making our regulatory system easier to understand for stakeholders is very important.

By "stakeholders" I do not mean only political parties, who are, of course, important components of the political system. We must also make the system clearer and more transparent for the general public, who deserve to have faith in the political administration of the State. The New South Wales Nationals have made detailed comments on many of the recommendations in our submission. We are happy to answer questions.

**CHAIR:** I refer to recommendation 40, which states:

> That the scheme of party and official agents be abolished and that candidates and elected Members be responsible for compliance with the Act.

What is your view on that, and how would it impact on members of Parliament?

**Mr QUIGLEY:** One of the main things that most parties try to do is to keep members of Parliament and candidates as far away as possible from donations. That is a good policy, and this report in other sections says it is a very good idea. We find it completely incongruous that at the same time that the Panel supports the idea that Members of Parliament and candidates should be as far away as possible from donations it also says that they should be responsible for breaches of the Acts. We understand the motivation behind this and that there is frustration that in some of the past investigations senior people have not been held responsible for things that have happened on their watch. However, we suggest that there may be better ways that can be explored to make them more accountable without trying to bring members and candidates back into donations.

**The Hon. COURTNEY HOUSSOS:** You referred to the benefits of agents, and we have heard that from other witnesses today. Can you expand on that in terms of your day-to-day interactions with the Electoral Commission? What are some of the concrete benefits?

**Mr QUIGLEY:** I will answer the question and then throw to Mr Aubert because he has much more day-to-day dealing with this than I do. From my point of view there are two components to compliance with these Acts. There are the executive decisions and the fulfilment of all the requirements in relation to disclosures, which are done generally by trained accountants and often people with legal qualifications within the parties. There should be some level of responsibility on both the executive and administrative arms to ensure compliance with the Acts.

**Mr AUBERT:** One of the key benefits of the party agent scheme is that there is a requirement for disclosures to be made that contain a lot of raw data that requires the work of professional accountants and people with relevant expertise in the field to formulate and to attest to their accuracy. That is the only point I would make in addition to what Mr Quigley said.

**Mr QUIGLEY:** The suggestion is that party agent be replaced and we go back to the candidates. At the moment, the party agents are a very clear line of communication between the Electoral Commission and the parties. I am sure that the Commission feels secure in the knowledge that when it communicates with our agent, that is being acted upon. Throwing in 25-odd members of Parliament all concerned at that time with their own election—and the senior people do not spend much time in their electorate during an election campaign—and expecting clear and consistent communication with the commission is asking for trouble.

**The Hon. COURTNEY HOUSSOS:** The report recommends that parties become incorporated. The Labor Party submission suggests that political parties could be deemed to be legal entities under the Act. That would fulfil the requirement to be able to be prosecuted, but would not have some of the other associated responsibilities of incorporation that might not be appropriate for political parties. What is your view?

**Mr AUBERT:** We are of the same view about incorporation. Deeming political parties to be legal entities for the purposes of prosecution under this Act is a simple and effective to solution to some of the issues raised by the Expert Panel. Forcing political parties to incorporate is an extraordinary incursion into the inner workings of an essentially private organisation that involves members coming together for a common purpose and establishing their corporate structure the way they want. There are no examples in New South Wales or in Australia of such a government incursion into determining the corporate structure of an organisation. I further note that if such a proposal were to proceed, we would be faced with the transfer of assets from one body to the new body. You would be faced with transferring other legal liabilities to the new body. It could create all sorts of tax liabilities. The list goes on about the actual practical consequences. It could be too much for some parties to handle.

**The Hon. COURTNEY HOUSSOS:** I have just one final question. You indicated in your submission, and also in your opening statement, that you are opposed to recommendation 12, which talks about electoral-based caps by expenditure. Would you like to expand on that?

**Mr QUIGLEY:** Yes. One of our great frustrations with the Act is dealing with a piece of legislation that in many cases is quite vague and absolutely untested. We find section 95F is one of the few parts where we have clarity. We know exactly under these conditions what constitutes electorate specific expenditure. Then the suggestion is made by the Panel that it be replaced with this New Zealand model whereby anything that can be reasonably construed to be electorate expenditure is therefore counted as electorate expenditure, which is almost devoid of a definition. It is completely nebulous and very open to interpretation.

For example, if Mike Baird or Luke Foley were to do a television ad coming out of the Sydney media market that went into their home electorates, obviously that is going to influence people in their electorate to vote for them, but is it then counted as electorate expenditure for the purposes of that seat? We ran a few ads in *The Land* newspaper over a few elections where we would feature all of our candidates, put them in a row down the bottom. That is not only going to people in the seats that we represent or contest; that is going to places like Albury and Wagga where we do not even have lower House candidates. Part of what we do there is help the Upper House vote. How then do you determine what portion of that spend goes to each electorate? You could keep listing examples along these lines as long as your imagination. For that reason, we like sticking with the current line. There is a line there. There is a definition there. It is clear and it is easily understood. If we were to move to this New Zealand model, it would just add another layer to the uncertainty surrounding these laws.

**The Hon. Dr PETER PHELPS:** I do not mean to bore the Committee but I am going to ask these three questions again. Do you believe that the growth of the administration fund has professionalised your party and improved your internal working processes?

**Mr QUIGLEY:** Yes, it definitely has. We are looking at—

**The Hon. ROBERT BORSAK:** See what happens when you leave, Ben.

**Mr QUIGLEY:** I am looking at a person to my right who I do not know if we could have kept on under the old scheme. He is responsible primarily for all of our compliance and does a remarkable job in that

respect. I was just explaining earlier that we were able to take on extra administrative staff during the campaign to ensure compliance, which was a huge help in keeping track of what had been spent and what had been raised and where it all came from and went, and then compiling the eventual disclosure. Do you have anything to add on that front, Mr Aubert?

**CHAIR:** I think that gives us the theme.

**The Hon. Dr PETER PHELPS:** My second question is: In your dealings with the Electoral Commission in post-campaign audits, have you found them to be lackadaisical, ineffective or acting in any way that would merit their removal and replacement by the Auditor-General, as is proposed in one of the recommendations—that the Auditor-General take over the auditing function for those political parties that receive administrative funding—or are you happy with the way the Electoral Commission does it at the current time?

**The Hon. BEN FRANKLIN:** Or is there a third option?

**Mr AUBERT:** I might just briefly answer that. Mr Quigley and I are both new to our roles and the compliance process and the audit process—

**CHAIR:** If you would like to take that on notice, I am happy for that as well.

**Mr QUIGLEY:** I can answer the second part of it quite happily, but in terms of our dealings with the Electoral Commission we just need to remember that I was in a communications role before this and did not have any frontline dealings with the Electoral Commission as such and that Mr Aubert has only been in his role since the start of the year.

**The Hon. Dr PETER PHELPS:** That is okay. I might take that question to the previous State director.

**Mr QUIGLEY:** We are happy to answer the second part though, in that we support the removal of the double auditing, but we think that the Auditor-General, to our knowledge, does not have many parallel roles of this type and that the Electoral Commission with its knowledge and its previous capacity to deal with this should remain with the audit function.

**The Hon. Dr PETER PHELPS:** My final question relates to the recommendation for strict liability offences. I do not know the nature of your party but I presume it is fairly decentralised, with a large number of branches and conferences. Do you feel that the creation of strict liability offences is necessary or advantageous considering the large number of units that are in your party?

**Mr QUIGLEY:** The extra strict liability offence is the incomplete disclosure—am I right?

**Mr AUBERT:** That is one existing strict liability offence.

**Mr QUIGLEY:** Is it existing or is it the suggested one?

**The Hon. Dr PETER PHELPS:** It is suggesting failing to lodge a disclosure, failing to keep records and incomplete disclosures.

**Mr QUIGLEY:** Yes, so incomplete disclosures, as I understand it, is not currently included but it suggests that it be included?

**The Hon. Dr PETER PHELPS:** Yes.

**Mr QUIGLEY:** On that front particularly we are opposed because, as you said, there are many small sub-organisations within our larger organisations, some of which are not always as active as we would like them to be. We hound them when it comes to disclosure time—we really do.

**The Hon. ROBERT BORSAK:** But that is the nature of volunteers, is it not?

**Mr QUIGLEY:** Absolutely. And we do our level best across these hundreds of bodies to make sure that they are complying. If it pops up six months later that they have not done their job, obviously we want to

rectify that as soon as possible, but getting rid of consideration around the context of that and imposing strict liability on that kind of offence is ill advised.

**The Hon. Dr PETER PHELPS:** But the worst part about it is that it has the unintended consequence that if you do find something is wrong later on, if you have a strict liability offence the impetus is not to disclose it and correct it; it is to then cover it up.

**Mr QUIGLEY:** Absolutely.

**The Hon. Dr PETER PHELPS:** So you in fact have a worse situation than you have at the moment, where you have the ability to amend your returns at a later date without the concern of facing a strict liability offence.

**Mr AUBERT:** You asked whether it was necessary. I might just add—and this is included in our submission—that the Electoral Commission has very extensive investigatory powers, I believe under 110 and 110A, in relation to serving political parties and required entities notices for the production of documents and evidence and further physical inspection of your books without a warrant. So I just wish to note that and question whether such a move to strict liability would be necessary.

**The Hon. ROBERT BORSAK:** Mr Quigley, regarding recommendation 34 you say that you accept that the details of senior office holders should be put to the Electoral Commission NSW but later in your submission you say that it ought not be the Electoral Commission's role to effectively vet those people or in fact have any real right of veto over who is and who is not an officer of the party. Do you want to expand on that?

**Mr QUIGLEY:** I think there are two aspects to this. First, the question of whether what is essentially a government body should be exercising veto over who is an office bearer in a political party is very troubling. As a matter of principle I would oppose it on those grounds. But also, from a practical point of view, there are so many different systems operating with political parties and that only increases as we get through to smaller parties. The one-size-fits-all model will never work—not that I suggest the Electoral Commission would seek to impose that, but the best arbiter of how a party's structure should work and who should be in positions of responsibility should ultimately lie with the party, not with the Government or a government body.

Sunlight is the best disinfectant and the Panel comes back to this time and time again on other issues. I would suggest that is the answer to this as well—that parties submit their list of senior office bearers and it is public. If they are putting their mailroom boy down as the person who is most responsible for what is going on, the media will have a field day. Therefore, the incentive is to make sure they are complying with the requirement to submit authentic senior office bearers. For those reasons we go as far as supporting the disclosure of senior office bearers to the Electoral Commission but not the approval of the Electoral Commission for those senior office bearers.

**The Hon. BEN FRANKLIN:** Recommendation 14, which you address in your submission, is of course about the funding for elections. You support the 2015 model, which is a dollar per vote model, in preference to the percentage of expenditure model. Do you want to elaborate on that?

**Mr QUIGLEY:** The Panel said a large part of the justification for recommending the expenditure model is that it is fairer. We come to the question of what do we define as "fair"? Do we think it is fair that a party like No Land Tax should be reimbursed on its expenditure rather than its public support? I would argue that the answer is no. Should an independent candidate in a seat who can command 30 per cent of the vote but cannot spend that much money be reimbursed close to the amount they spend? Sorry, they will be reimbursed close to the amount they spend. An independent with much less support who spends a lot more will receive a lot more public funding for their troubles. On that front I think the logic is flawed.

**The Hon. Dr PETER PHELPS:** In the 2011 model?

**Mr QUIGLEY:** In the 2011 model. The second point I raise is, why are we all here? We are here because we want to reduce the risk of perceived or actual corruption in our electoral system. While ever we are forcing parties to scrabble for election funding we are going to have that problem. The 2011 model inherently makes parties chase quite a substantial amount of funding. Even though there is a fair bit of government support, the parties still have to fundraise substantially. Whereas in the 2015 model—it would probably be a losing campaign—the public funds available, in theory, allow candidates and parties to run bare bones, similar to the

campaign, without having to chase too much money. It is all about winding back that desperate need to raise money. The incentive is still there for them to raise a bit of money because it will help but it is not a matter of life or death for them. Under those circumstances, I think the risk of pushing people to try to evade the laws is a lot less, and the risk of pushing people to give undue favour in return for money is a lot less as well.

**CHAIR:** Do you have any final remarks you would like to leave us with today?

**Mr QUIGLEY:** I am finished.

**CHAIR:** Thank you very much for appearing before the Committee today. We appreciate the time you have given us.

**(The witnesses withdrew)**

**The Committee adjourned at 3.33 p.m.**