

**REPORT OF PROCEEDINGS BEFORE**

**JOINT STANDING COMMITTEE ON ELECTORAL  
MATTERS**

**INQUIRY INTO PUBLIC FUNDING OF ELECTION CAMPAIGNS**

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**At Sydney on Monday 1 February 2010**

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**The Committee met at 10.00 a.m.**

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**PRESENT**

Mr R. A. Furolo (Chair)

**Legislative Council**

The Hon. J. A. Gardiner  
The Hon. D. T. Harwin  
Ms L. Rhiannon  
The Hon. M. S. Veitch

**Legislative Assembly**

Ms D. Beamer  
Mr R. D. Coombs

**CHAIR:** This is the Committee's second hearing as part of its inquiry into a public funding model for political parties and candidates to apply at State and local government elections. The terms of reference for the inquiry include wide-ranging issues relating to the reform of electoral and political party funding. The Committee's inquiry process enables multi-party consideration of this important area of reform. The inquiry builds on the work of the Legislative Council Select Committee on Electoral and Political Party Funding, which recommended a ban on all but small donations by individuals, and that further consultation be undertaken on increasing public funding of political parties and elections. As part of the preliminary phase of this inquiry, the Committee heard from the Electoral Commissioner, Mr Colin Barry. Today the Committee will hear from party representatives, followed by a roundtable with academics. On behalf of the Committee, I thank all witnesses for appearing today.

**BENJAMIN CAMERON FRANKLIN**, State Director, National Party of Australia, New South Wales Branch, Level 5, 30 Carrington Street, Sydney, sworn and examined:

**CHAIR:** In what capacity do you appear before the Committee today?

**Mr FRANKLIN:** As State Director of the National Party of Australia, New South Wales Branch.

**CHAIR:** The Committee has received a submission from The Nationals. Do you want the submission to be included as part of your sworn evidence?

**Mr FRANKLIN:** Yes.

**CHAIR:** Do you want to make an opening statement before questions?

**Mr FRANKLIN:** Yes. Thank you for the opportunity to appear before the Committee today. The Nationals in New South Wales are committed to reform of the current system of donations and election campaign funding. Our parliamentary team, that of our Liberal Coalition partners and particularly our leaders Andrew Stoner and Barry O'Farrell have taken the lead in demanding reform of the current system of campaign financing.

There is clearly a heightened public appetite for reform in this area. The public is sick of constant allegations, of Independent Commission Against Corruption inquiries and abuse everywhere from Rockdale to Wollongong. They are undermining confidence in the overall process and in our democratic institutions because of the actions of a few. As is stated in the policy of the Liberals and The Nationals on campaign finance reform, "the community has a right to expect decisions to be made on the basis of merit and public interest, and for those decisions not to be swayed by special access or political donations".

International experience has shown us that neither leaders, governments nor even political parties can survive with the stench of corruption around them. Therefore, I commend this Committee and its work. I note that the public debate so far has been broadly bipartisan in understanding the need for campaign finance reform, and I hope that this Committee and that this Government has the strength and capacity to legislate before the 2011 State election. The community expects no less.

The Nationals would prefer that any such reform be conducted in a cooperative manner between the State and Federal governments. This would ensure unity of purpose, provide consistency in administration and avoid possible jurisdictional problems. But even if the Federal Parliament decides not to legislate in this area—and some commentators are speculating that the Federal Labor Government is losing its zeal for reform—New South Wales should go it alone.

The Nationals are conscious of the need for any reforms to pass the Lange test, and believe that addressing either real or perceived corruption within the political system is adequate justification to burden political freedom to the degree which we advocate. That having been said, I am not a lawyer and those issues will obviously need to be considered by those with appropriate training and experience before this Committee. The proposal put forward by The Nationals considers the need to reform both the income and expenditure, or supply and demand sides of the debate.

Donation reform is needed clearly and apparently and that appears to be almost universally accepted. Organisations, corporations, unions and all other structures other than individuals should be banned from giving money to political parties or candidates. The right to financially support a party or a candidate should be linked, we believe, to the right to electorally support a party or a candidate, that is, individuals on the electoral roll. Donations from those individuals should be set at a relatively low level—between \$1,000 and \$2,000 we believe.

I will clarify our submission at this point to make sure that there is no misunderstanding. That limit will be aggregated for any entity, member of Parliament or candidate or political party together. So we cannot have one political party having \$1,000 donations, for example, if that were the amount, for every candidate running in an election campaign because that would clearly make campaign finance reform meaningless. However, by restricting the ability of political players to raise money in future campaigns without restricting expenditure on those campaigns, confers a significant advantage on major political parties who may have an existing asset base. Therefore, we necessarily propose expenditure limits as well.

And then the next issue arises. By restricting the ability of parties and candidates to raise money for campaign purposes, that can be considered an inappropriate curtailment of political communication so for that reason, regulation of donations and expenditure must be accompanied by a review—and we suggest substantial increase—of current public funding of political campaigns. In addition, it is just not campaign expenses that are funded by donations but it is also party administration and policy development. Therefore, we believe that a system of public support for these activities must be established to ensure the ongoing health of our party political system, and this support should be financial.

To this end I note the comments of Colin Barry at the hearing on 9 December, "There is no doubt that political parties are the major players in the Australian representative democracy. They are the main opinion formers and agenda setters." Finally, experience overseas has shown that the electoral activities of third parties must be regulated in a commensurate manner to those of parties or candidates, or else fundraising and expenditure will continue by proxy through campaigns that are not officially linked to the political players.

Therefore, The Nationals support the following key measures as a necessary part of any genuine attempt at reform: a ban on all donations to political parties and candidates other than individuals who are enrolled to vote in New South Wales; individual donations to be limited by an annual cap per donor; ongoing requirement for regular disclosure of financial returns by political parties, including disclosure of the name and address of all donors who contribute more than \$1,000 in a financial year; an increase in public funding of election costs incurred by political parties and candidates in recognition of the restrictions placed on their funding by donation bans and caps; the establishment of a Party Administration Fund, as recommended by the Legislative Council Select Committee on Electoral and Political Party Funding; a cap on election campaign spending by political parties and candidates; restrictions on the use of publicly funded electorate mail-out accounts by members of Parliament in the lead-up to an election; and regulation of fundraising and election spending by third parties.

With those few opening statements, I am pleased to be here today. I commend the work of the Committee and I am happy to answer any questions from the Committee.

**CHAIR:** In his evidence to this Committee in December the Electoral Commissioner outlined the need for four high-level principles. If you have read his submission I am sure you are familiar with those principles of protecting the integrity of representative government, promoting fairness in politics, supporting parties to perform their functions and respect for political freedoms. Is it useful to have some general principles formulated to guide developments and aid in the interpretation of electoral finance reform?

**Mr FRANKLIN:** I do. I consider it not only useful but paramount to the importance of this Committee.

**CHAIR:** Are the four principles outlined by the Electoral Commissioner appropriate?

**Mr FRANKLIN:** To me they seem to be appropriate. In fact, they are exactly the sort of principles that were guiding our thought processes when we constructed our submission and they seem eminently sensible to me.

**CHAIR:** Do you know of any other principles that should be included?

**Mr FRANKLIN:** Off the top of my head, no. They seem to cover the four broad-ranging aspects.

**The Hon. MICHAEL VEITCH:** In relation to the proposed new funding model, what are your views of how to treat in-kind contributions? How could they be policed?

**Mr FRANKLIN:** In our submission we have stated that we think in-kind contributions must be treated as donations, and they must be treated at market rate. If not, then again campaign finance reform becomes meaningless because people will just give in-kind donations in contrast to money. They could give thousands of dollars worth of advertising space, for example, and therefore making the whole process meaningless.

I think that they must be treated in that way. In terms of how this is to be policed, that is clearly a much more difficult issue and is obviously going to be one of the significant issues for consideration of this Committee. I think, firstly and foremost, political parties and candidates must be bound by the requirements to be open, honest, transparent and accountable in their disclosure of in-kind donations. There must be a process for there to be some recourse if opponents or others within the community do not believe that there has been openness, transparency and honesty by a party or an individual making those statements of what in-kind

contributions they have received. Other than those few statements, I would leave that issue in your very capable hands.

**The Hon. MICHAEL VEITCH:** It is a difficult area.

**Mr FRANKLIN:** It is.

**The Hon. MICHAEL VEITCH:** Another area that concerns me about a new funding regime is start-up or new political parties or independents that are first-time contestants at an election and how they could engage the funding system. The models we keep talking about seem to reward incumbency and I have concerns about independents or new start-up parties.

**Mr FRANKLIN:** In our submission there are two models or schemes of public funding. The first is for election results, so public funding of election campaigns, and that is determined in our model and in most models that are proposed by some sort of assessment of the primary vote of that candidate or individual or party and giving them an equivalent amount of public funding depending on the figure that is struck. Clearly that is not going to be a problem for new parties or candidates or independents. If they can prove their support in the electoral marketplace then they will receive the appropriate funding, so I do not see that that is an issue.

The second issue is of more concern to your particular question, which is the suggested party administration fund. I think that there does need to be some consideration of new players in that process, but at the end of the day The Nationals believe that until a party has an elected representative in parliament they should not be entitled to claim funding under the party administration fund. I think we have to draw the line somewhere, otherwise there will be all sorts of new parties being established every week that have no serious intention of winning elections or running for parliament, but see it as a—

**The Hon. MICHAEL VEITCH:** Profiteering process?

**Mr FRANKLIN:** Exactly. So our view is that the line has to be drawn somewhere, and that line is when a party has an elected representative in parliament.

**CHAIR:** There was a recommendation that interested me in the submission of the Liberal Party. Most of the submissions advocated a new system of bans and caps on donations. This may present a problem given the Federal nature of some political parties. In the Liberal Party submission, in order to minimise the impact on the caps and bans on Federal election finance laws, it is suggested that New South Wales political parties should be required to quarantine various categories of income in separate accounts, including an account for funds raised for Federal election campaigns, an account for funds raised for State election campaigns and a separate account for party administration. This is a way of trying to make sure that the New South Wales electoral law applies to the funds raised for New South Wales elections. As a party administrator, do you think that that sort of system is practical and feasible?

**Mr FRANKLIN:** That is not something that we considered in our submission, but on hearing of it it seems to me to be an elegant and sensible solution that we could quite happily look at and would quite happily be involved with. I do not have any instinctive concerns about that. If it deals with some of the particular constitutional issues that might arise, it seems quite sensible and it is something that the National Party would be quite happy to look at.

**The Hon. JENNIFER GARDINER:** In the submissions published a few minutes ago—

**Mr FRANKLIN:** I have not had time to read them.

**The Hon. JENNIFER GARDINER:** It is a bit difficult for witnesses under those circumstances, but there are various models from The Nationals, the Liberal Party and the Greens in particular. In terms of election expenditure caps, the Greens say that Legislative Assembly candidates should be capped at \$30,000 each and a party running a statewide campaign would be capped at \$1 million. There are various other caps. What do you say about a \$30,000 cap, if anything?

**Mr FRANKLIN:** I have fairly strong views. While I respect and understand the motivation of the Greens in proposing it, I disagree with a \$30,000 cap. I think it is too low. We have not proposed an actual number, but we have given an example, which is potentially \$2 per vote, or let us say \$2 per elector in a

Legislative Assembly seat, that is a figure of about \$100,000. We think that that is a more reasonable figure. I think \$100,000 in a Legislative Assembly seat is about two personally addressed mail-outs. That is not an excessive amount of money, particularly in regional seats, which is obviously what the National Party is most concerned with, when you add to that a greater impost on media markets and travel expenses. You cannot, for example, print off a flyer in many regional markets and give it to your volunteers to distribute it to 10,000 homes because there may be 3 kilometres or 5 kilometres or 100 kilometres between letter boxes, so that means that there is going to be a higher expense due to distribution of material. I would suggest that our figure is more appropriate and \$30,000 I do not think will really be able to allow the sort of communication that is required in election campaigns. If this Committee were to consider—and we would encourage that it does—potentially higher expenditure caps for regional seats, noting the cost of petrol to travel around different towns, there may be, for example, six or eight television stations in one electorate alone or 20 or 30 small newspapers. While it is argued that newspaper advertising in country papers is cheaper, the cumulative effect of having 20 newspapers to advertise in makes it much more substantial—and then there are two dozen radio stations and so forth as well. We would certainly be open to the consideration of a two-tiered system with a higher tier for regional seats. I hope that answers your question.

**Ms LEE RHIANNON:** In your introductory remarks you talked about the need to aggregate amounts of money when there are individual donations, so we would not have someone giving \$1,000 to a party. I am also interested in aggregating between the Liberal Party and The Nationals. I totally respect that they are two separate parties and we know that they have separate structures; however, they run together come election times in the upper House, and I think that has been quite a challenge for a lot of us, wanting to be fair. The Hon. Michael Veitch mentioned start-up parties and there are parties that may work together in the parliamentary process and run in certain houses. Have you given any thought to that issue because, from what I have read, you are presenting that they are totally separate, but there comes a point where they are not totally separate and electoral campaigning benefits both. Have you thought that through?

**Mr FRANKLIN:** Absolutely, and I take your point in the tenor that it is intended. The first point I would make in response to the question is that the Liberal and National parties are entirely separate organisations, and I know that you do not dispute that, but I do want to state that they are entirely separate and they have entirely separate organisational structures. The National Party has the significant range of functions that are associated with an independent party holding its own membership base, servicing its own members, communicating its policies with the broader electorate, running all of those events that a political party would do and so forth. So we do not have any economies of scale in a political party administrative sense. That is the first point.

I do take your point, though, when it comes to election campaigns at a State level, we often do campaign—and in fact have for as long as I can remember, and certainly in this election campaign—as a Coalition. That is why in our submission we have proposed that for electoral funding, if a party is running in a lower House seat, it only receives funding for the seats that they run in the lower House. They receive no extra funding for seats they run in the Legislative Council. For example, at the next election the National Party will run in 20 lower House seats and the Liberal Party will run in 73, so the Liberal Party would get their funding for their 73 seats and we would get our funding for our 20 seats, which is exactly equivalent to any party that runs in the 93 seats.

**Ms LEE RHIANNON:** What about The Shooters Party, which sometimes does not run in any lower House seats?

**Mr FRANKLIN:** That is why we have also suggested that if a party only runs in the upper House then the party should receive funding for the upper House.

**Ms LEE RHIANNON:** But only if they do not run in the lower House, is that what you are saying?

**Mr FRANKLIN:** I should clarify for a moment.

**CHAIR:** You are welcome to take the question on notice.

**Mr FRANKLIN:** Yes, I will. I do believe the public funding should be increased. I have just confused momentarily the expenditure and the public funding structures. I will take the question on notice.

**Ms LEE RHIANNON:** You can see what I am trying to explore.

**Mr FRANKLIN:** I absolutely understand your point.

**Ms LEE RHIANNON:** It is a difficult one.

**Mr FRANKLIN:** But you have to remember that in the upper House, for example, the Liberal and National parties only get the same funding and then they have to share it between themselves. So they get funding for a ticket.

**The Hon. DON HARWIN:** Based on the percentage of the vote.

**Mr FRANKLIN:** Based on the percentage of the vote. Then we share it between each other.

**Ms LEE RHIANNON:** That is at the present time but, in terms of a new arrangement, if we did achieve what there seems to be agreement on, that is, a ban on corporate and other organisations and a cap on individuals, we need an increase in public funding. What model is fair in circumstances such as your own? I am trying to hash that out.

**Mr FRANKLIN:** I should clarify. My apologies, before I was speaking of expenditure caps rather than public funding. With so many different models going around, sometimes it is hard to keep them all separate. In terms of the public funding, we think that the current system is a reasonable and fair one but we think that the rate should be increased for everybody. Because we as a Coalition receive a certain percentage of the vote together in the upper House, we get only that percentage of the public funding and, therefore, we distribute it between each other. We are not getting extra funding, as it were, in the upper House because we run as a Coalition and receive money as a Coalition.

**Ms LEE RHIANNON:** Reference has been made to the contribution by the Commissioner, Mr Colin Barry. I cannot remember the exact formulation but we were left with the impression that he had doubts about achieving reform prior to the next State election. Have you given any thought as to whether it is possible to achieve legislative reform in time for the 2011 State election?

**Mr FRANKLIN:** I would hope so. The first point I would make about that is I note in Mr Barry's verbal submission that he has agreed that local government considerations should be extracted from this process and considered after the election. To me that would seem logical. There appear to be a whole range of other issues that will come up with local government that do not come up with State elections. So to me that seems eminently sensible. Other than that, this issue has been kicking around for a long, long time, as you yourself have said. There comes a time when you have to grasp the nettle and actually do the work. You have to draft the legislation. It was quite clear when the former Premier decided to bow to public pressure and to the pressure of the Liberal and National parties and the Greens and take action on this—and credit to him for doing so—that he wanted there to be legislation before the State election, as the Liberal and National parties do, as the Greens do and as the public does. That just means, as Colin Barry said in his submission, that people will have to burn the midnight oil and make it happen. To me, there is an expectation that it should happen. I think it is a moral expectation as well as a political one.

**CHAIR:** It was suggested in your submission that there is no reason to rearrange the current public funding situation whereby funding is allocated to the Central Fund, that is, the Legislative Council, at a rate that is double that allocated to the Constituency Fund for parties and candidates campaigning for the Legislative Assembly. The Liberal Party's submission suggested that the ratio be reversed to reflect the role played by the Legislative Assembly in forming government. Do you have any comments about that suggestion at all?

**Mr FRANKLIN:** I do. The first point of clarification I would like to make is that sometimes there is an assumption that the Central Fund is to fund Legislative Council campaigns. It is not and never was intended to be. It is a central fund. The Constituency Fund is indeed to fund individual campaigns in individual seats, but the Central Fund was always intended for more than just funding a Legislative Council campaign. In fact, former Premier Neville Wran when he moved the election funding bill on 15 April 1981 discussed this issue. I would like to quote from his speech, if I may. He said:

Two-thirds of the fund will be allocated to the Central Fund, the remaining one-third to the Constituency Fund. This proportion reflects a realistic appreciation of how the major costs of election campaigning are today borne by the parties themselves. The major costs are incurred by the party headquarters in commissioning surveys, in making advertisements, in buying media time or

space and in paying for large printing requirements. The individual candidate will incur expenses but these will vary considerably from candidate to candidate and will not be nearly as great as the cost to the parties.

I would contend that in the 30 years since the former Premier made that speech that the costs borne by parties have certainly increased in that time. So the justification and the validation remain as they were when he originally moved the bill. The second point I would make, which we make in our submission, is that if you start changing the ratio you start getting other flow-on effects. Ms Rhiannon has mentioned The Shooters Party. If, for example, you swap the ratio from two to one to the Legislative Council to two to one to the Legislative Assembly, it would mean that The Shooters Party, who only run in the Legislative Council, would lose a significant proportion of funds. On the other hand, if you increase the Legislative Council funding at the expense of the Constituency Fund, then Independents who only run in Legislative Assembly seats would obviously be proportionately disadvantaged. For all those reasons we contend that keeping the status quo is the most appropriate solution. I might add with regard to that, our submission has tried to keep to the status quo in as many areas as possible to ensure that the significant changes that will have to be made are as understandable, acceptable and easily digestible by the community as possible.

**Ms DIANE BEAMER:** Thank you for your submission made so far. I want to talk about two issues. You talk about donation caps from individuals. We are all aware that certain individuals donate to both political parties, as in Liberal and Labor. You would not propose a ban on that?

**Mr FRANKLIN:** I would not. It would surprise me if individuals who are on the electoral roll donated to both political parties. At the moment I suspect it is corporations. Although I make the point, if unions decided before these laws are enacted that they want to donate to both the Liberal and National parties as well as the Labor Party, we would gratefully accept that money. Your point is: Could individuals still donate to two parties? Our submission is silent on that issue, but I would not see a concern about that because it would restrict political freedom. I do not think you can say, "You are only allowed to donate a certain amount of money to the entire political process."

**Ms DIANE BEAMER:** It would be difficult to find out whom they donated to. To give an example, "I am a very committed Coalition person. I can donate to the National Party and the Liberal Party."

**Mr FRANKLIN:** Yes.

**Ms DIANE BEAMER:** I can give them \$2,000. A committed Labor Party person can give only \$1,000. It is very hard to find out whether a person has donated to another party, but that could be an unforeseen consequence.

**Mr FRANKLIN:** It is my understanding that Country Labor is a separate registered political party as well. So they could donate \$1,000 to Labor and to Country Labor.

**Ms DIANE BEAMER:** Would you see that as an area that could be manipulated?

**Mr FRANKLIN:** No, I would not. If you broaden it and you consider the impact on the parties as well, somebody might want to give \$1,000—let us continue to use that figure—to the Greens but may also want to give \$500 to Greenpeace. Why should they be prohibited from doing so and being part of the electoral debate? Yes, there must be limits imposed but we have to be sensible in those limits. We have to ensure that political freedom is preserved. The final point is, of course, the administrative burden of increasing that to ensure only \$1,000 is given to any political party—

**Ms DIANE BEAMER:** I think it would be impossible.

**Mr FRANKLIN:** I think it would be impossible as well.

**Ms DIANE BEAMER:** I am looking at how people perceive the issues you talk about in terms of donations. Expenditure caps are fairly easy to understand. Donation caps are the crux of the issue. When we talk about what people find unpalatable, it is about people giving a lot of money to a political party.

**Mr FRANKLIN:** Exactly, which is the fundamental point we have made, therefore the perceived corruption in donating for influence in the decision-making process that could result.

**Ms DIANE BEAMER:** Would you put a cap on candidates donating to themselves?



**Mr FRANKLIN:** Absolutely. As we stated in our submission they fall under exactly the same requirements. A candidate cannot give \$300,000 to their own campaign because all that will do is ensure that either (a)—

**Ms DIANE BEAMER:** The rich—

**Mr FRANKLIN:** As you rightly point out, rich candidates will be unfairly advantaged or (b), and much more likely, that organisations, corporations or unions will give gifts of a personal nature to their candidate who will then funnel that money into their election campaign. That would again make a mockery of the laws. These restrictions and rules must apply to candidates themselves as well.

**Ms DIANE BEAMER:** When you talk about donations in-kind and how much they are worth, you are not talking about volunteer labour?

**Mr FRANKLIN:** I am not talking about volunteer labour. I think and hope that I made that exception in our submission. If I did not, certainly volunteer labour is excepted. However, I am indeed talking about getting a market appraisal of what things are worth in the same way that there are currently restrictions over the donation of office space, for example, or computer equipment. You need to get a market assessment of what it is worth. You can only get up to \$1,000 donation for office space, I think it is, and therefore, you need a market appraisal. There would be the same flow-on to other in-kind donations under our scheme.

**Mr ROBERT COOMBS:** Thank you, Mr Franklin. I have a question on the public funding model. I preface my remarks by saying that I am sympathetic to some of those views coming forward. However, I am not convinced that the Australian public is. There are plenty of examples in this place where there is a large degree of goodwill and collaboration but when it gets out to the constituencies some of those things are rejected, especially when they wake up that they have to pay for it. Firstly, how do you think a new public model would be accepted in country areas of New South Wales? Secondly, do you have any views in relation to how a new model would be marketed or explained throughout New South Wales?

**Mr FRANKLIN:** Firstly, on this issue I would not delineate, although I often do, between regional and urban New South Wales. I think that all constituents are interested in this issue. I do take your point. Clearly, the public is going to be not overwhelmingly enthusiastic about increased public funding for election campaigns taken as an isolated example. However, when balanced against the current system, the perceived problems that are within the system, the perceived endemic corruption, particularly in the area of development, then I think that it would be the lesser of two evils by a long, long way. That is the first point. The second point with regard to your concern about a public education campaign, that would clearly need to happen, I would assume. That is something that the Electoral Commission would need to determine. But I assume that one of the recommendations out of this Committee—without arrogantly suggesting that I would know what they would be—I suspect one of them may be that there needs to be some sort of public education campaign to show why this is happening. I think that that is an appropriate price to pay to stop the extraordinary donation-for-development perception that is surrounding the current decision-making process with this Government.

**CHAIR:** The figure of \$1,000 as a cap on donations has been bandied around in a number of submissions and discussed here this morning. If that figure is adopted, what do you think is the appropriate disclosure level? The current disclosure is \$1,000. If the cap is \$1,000, where should the new disclosure level be?

**Mr FRANKLIN:** I think that the disclosure level should be \$1,000. Therefore I would suggest that there should not actually be a disclosure level because I think \$1,000 is an appropriate amount. Why do I say that? I think \$1,000 is a very small amount to start with. In fact, to go back to Neville Wran's speech 30 years ago, we can see that he suggested and enshrined in legislation, "Where any political contribution to a party exceeds \$1,000 the name of the donor must be identified." Clearly, the value of \$1,000 in 30 years has massively decreased. So I would suggest that \$1,000 is a quite small sum and that therefore it is an appropriate level for disclosure. Therefore, if the figure were \$1,000 as a limit, individual donations would not need to be disclosed.

The other reason I think that is reasonable is that the sorts of new systems that we have proposed and that have been thrown around in the media will require a massive and significant new administrative burden. This would be one way to ease the administrative burden while still sticking with the status quo. That is, we are

not lowering the threshold for financial disclosure, we are keeping it where it is, but if people are only allowed to give \$1,000 in effect there does not need to be disclosure anymore; that situation is solved by a new regime.

**The Hon. MICHAEL VEITCH:** When you say \$1,000, that is cash and in-kind contributions combined should not exceed \$1,000?

**Mr FRANKLIN:** Correct.

**CHAIR:** The Independent Commission Against Corruption in its submission suggested that disclosure and transparency was one of the best forms of prevention of corruption. If people who make a \$1,000 donation do not need to disclose it because that is the cap as proposed, where is the disclosure going to come in? Will people not be required to disclose donations at any level up to \$1,000?

**Mr FRANKLIN:** Under our submission, no—assuming it is a \$1,000 cap, unless they go over that amount in the combination of both their donation and their membership fee. We have suggested in our submission that membership fees—or affiliation fees if, and only if, there has been individual written consent that those affiliation fees can be utilised—should be classed as separate entities. However, membership fees should have a cap up to, or certainly no more than, the same amount that the donations are capped at. However, we have suggested that for disclosure purposes those two should be added together and if that goes over the \$1,000 limit which we were discussing a moment ago that is what should be disclosed.

While I absolutely agree with the Independent Commission Against Corruption that transparency is critical to alleviate the perception of corruption or real corruption, I think the level of \$1,000 is one that is not going to attract corruption, and that is why the current level is an appropriate one. The current parties and candidates are not required to disclose over \$1,000, so I do not see any reason why that should be lowered in the new situation.

**CHAIR:** Taking your point that \$1,000 as a donation is so low that it is unlikely to have an impact on the integrity of the campaigns, is it your view that donations should only be from individuals and not from corporations, unions or third parties?

**Mr FRANKLIN:** It is. It is our very strong view that that is the case, and that these individuals should be on the electoral roll.

**CHAIR:** If everyone is restricted to donating \$1,000, it should not matter that corporations or unions are held to that same level; they should still not be permitted to make a donation?

**Mr FRANKLIN:** That is our view, yes. Our view is that there should be no donations from any third party source and that donations should only be received from enrolled individuals.

**Ms DIANE BEAMER:** If we are not disclosing the \$1,000, how do we know that an individual has not donated to somebody nearby and we have both got \$1,000?

**Mr FRANKLIN:** Do you mean another Labor candidate?

**Ms DIANE BEAMER:** Another Labor candidate.

**Mr FRANKLIN:** As I mentioned in my clarifying remarks in my opening statement, when you say \$1,000 as a limit that includes all aspects of the party—MPs, candidates, and the political party itself—and it is aggregated, so you can only donate up to that amount. A political party has the responsibility of making sure that it keeps tabs on what the aggregation is from an individual person. That is going to pose a significant administrative burden on the party. However, there is already an administrative burden on the party in aggregating donations when it gets over \$1,000 anyway, so I see it as the same sort of premise.

**Ms DIANE BEAMER:** From a candidate's point of view, it would be very hard to understand being told, "No, you cannot come to a fundraising function because you have already got to the limit"?

**Mr FRANKLIN:** While that is an unfortunate side-effect, if we are going to put bans on donations that is the sort of thing that will have to happen and the National Party will be very happy to police that thoroughly.

**The Hon. MICHAEL VEITCH:** My question relates to complexity and it arises from some of the comments of Mrs Beamer. I refer to the \$1,000 cap for cash and in-kind contributions. Say I donate to Mrs Beamer. Mrs Beamer is also the mayor of her local shire and she has run as an Independent. In that scenario, can I then donate another \$1,000 to her in her other public capacity?

**Mr FRANKLIN:** As I suggested when discussing local government, I think that local government must be separated and considered entirely separately—and I believe should be considered after the State election because there is a whole new hornet's nest that would need to be considered, including those sorts of issues.

**The Hon. MICHAEL VEITCH:** Do you have a view about that, though?

**Mr FRANKLIN:** We are talking about donations to political parties and to State election candidates, and my view is that there should be a cap of \$1,000 aggregated and cumulative from individuals to political parties or their representatives.

**CHAIR:** Over a financial year?

**Mr FRANKLIN:** Over a financial year.

**Ms DIANE BEAMER:** And the difference between State and Federal?

**Mr FRANKLIN:** There is obviously Federal legislation which may or may not be considered and that is entirely separate. We believe, as I mentioned at the beginning, that New South Wales could and should, and has an obligation we believe, to go ahead with reform. I hope very much, Mr Chairman, that the Labor Government has the fortitude and the strength to make good on its commitments and do just that.

**CHAIR:** Thank you very much for giving evidence this morning. With regard to the questions we have not had time to put to you, would you be able to provide the answers to those questions by 8 February if we get the questions to you by tomorrow?

**Mr FRANKLIN:** Yes, that should be fine.

**(The witness withdrew)**

**MATTHEW JAMES THISTLETHWAITE**, General Secretary, Australian Labor Party (New South Wales Branch), Level 9, 377 Sussex Street, Sydney, sworn and examined:

**CHAIR:** We have received a submission from the Australian Labor Party. Is it your wish that the submission be included as part of your sworn evidence?

**Mr THISTLETHWAITE:** Yes.

**CHAIR:** Would you like to make an opening statement before we commence questions?

**Mr THISTLETHWAITE:** I would, Mr Chairman. Firstly I would like to thank the Committee for the opportunity to appear this morning and to congratulate all MPs in the New South Wales Parliament for supporting this inquiry into what is a very important area of public policy in New South Wales.

It is apparent through this inquiry and other reforms in New South Wales that this State is leading the way when it comes to electoral funding and disclosure reform. Can I say at the outset that New South Wales Labor wholeheartedly supports reform of electoral funding and disclosure laws. Indeed, I think the record of Labor in government proves this: successive Labor governments, beginning with the Wran Government in 1981 right through to the Rees Government more recently, have undertaken reform of funding and disclosure laws.

Those reforms have been aimed at improving transparency, accountability and the democratic integrity of our electoral system. It is heartening to see that the Keneally Government is continuing that legacy in New South Wales. I think it is fair to say that New South Wales now has the most transparent, accountable and democratic funding and disclosure laws in the country. But this is, of course, an area where continual reform is always debated, and it is apparent that in the public's eyes there is an appetite for further reform.

We live in an information age, and reforms to electoral laws concerning accountability in more recent times have meant that information is now freely available to the public concerning donations to political parties and the expenditure that political parties undertake, particularly around election campaign time. These are all positive reforms and something that the Labor Party has always supported.

Of course, at the same time election campaigns have mirrored other aspects of society, most notably in that election campaigns have become much more expensive for political parties to run. Just as the cost of the average home or car in New South Wales has risen dramatically in recent years, so has the cost of running election campaigns. This is a trend that is mirrored throughout Western democracies. Of course, when your expenses are increasing, organisations need to find ways to raise income to cover those expenses. That has meant more and larger donations to fund those expenses, in New South Wales, Australia, and indeed throughout the world.

Given that this information is now freely available to the public, because of the increases in electoral expenditure and the increases in donations associated with that expenditure some have begun to question the integrity of the system. It has been pointed out that there is a perception of undue influence in the system. In our view, that is not healthy for democracy moving forward. In my view a thriving democracy is one in which all within society participate in the system and have confidence in the system. That includes individuals, small businesses, partnerships, corporations, non-government organisations, not-for-profit organisations, and indeed government-sponsored organisations and associations.

We would like to promote a system in which all are engaged in the political process and all have confidence in the system of funding and disclosure in the State. In that vein I think it is the role of this Committee and legislators to ensure that the system strikes the right balance between the rights of individuals whom I have just mentioned to participate in the democratic process—in a process that is free from a perception of undue influence—but also in a system in which the public has confidence as well as confidence in the level of support that taxpayers are giving to candidates and political parties to put their case for election.

Much of our submission goes to the fact that it is up to this inquiry and legislators to strike the right balance. You have asked for our views on what strikes the right balance. We have made those views clear in our submission. There are four points that I wish to make in respect of our submission and the system moving forward. The first point is that, ideally, we believe that reform needs to be approached at a national level and that a national system of identical Federal and State laws relating to election funding and disclosure should be

implemented. We point that out on page three of our submission. Currently we have what is a somewhat absurd situation in that the level of disclosure in New South Wales for a political donation is \$1,000, yet at the national level the level of disclosure is \$11,200. Eleven times more money can be donated to a political party at the national level than at the State level, and avoids disclosure.

When you have discrepancies such as that in the system, you immediately create loopholes. When you have loopholes, you reduce the public's confidence in that particular system. We believe that any approach needs to be a national approach. Ideally you should have a national system of identical Federal and State laws. That also goes to simplicity of the system, both for participating in it and for the general public having confidence in that system. I would also point out the view of Professor Anne Twomey who says that differences in particular laws at a State and Federal level may run foul of constitutional limitations. If New South Wales were to restrict donations to a certain level and have a different regime operating at the Federal level because State political parties are involved in capital election campaigns, there may be an issue under the Commonwealth Constitution in respect of a conflict of laws. They are all issues that need to be considered by this Committee.

The second point I make is that the system should be transparent and simple. The current New South Wales system, while it is the most transparent in the country, is not simple. It is a complex system. There are some discrepancies in the system. We point out one of those discrepancies on page four of our submission in that the disclosure period is six months whereas the threshold for which a donor's details must be disclosed is calculated annually. If you are going to improve confidence of the public in the system, it needs to be a system that the public understands. I am not sure that most politicians would understand how our electoral funding and disclosure system works on a wholesale level in the State.

The third point I make is that these reforms need to be approached on a multiparty consultative basis. All parties must support the reform process. There is no point in political parties arguing over the details of such a scheme because it simply will not work, and it will not be a system in which the public will have confidence. Can I say that the Labor Party in New South Wales is happy to work with other political parties to ensure that we come up with a system in which all parties, all candidates and ultimately all members of the public have confidence.

The fourth and final point I make is that of course reform needs to be conscious of the implied limitation of freedom of political communication under the Commonwealth Constitution. This is a point we make at pages four and five of our submission. You will note that New South Wales Labor supports caps on donations and expenditure, but we make the important point that that is conditional upon the implied limitation under the Commonwealth Constitution. The terms of reference go to the level of caps or limitations on donations and expenditure that we see as appropriate. I have not put a figure on that, and I do not intend to this morning for the simple reason that I am not a constitutional lawyer. It is my view that this is an area in which the Government should properly receive constitutional legal expert advice on what would be an appropriate level of caps for donations and expenditure to ensure that that implied freedom under the Constitution is not breached. Then the process should be that the Government should work with other political parties to ensure that that confidence to which I referred earlier is maintained in the system.

In conclusion—we support reform. We thank the Committee for the opportunity to address you. We look forward to working with other parties in this important area of public policy.

**CHAIR:** Outlined in your submission, and again verbally just now, is your view on the desire for nationally consistent laws. In the absence of the Federal campaign financial reform eventuating in the near future, to what extent do you consider that New South Wales can, or should, go it alone?

**Mr THISTLETHWAITE:** There has been an attempt at the Federal level to undertake some reform recently. Unfortunately, that was not successful and those reforms have been held up in the Senate of the Federal Parliament. Again I make the point that for funding and disclosure reform to be successful, it needs to be approached on a multiparty basis; otherwise, you will get the roadblocks that you have got at a Federal level. Ideally it should be done at a Federal and State level so that there are identical laws and there are no loopholes. Whether the New South Wales Government should go it alone is an area in which I believe they should receive proper constitutional legal advice on the points I raised earlier. That is a point that is raised by Professor Anne Twomey, who I understand is appearing later in the afternoon. Perhaps that is a question more appropriately directed to her.

**CHAIR:** A number of submissions have referred to bans and caps on donations. Quite a few of them referred to donations being capped at \$1,000 per political party per year, and \$1,000 per independent candidate per electoral cycle. The ban will include a ban on donations from corporations, unions and other interest groups under these proposals. What are your thoughts on limiting donations to those only from individuals?

**Mr THISTLETHWAITE:** Again, that is an area in which I think the New South Wales Government should receive advice from a constitutional expert. I do not purport to be an expert in that field, but from what I have read it appears that to ban an organisation that is legally recognised in our society—a corporation, a trade union or a not-for-profit organisation—from donating and actively participating in the democratic process may run foul of that constitutional limitation. Restricting it to individuals' money cause a problem with the constitutional limitation. If that were the case, perhaps the way round it would be to say that the X dollar cap on donations applies to all in society—individuals, small businesses, corporations, unions, and whatever.

**CHAIR:** On an administrative level, the Liberal Party submission discussed the opportunity of dividing up campaign accounts into a Federal campaign account, a State campaign account and an administrative account to help work out where money is coming from and where money is going to for the purposes of disclosure. At an administrative level, is that something that the New South Wales branch of the Australian Labor Party would be able to comply with?

**Mr THISTLETHWAITE:** It certainly is. In fact much of our accounting practices at the moment operate on separate accounts, particularly for State-elected councils, Federal-elected councils, local government committees, and administration of the party. That is something that we could certainly comply with.

**The Hon. JENNIFER GARDINER:** Have you read the terms of reference for this inquiry that Mr Rees gave to us, and which are quite specific as to the work that this Committee is meant to undertake?

**Mr THISTLETHWAITE:** Yes.

**The Hon. JENNIFER GARDINER:** They are pretty specific, are they not? For example—

The Committee is to consider the following:

- (a) the criteria and thresholds that should apply for eligibility to receive public funding;
- (b) the manner in which public funding should be calculated and allocated ...
- (c) any caps that should apply ...

The Labor Party has put in a four-page submission, which does not actually give this Committee the Labor Party's preferred model, whereas the other parties—the Liberals, The Nationals and the Greens, for example—have done so. Can you explain why the Labor Party has done that? In your opening remarks I think you were giving the impression that the party should go off somewhere else and discuss a model, but that this Committee is, basically—at least this is what I think you are saying—irrelevant, apart from considering some constitutional advice, which the Government in the Iemma, Rees and Keneally regimes had access to? They all had access to Dr Twomey's advice. What are we doing here if you in the Labor Party are not prepared to come forward and put on the table your preferred model?

**Mr THISTLETHWAITE:** The last time there was an inquiry of this like in New South Wales was, I believe, a couple of years ago. The possibility of bans on political donations was discussed. In fact, I believe that my predecessor actually advocated bans on political donations in the State at that inquiry. Subsequently the Government received advice from a constitutional expert to say that that was not possible in her view because of the limitations under the Commonwealth Constitution. I do not want to get into a similar situation in which I make a statement or express a point of view which I am not expert in, and which I am not qualified as an expert to give, and have that particular view shot down by an expert further down the track.

I believe that—and I pointed this out in my opening remarks—if this process is to be successful, the Government certainly should receive the advice of the constitutional expert regarding the limitations and expectations that can be placed on any future system. Then they should properly negotiate with other political parties to ensure that they have confidence in that system, which is the outcome, and indeed that the public has confidence in the system.

**CHAIR:** A number of submissions that have been made have discussed a cap on donations from individuals of \$1,000.

**Mr THISTLETHWAITE:** Yes.

**CHAIR:** If \$1,000 is established as the cap or maximum amount of the donations that political parties can receive from individuals, what do you see as the threshold limit for disclosure in relation to that?

**Mr THISTLETHWAITE:** I believe it should be at a level that is below the \$1,000. I do not see any point in having a cap of \$1,000 but a disclosure threshold of \$1,000 also. That defeats the purpose. I believe it should be lower than the threshold, but at a level which is administratively achievable for political parties. If someone buys raffle tickets for \$5 at a local fête at which a political party has a stall, I do not believe it is sensible that a political party has to disclose that level of donation. However, if someone pays \$500 to go to a function, that seems like a more appropriate donation that should be disclosed by that political party. I think it is about striking an appropriate balance—one in which the public has confidence, in that it has adequate transparency, but also one that provides administrative success for a political party in achieving and complying with it.

**CHAIR:** Balancing caps on donations and the other tool being considered, which is caps on expenditure for campaigns, the timing of any expenditure cap will be important. A number of different options have been suggested, including: from the beginning of the financial year in which the general election is to be held; three months before the election; or for the whole four-year election cycle. Do you have a view about what is the most appropriate time frame during which campaign expenditure limits should apply?

**Mr THISTLETHWAITE:** Again, I am not an expert, so I think that is an area in which the Government should receive some advice from a constitutional expert, in my view probably during a certain period before the general election.

**CHAIR:** Six months or nine months?

**Mr THISTLETHWAITE:** Yes, something like that.

**The Hon. DON HARWIN:** I have a couple of questions that are all related to one issue. Mr Thistlethwaite, I have a couple of questions relating to affiliation fees. I commence by asking you to detail briefly the position in the Labor Party rules that deal with the relationship to your party of affiliated trade unions.

**Mr THISTLETHWAITE:** Under our rules trade unions can affiliate to the Labor Party. In doing so they pay an affiliation fee that currently is \$3.25 per member. Generally, those unions will do so on the will of their membership. Generally, there is a resolution at an annual conference or a committee of management for that particular union to make a decision to affiliate to the Labor Party. In that affiliation unions are accorded certain rights under the rules of the party, most notably, the right to send delegates to conferences of the Labor Party and to vote at those conferences.

**The Hon. DON HARWIN:** Is that only at annual State conferences and national conferences, or does it apply also to other conferences?

**Mr THISTLETHWAITE:** It applies also to country conferences.

**The Hon. DON HARWIN:** Is there a provision within your party rules that describes the process through which an affiliated trade union needs to go in order to affiliate? For example, is there a requirement as to how often the trade union has to consider the issue of affiliation, or the nature of the decision that the individual affiliated trade union member has to make? Would you elaborate on that briefly?

**Mr ROBERT COOMBS:** Point of order: I am not sure what this has to do with our terms of reference. This is not an investigation into the way in which trade unions conduct themselves, or how they affiliate with the party.

**The Hon. DON HARWIN:** I assure Mr Coombs that that is not where I am going. Affiliation fees are the biggest stumbling block when trying to come up with a sensible system of election funding. It would be

useful for the Committee to have some evidence about how the affiliation fee process works. If you had read our submission you would be aware that we have a particular view on affiliation fees. I think it is important that we have on the record some evidence about how affiliation fees work. That is all I am doing.

**Mr ROBERT COOMBS:** The Chair will note my concern. I am willing for this line of questioning to continue. However, if it gets much tighter than it already has I will again intervene.

**CHAIR:** Order! A number of submissions discuss the issue of trade unions and there are suggestions about restrictions on trade unions being able to contribute to political parties. If Mr Thistlethwaite is happy to make some comments on that issue I am happy for the questions to continue.

**Mr THISTLETHWAITE:** Trade unions affiliate annually. There is a process that they have to follow. They have to prepare an audited average of their membership and that average is calculated over three years. They then send us their audited figures and they affiliate to the party.

**The Hon. DON HARWIN:** So each year the union has to decide that it will affiliate?

**Mr THISTLETHWAITE:** Yes.

**The Hon. DON HARWIN:** You do not specify anything in your party rules as to how they are required to make that decision? Is it a decision that is entirely up to the trade unions themselves?

**Mr THISTLETHWAITE:** There are rules that detail how that affiliation takes place but the decision to affiliate is left to the members of that union.

**The Hon. DON HARWIN:** Would you be happy to supply the Committee with a copy of those details?

**Mr THISTLETHWAITE:** Under our rules only members of the party are entitled to receive a copy of the rulebook. However, I am happy to supply those provisions to the Committee.

**The Hon. DON HARWIN:** Thank you very much. What is the number of affiliated trade unions at present?

**Mr THISTLETHWAITE:** It is about 18.

**The Hon. DON HARWIN:** What is the ballpark figure that it costs each year to keep open the doors at level 9, 377 Sussex Street? Are you willing to tell the Committee approximately what proportion of those administrative and staff costs is covered by the amount that is paid in affiliation fees each year?

**Mr THISTLETHWAITE:** I am sorry; I simply do not have those figures for you. I do not think that relates to the terms of reference, so I did not prepare for it.

**The Hon. DON HARWIN:** The reason I am asking is that we are looking at possible election funding for party administration. I think it is relevant in trying to strike a figure—an appropriate amount that taxpayers could contribute to party administration through public funding—if, for example, a low cap were placed on donations and if corporate funding and trade union donations were banned. That is the reason I am asking this question.

**Mr THISTLETHWAITE:** I am happy to supply those figures on notice.

**CHAIR:** You have been asked a series of specific questions that you might not be able to answer. I suggest that those questions should be supplied to the General Secretary.

**Mr THISTLETHWAITE:** I am happy to supply those figures on notice.

**The Hon. DON HARWIN:** That is the only reason I am asking the question.

**CHAIR:** I understand the member's line of questioning.



**The Hon. DON HARWIN:** Would it be fair to say that, in order to keep the doors open each year at your head office, membership fees for actual party members, affiliation fees and political education fees are not enough? You rely also on corporate donations and trade union donations to cover your administrative expenses?

**Mr THISTLETHWAITE:** I cannot answer that question; I would have to check the figures.

**The Hon. DON HARWIN:** I will place the rest of my questions on notice.

**Ms LEE RHIANNON:** At the last State conference you would have heard Mr Rees, the former Premier, outline the need for far-reaching reform of electoral funding? Obviously I did not hear it but I read about it with interest in the media coverage. To remind all members, he spoke about the need for far-reaching reform, the result of which was the referral to this Committee. There was a specific package with which we have already dealt relating to developer donations. I was surprised when I heard some of the language that you used in answering questions. However, I was particularly surprised when I heard your introductory remarks.

At one point you said that any approach needs to be a national approach. Clearly, what came through from the former Premier—we acted on it with the ban on developer donations, which happened only in New South Wales—was the need for New South Wales to give leadership. Has Labor gone cold on the whole issue of New South Wales giving a lead on this most important issue, as that is the impression I got from your earlier language? It is also the impression that the new Labor Government is giving.

**Mr THISTLETHWAITE:** In my view, any reform that is undertaken should improve the confidence of the public in the system that develops. In my earlier remarks I said that, ideally, reform should be undertaken at both a State and a national level, for the reason that it reduces loopholes. If there are loopholes it reduces the confidence of the public in the system. Labor has not gone cold on reform. On a number of occasions former Premier Rees undertook to raise the issue of electoral funding and disclosure reform, both in the public and with the Federal Government. The Federal Government attempted to undertake significant reform in the Federal Parliament but, unfortunately, that has not occurred because of roadblocks in the Senate. We support reform in New South Wales, we will participate in reform in New South Wales and we will work with other political parties. However, we have said constantly that, ideally, it should be undertaken at a national and at a State level to ensure maximum confidence in the system.

**Ms LEE RHIANNON:** You would have read the reports and some of the comments made by Senator Ludwig about the chances of reform at the Federal level, which is where it has stalled. Do you believe we should be pushing forward with the original intention of former Premier Rees to pass legislation on the reform of electoral funding in New South Wales prior to the next State election?

**Mr THISTLETHWAITE:** I am not sure whether reform at the Federal level has stalled. I understand that discussions are still going on concerning reform, and we support that. This inquiry is occurring in New South Wales because the former Premier believed that reform was essential in New South Wales. We support that, but again I reiterate that ideally we believe it should be undertaken in all States and at a national level.

**CHAIR:** I think that question has been answered.

**Ms LEE RHIANNON:** Mr Thistlethwaite, when you spoke earlier you talked about how expensive election campaigns had become with all the television advertisements, the glossy pamphlets that are shoved in our letterboxes, et cetera. You gave great emphasis to that excessive increase. I imagine you would agree that the rise in electoral funding has been much greater than the rise in the cost of living. You gave us the impression that the cost of cars, houses and elections had gone up but I am sure that you did not mean to give us that impression because the rise in electoral funding has been at a much greater rate. Would you agree with that?

**Mr THISTLETHWAITE:** I am not sure of the exact figures, but I know that in more recent times the cost of a house in New South Wales, in particular in Sydney, has exploded. I do not think that would be too different from what happened with electoral expenditure.

**Ms LEE RHIANNON:** Parties at State and Federal elections now spend record amounts, or millions of dollars. Parties use all the donations that come in. When we gain electoral funding reform is that is the level at which parties should be funded? Would you spell it out because your submission was quite minimal and it was hard to get a sense of where you are taking it?

**Mr THISTLETHWAITE:** I think that is an area in which the Government needs to work with other parties to try to strike the right balance. If you went out and said to members of the public, "We will increase public funding to political parties by \$100 million a year", I am not sure whether they would be too supportive of that in isolation. That is why the issue needs to be approached on a multiparty basis. That is why there must be a public debate about the issue.

**Ms LEE RHIANNON:** What would you bring to the table in that debate? That is what people are finding a bit frustrating. We need to start the debate. What would Labor bring to the table about what it should be doing?

**CHAIR:** One of the suggestions was that the figure used in the 2003 State election would be a reasonable starting point as a basis for caps on expenditure for campaigns. Is that something you would see as being a reasonable limit?

**Mr THISTLETHWAITE:** Caps on expenditure?

**CHAIR:** Yes. The amount that campaigns were to be funded and the caps on expenditure were to be based on the 2003 election.

**Mr THISTLETHWAITE:** Referring to caps on expenditure, in our view it is most practical during a particular campaign period to cap electronic and print advertisements. Caps on other areas of expenditure are simply too hard to administer and police. For instance, I am not sure how you would cap the expenditure of a political party on printing. The number of flyers that an individual candidate who might be running as an Independent could print and distribute to his or her electorate could run foul of the constitutional limitation. I make this point seriously: If all the political parties in New South Wales were of the view that there should be restrictions on donations and expenditure in the form of caps my view would be that the first approach would be to go to a constitutional law expert to establish what level of caps on donations and expenditure would not run foul of the constitutional limitation.

If you implement a system that has caps and it is challenged in the High Court and falls over, what will that do for public confidence in the system moving forward? I believe it is appropriate that the parties, firstly, agree there should be caps. We have advocated that and I believe the other parties have advocated that. The next step would be to get proper constitutional legal advice to ensure that any future system will not fall over in the High Court.

**The Hon. MICHAEL VEITCH:** I want to take you back to the line of questioning by the Hon. Don Harwin about administration of political parties. It is an issue that was discussed at length during the Select Committee's inquiry a couple of years ago. There was a view in that committee, which was not shared by all, that you could have public funding for electoral campaigns but people could still donate to political parties or candidates solely for the administration of that party or individual. Do you have a view about that? The money could not be used at all for campaigning; it could be used solely to assist the administration of the party.

**Mr THISTLETHWAITE:** Administratively that is achievable. I am not sure that that is a system that the public would ultimately have confidence in, but it is certainly achievable and something that we can implement.

**The Hon. MICHAEL VEITCH:** I have another question, relating to in-kind donations. I raised this question earlier with Mr Franklin from the National Party. Again, it is an area that is very difficult to police or enforce. How do you see volunteer in-kind-type donations or contributions being measured and brought to account under a public funding model?

**Mr THISTLETHWAITE:** There are current restrictions on in-kind donations and we believe they are appropriate moving forward. We certainly have no problem working within those restrictions. One would think that if certain restrictions were put on donations at a financial level, then similarly in-kind donations should probably mirror that financial cap.

**The Hon. JENNIFER GARDINER:** Can I ask about the timetable that the Labor Party sees applying? When the new Premier, Kristina Keneally, told *Stateline* on 4 December last that she was committed to full public funding of election campaigns, was she then and is she now, as your parliamentary leader, talking about getting legislation through the Parliament in time for the next State election?

**Mr THISTLETHWAITE:** Yes.

**The Hon. JENNIFER GARDINER:** Are you still committed to that?

**Mr THISTLETHWAITE:** Yes.

**The Hon. JENNIFER GARDINER:** Better get a hurry-on, then!

**Mr THISTLETHWAITE:** We are happy to work with everyone.

**Ms DIANE BEAMER:** All of us who have read the submissions understand the constitutional grey areas that we have some issues with, but often legislation is put through Parliaments, usually in Queensland because it does not have an upper House, as template legislation. In working towards this, while we understand that we can have some constitutional problems, if we were brave enough to go forward with some template legislation that hopefully all political parties were happy with—I understand your point that we do not want a battlefield or the legislation will fail, and Mr Franklin made a similar point; it has to be something we all agree on—do you think we could do that? I understand your point about the problems with constitutionality. If we put through that legislation as a hurry-up to the Feds, would that be an appropriate thing for the New South Wales Government to do?

**Mr THISTLETHWAITE:** I think that is certainly achievable. I make the point that there is quite a bit of writing on this particular aspect. In fact, I think the New South Wales Government has expert advice from Anne Twomey on this matter. George Williams has written on this topic on many occasions. I understand he might be appearing before the Committee. Perhaps it is something you should be asking those experts about.

**CHAIR:** Matt, on behalf of the Committee and people in the public gallery, thank you for your evidence and for taking part in this inquiry. Obviously there are a couple of things that we might need clarified. We will try to get some information to you by email by tomorrow and if you could respond to us by 8 February it would be appreciated. You are welcome also to respond to any other submissions from other party secretaries published today and make a further submission to the Committee.

**(The witness withdrew)**

**(Short adjournment)**

**CHRISTOPHER HENRY MALTBY**, Registered Officer, the Greens (NSW), 19 Eve Street, Erskineville, New South Wales, and

**DAVID MARTIN SHOEBRIDGE**, Convenor, the Greens (NSW), 19 Eve Street, Erskineville, New South Wales, affirmed and examined:

**CHAIR:** Mr Maltby, we have received your submission from the Greens. Is it your wish that it be included as part of your sworn evidence?

**Mr MALTBY:** Yes.

**CHAIR:** Would you like to make an opening statement?

**Mr MALTBY:** I will ask David to do that.

**Mr SHOEBRIDGE:** The New South Wales Greens in their submission are calling upon the Government and all political parties in New South Wales to join together and take urgent action to reform the corrupting influence of political donations in New South Wales. We are pleased to see that on one level all parties appear to be supporting controls on both the demand side and the supply side in the electoral arms race we have seen developing in New South Wales and across Australia. One real concern that the New South Wales Greens have is that other parties will hide behind potential constitutional problems to avoid taking action. If we have seen one thing of late it is that the urgency for reform and moves for reform at a Federal level are stalling.

It really is necessary for New South Wales to take the lead and put in place State-based reform of both the demand side and the supply side. Unless there is a cap on electoral expenditure, there will always be this constant need and constant conflict as parties look wherever they can to fund increasingly expensive electoral campaigns. The people of New South Wales would welcome reduced electoral expenditure. I am sure that the parties would get broad support if there was less bombarding of the people of New South Wales with repetitive, relatively similar electioneering in the lead up to elections in New South Wales. Less, more considered, more direct communication is something the people of New South Wales would welcome.

The New South Wales Greens recognise that New South Wales, like the Federal Government and other States, is bound by the limits of the Constitution. I am pleased to see, and the New South Wales Greens are pleased to see, that a group of constitutional lawyers will appear before the Committee this afternoon, in what lawyers call the "hot tub". They will all get together and hopefully come up with a joint opinion. However, the experience of all of us is that if you get four constitutional lawyers together, or four lawyers of any type, you are likely to get four different opinions and four differently nuanced responses. You are not going to get a lovely uniform response out of the hot tub. That will require the New South Wales Government to take appropriate advice, consult the other parties and then act. It should not use the lowest common denominator that comes out of the constitutional lawyers as the starting point.

I heard talk earlier, I think, from Ms Diane Beamer about template legislation. New South Wales needs to put in place that template legislation, and do it promptly too, because if there is to be a constitutional challenge to it it needs to be introduced in the coming session of Parliament so that a challenge can be brought promptly to the High Court and it can be tested before we get right up to the point of the election. So the concerns about constitutionality, the concern about a constitutional challenge, should be a driving force for immediate action because unless we get the legislation up immediately we will start finding potential challenges winding up in the High Court close to the election date. Let us get that done now. Let us act together, hopefully all the parties can act together in the interests of the people of New South Wales, and hopefully as a template for the people of Australia to reduce that corrupting influence of political donations.

**CHAIR:** In their submission the Greens state that expenditure caps on third parties in New Zealand and Canada were up to \$120,000 and \$150,000 respectively. What do you consider is an appropriate expenditure cap on third parties in New South Wales?

**Mr SHOEBRIDGE:** The submission posits something in the order of \$100,000 for third parties but that really is a matter for the broader political discussion to happen, but it needs to be a reasonably modest cap because if it is part of a broader reform where the spending power of the political parties has been reduced well then you can have a relatively modest cap on third parties because their relative voice, as against the political

parties, will be raised in the debate. If it is part of a broad reform where there are caps on the parties' expenditure you can have a relatively modest cap on third parties expenditure because their relative voice—relative to the capped expenditure of parties—will still be heard.

**Mr MALTBY:** I think this comes into the constitutional question in this way too because the sort of reform that would be supported constitutionally would be things which are reasonable in all the circumstances and which provide reasonable opportunities for the various players in elections, third parties, individuals, parties themselves, et cetera to have their voices heard but not dominate. So if you make it so that any one group is disproportionately favoured then that is more likely to have the resultant legislation changed. In the spectrum of all the caps that may be imposed on the various players in the electoral process they all need to be designed so that they provide that reasonable voice to all the different points of view.

**CHAIR:** Do you agree, as has been suggested in a number of submissions, that the voices of political parties and candidates should have primacy over third parties, that is, third party candidates or third party groupings should not be able to spend as much in total or in individual elections as political parties?

**Mr MALTBY:** It is a challenging area. An electoral campaign is composed of both support for individual candidates and spruiking their respective qualities as a representative and then also in the pursuit of particular political issues and the seeking of mandates for change, and identifying candidates who will support particular issues that the public may be interested in. Those things are different in a way but if you see, what we have seen in the United States of America particularly, third party organisations have entered the debate in a candidate-specific way—for example, candidate X has a terrible position on such and such an issue—that is the sort of thing that might be more of a problem than saying "Here is an issue of importance to the people of New South Wales. We think you should be voting for candidates who have got strong positions on this sort of issue."

**Mr SHOEBRIDGE:** One way of looking at it is saying the parties and the candidates must be the primary voice. That is probably not the way I think would be appropriate to look at it. The best way to look at it would be to say "No single issue in a campaign or no single issue group can dominate" so there needs to be restrictions so you do not get these single issue campaigns dominating a campaign: it can only be part of a campaign. That is probably, I think, a more rigorous way to look at it.

**CHAIR:** In your submission you recommended that in the three months prior to and including a general election, the New South Wales Auditor-General be given the power to determine if government advertising should be publicly released. In his submission the Auditor-General stated that he does not think it would be an appropriate role for the Auditor-General as it would limit his ability to give an opinion on compliance with government advertising guidelines, the Public Finance and Audit Act and the Appropriations Act. What is your comment in response to that?

**Mr SHOEBRIDGE:** If not the Auditor-General, an independent statutory officer needs to be put in place to consider government advertising, particularly if you are restricting the capacity of Oppositions and other parties and other voices to be heard because otherwise the danger will be that incumbency with the power to advertise at will without a restraint will become even more powerful than it is in the current system. The other part of the New South Wales Greens' submission is that the Electoral Funding Authority needs to be given both additional funds and some form of independent statutory commissioner, with independence similar to that of the Director of Public Prosecutions and to have oversight of the electoral funding reform agenda and would be entirely appropriate for that independent commissioner to also take on board that function that we have suggested might happen with the Auditor-General.

**CHAIR:** Possibly the establishment of a government advertising commissioner, or someone along those lines?

**Mr SHOEBRIDGE:** Indeed, the exact name or the exact animal is not the issue. The fact is an independent statutory officer having some oversight during that campaign period.

**The Hon. DON HARWIN:** The Ontario model is that the Auditor-General can either do it himself or if he chooses not to, in terms of those concerns that Mr Achterstraat relays, he can delegate his power to an advertising commissioner that he appoints.

**Mr SHOEBRIDGE:** That would be acceptable.

**CHAIR:** In December the Electoral Commissioner outlined to the Committee four general principles to guide the establishment of the Act. I referred to them earlier as: protecting the integrity of representative government, promoting fairness in politics, supporting parties to perform their functions and respect for political freedoms. Have you reviewed his statement to the hearing?

**Mr SHOEBRIDGE:** I have not reviewed it recently but those four seem commonsense, and one would hope, cross-partisan principles that parties could unite around as guiding principles for reform agenda.

**CHAIR:** At an administrative level the submission from the Liberal Party talked about quarantining campaign accounts as one way to overcome the potential constitutional issues between Federal and State campaigns. The Federal campaign account of any political party would be separate to the State campaign account and separate to the administration account. From an administration point of view for the Greens, is that something that you think would be applicable?

**Mr MALTBY:** I am not quite sure how that would work because, you know, while we have funding most Federal campaigns are conducted at a State level as well by all parties so it is the same pool of funds that generally campaign in both of those things. I think the issue is the transfer of funding between States so that a larger pool of funds might be available in a particular State and then that might be transferred on to another State for their State election and so forth and go around that cycle there. The important thing is to close loopholes that might allow money from other parts of a national party into a particular State, or into New South Wales in this specific case, and thus get around the funding caps or donation limitations et cetera that might exist. I think the Greens might find it challenging to have a separate Federal campaign fund from a State one because that would be very onerous on our limited funding seeing as we already have a policy of not taking corporate money.

**Mr SHOEBRIDGE:** The Greens are great recyclers and Federal funds are used for State funds and recycled through—subject, of course, to the rigorous disclosure requirements, and there are separate disclosure requirements which require administrative compliance for the New South Wales Greens, so it takes some time. The Greens welcome those administrative compliance obligations, but some consideration would be needed in terms of how the New South Wales Greens funding could be done.

**Mr ROBERT COOMBS:** I am looking at the submission by Mr Thompson. Is that your only submission?

**Mr SHOEBRIDGE:** No, it is the submission of the Greens. I think Mr Thompson is appearing separately.

**Mr ROBERT COOMBS:** Nevertheless, under major points to be incorporated in a new election funding system, the first point it makes is banning all donations from corporations and other organisations. I have spoken to people with some expertise in this and all of them seem to come back to the point that, if a challenge was run in the High Court, that would be the point on which any new legislation would fall over. I think there are some problems in properly marketing this thing to the New South Wales public and it would be disastrous if, with the best intentions, we come to a position which ends up being knocked over in the High Court because of something that we have not been flexible about. I am interested in understanding if there is any ambit. Secondly, it is all right to talk about financial limitations, but practically there are problems. The Greens raise money like the Labor Party does—relying on fundraisers—and if I invite a person from a local corporation I might have to say, "You are from X corporation, so you can't come to my fundraiser because you might make a donation and you are not allowed to, or it will cost me money." It is even a problem when you have \$1,000 caps. Let us say a corporation makes a \$1,000 donation to a party and you then invite it to your particular fundraiser. You would have to say, "You're welcome to come, but we are going to have to pay for it and, by the way, don't buy any raffle tickets." This is the extent of the new regime that we are considering.

**Mr MALTBY:** I think the question of constitutionality has been specifically raised in relation to banning donations from a particular sector of the corporate world. I think developer donations and the Queensland scenario is in question here—and I agree with that. It would be unlikely to be considered reasonable to say that any one particular sector of the economy was somehow untouchable in this area and we should restrict their ability to be a participant, but I think we do need to draw a distinction between corporations and voters. Corporations do not have a vote, only the people who work for them, their employees and other people—members of unions and all those people—are empowered to vote, but the corporations themselves do not do that. I think the only way you can successfully limit the participation of corporations and their significant

resources, and their potential to create the perception of corruption, is to ban all corporate participation in financial terms. That does not stop the directors, employees and other people being involved, and that is where it is important that there be modest caps on individuals because you would not want 100 or 1,000 employees of a large corporation coming along and donating exactly the amount of the cap as a way of getting around it, although I understand that does occur in other jurisdictions. This area is not without minefields and I think the only way we can address the problem of some corporations is to target all corporations. I do not think there is a constitutional problem because those entities do not have a constitutional right to vote or to participate in the democratic process directly—the individuals within them do.

On the practical side of things, of course, if a person has come to a fundraiser or whatever, if you are not talking about corporations being involved, it makes that a lot easier. A person who wants to donate to a particular candidate or party can do that up to whatever cap is determined to be appropriate, and at that point they are probably limited. This is where the disclosure threshold comes in too. If you have a disclosure of, say, the price of a movie ticket or something like that, if somebody comes along to one of your fundraisers, which happens to be the showing of some film, and they had already donated the limit, nobody is really going to complain, and it is probably not going to be really important anyway because you are talking about a small amount of money. It is when people are explicitly trying to get around reasonable restrictions on funding which might create the impression of undue influence, but small or reasonable amounts under disclosure might escape scrutiny without too many people being unhappy.

**Mr SHOEBRIDGE:** The constitutional impediment, of course, is a restraint on parliaments and governments from acting to stop that broad political discourse happening that allows for free and fair elections, so to the extent that there is a restraint it is a restraint that stops governments and parliaments stopping individuals communicating amongst themselves in a free and open way so that we can have a functioning democracy, and that restraint does not apply to the same extent to corporations, which do not have that right to participate *prima facie* in a democracy. I think that is the important distinction. In terms of not taking donations from corporations, if you get a cheque or a payment from a corporation you just simply have to return it. That has been the experience of the New South Wales Greens. It does put an administrative burden on a party, but once the word is out it becomes less burdensome because you do not tend to get them.

**CHAIR:** If we address the demand side for campaign funds by capping how much parties and candidates can spend and we cap donations to a limit that is unlikely to cause undue influence on candidates and parties, let us say \$1,000, is there much demand for corporate donations from political parties? If the cap is \$1,000, their capacity to unduly influence candidates and political parties is severely limited. Is there a particular reason over and above what you have suggested why they should be excluded from making contributions to candidates or political parties of their choice? If they cannot buy influence because they are capped so low—

**Mr MALTBY:** That is a good point. I think that case could be made. I suppose it is certainly more consistent if you restrict the electoral process and the funding of the electoral process to the individuals who are the voters. It might be possible to make a case that says that if there is not a demand for large donations—and there has been a lot of approbation applied to corporations and some corporations have withdrawn from donating for that reason—maybe there would not be the need to explicitly restrict them, but certainly it is the case, and I accept the point, that there are many public-spirited individuals in corporations who donate or have a political view which they support through their corporation. We need to be careful of making it selective. It would have to be either all in or all out, and if it is all in it makes the determining of caps on expenditure and donations much more important.

**Mr SHOEBRIDGE:** But in circumstances where you have a cap on expenditure and hopefully there is unanimity of opinion supporting a cap on expenditure, corporate donations up to \$1,000 can still have influence, particularly when you take into account corporate structures, which allow for subsidiary donations and the like. This ought to be reform that encourages the electoral contest to be about ideas and motivations for people, the citizens of New South Wales, not the corporations of New South Wales, and therefore the Greens strongly support the prohibition on donations to corporations.

**The Hon. MICHAEL VEITCH:** Recommendation 2.1 in your submission talks about a \$30,000 cap per lower House seat. What I am trying to work through in my own mind about setting up a public funding model is that it does not contain an inherent disadvantage for start-up parties or people running genuinely as an independent. Drawing on recent experience, what would prevent a party from running 12 candidates in an election to increase the dollar value to that electorate? The message of the party would be the same, but the individuals collect the money. How do you propose to overcome a scenario like that?

**Mr SHOEBRIDGE:** The recent unpleasant North Shore experience that you are referring to could be dealt with by simply saying a party's expenditure is capped. That would have comprehensively dealt with that unpleasant North Shore experience that we recently saw. If the party's campaign expenditure were capped then that would be it. If you are asking how you control ghost independents—

**The Hon. MICHAEL VEITCH:** Yes.

**Mr SHOEBRIDGE:** This is going to require careful drafting—and let us not be too precious about it. The first draft of this legislation will be the first time that everyone collectively in New South Wales acts together to try to come up with a model reform, and no doubt it will require iterations and considerations over time like almost all statutes in New South Wales and federally. One would aim for legislation that covers that. No doubt there will be people who squirm and manoeuvre to try to outflank any reform that we put in place, but that just requires constant vigilance and continuing review of the legislation, so you put in place provisions that try to capture and describe that mock candidacy.

**The Hon. MICHAEL VEITCH:** The second issue I raise follows a similar thought process. The Greens, The Nationals, the Liberal Party and the Labor Party run candidates and draw upon a centralised arrangement in relation to marketing, campaign skills, strategy—the whole lot—but someone running as an independent I would see is inherently disadvantaged because they are running their own campaign in a seat and are not able engage their electorate on an equal footing with larger party structures. How do we overcome that situation in the public funding model to create an equal field, and not go the other way and provide a greater advantage for someone who is independent?

**Mr SHOEBRIDGE:** There might be room to consider saying if you are a candidate of a registered party who already has elected members in the Parliament then you are going to benefit from economies of scale in the course of your electoral campaign and therefore the cap for those candidates might be considered to be marginally lesser than an independent candidate. There might be scope for that. I think that is an area for legitimate public debate because there are economies of scale—we all know that. There are economies of scale in running a statewide campaign and that is an area for legitimate concern.

**Mr MALTBY:** I think it is also fair to say, though, that those candidates presently face enormous difficulties in getting their message out. If you are an independent candidate in an individual seat, the media attention on the election is primarily focused on leadership and the statewide issues, so cutting through that is going to be very difficult for you as an independent anyway. To the extent that we are taking some of the competition out of those issues there may be more room in the statewide media and other places to report on the hot issues in particular seats that may be crucial to the election, and so you may create that just by the virtue of removing the noise or lowering the noise threshold in the rest of the campaign. I am not sure that you would make it worse, and in fact you may well make it better by doing this. Certainly the local media and other things have been a place for candidates, but I think the threshold per seat needs to be struck at such a level where it is possible to run a reasonable campaign as an individual candidate, and whether that would be more or less if you were independent or part of a statewide campaign I think is a matter for debate, but my feeling is that an equivalent amount is probably right for the reasons I went through before.

**The Hon. MICHAEL VEITCH:** Recommendation 2.8 in your submission states that expenditure caps should not apply to volunteer labour. Could you define what you mean by volunteer labour?

**Mr SHOEBRIDGE:** Genuine volunteer labour, not labour paid for by a corporation to go and work in a—

**The Hon. MICHAEL VEITCH:** Letterboxing, doorknocking, polling day workers?

**Mr SHOEBRIDGE:** Yes, letterboxing, doorknocking, polling day workers. But the existing in-kind restrictions need to take place.

**The Hon. MICHAEL VEITCH:** An accountant providing accounting services as the treasurer?

**Mr SHOEBRIDGE:** If they were providing that as a corporate accountant they would have to be prohibited. An elected officer who happens to be an accountant, that is an area I have not fully considered.



**Mr MALTBY:** That is one of the areas in the current legislation that works reasonably well, leaving aside the practicalities of enforcing it. There is not actually a blanket ban on donations in-kind. It is a blanket ban on donations up to the disclosure threshold. So choosing a suitable level which says that people can make professional contributions in their own capacity or in some way like that is acceptable but only up to the value of an amount which would otherwise have to be disclosed and then become an issue. I am not sure that was an intention of the current drafting of the Act but it has been reasonably effective, though it is a complicated Act.

**The Hon. DON HARWIN:** Would you elaborate on the issue of donation caps? Most of your submission is concentrated on the expenditure limits and system of public funding. A number of other submissions, which you would not have seen yet, talk about how membership fees in relation to donation caps? Would you see the membership fee that a registered political party asks from its members should be seen as a donation or should it fall outside the cap on donations? If so, what approach should be taken to membership fees? What relationship do you see between the two?

**Mr SHOEBRIDGE:** One would hope that membership fees and active members will always be a part of the political parties here in New South Wales, provided it was regulated at a reasonable cap. There would be scope for excluding membership fees from the donations cap, but you would regulate it as no more than \$100 per annum or a similar amount.

**Mr MALTBY:** Another method that could work here too, and I think is elsewhere advocated, is State funding for a party's administrative expenses. A model similar to that used for the Political Education Fund which explicitly has restrictions on where that money can be spent on campaigning expenses or just for party administration, in this case education, is potentially a way to go. Party membership might sustain the party but the membership fees might be restricted in their ability to fund campaigns. If we are talking about campaign funding that would be separate from the membership.

**Mr SHOEBRIDGE:** Tithes on parliamentarians might fall into the same scope. It is hard to see how a parliamentarian could influence its party any more than being a parliamentarian. Those types of area would be in the scope.

**The Hon. DON HARWIN:** What type of cap would you see on membership fees versus the cap on donations?

**Mr SHOEBRIDGE:** Greens NSW do not have a set position on a set fee. One would imagine something reasonable in the order of \$100 per annum would be the appropriate level, potentially slightly more but in that reasonable range.

**CHAIR:** Some submissions suggest that the cap on donations should also be the cap on membership fees. The cap on donations is \$1,000, so membership fees could not exceed that but it would be separate to donations that members would also be able to make to their party.

**Mr SHOEBRIDGE:** That does not sound like a membership fee; that sounds like a funding fee. There is room for debate on what the figure is. Members of a political party have a right to give some money towards their political party in order to support it. That ought to be at a reasonable threshold so that people do not get a double dip.

**The Hon. DON HARWIN:** We have a de facto law of that sort in the current legislation because of the fact it was passed just before Christmas.

**Mr SHOEBRIDGE:** You do not want your political fundraiser to become a political membership drive so you can double the efficacy of your political fundraiser. That is something that would fall foul of those four principles you set out earlier.

**CHAIR:** This question is for my own interest. If there were a cap per electorate on campaign expenditure and political parties had a separate cap as to the total they could spend, would it be reasonable for political parties that have not used their full expenditure under the cap in one seat to use the surplus in another seat?

**Mr SHOEBRIDGE:** I think that would subvert the central principle that you do not allow any particular organisation to buy the result in any given seat. If there is to be a cap then it ought to be set in place

uniformly. If you think about the administrative complexities of that, you need to have real-time communication between seats to work out the underfunding in this seat so as you can overfund in that seat. All legislative reform should, wherever possible, aim to put in clear, cogent, readily understandable restraints. A uniform cap is effectively like the ability to trade poker machine licences. You could trade your electoral expenditure. That would seem to fall foul of those essential principles.

**CHAIR:** Political parties, particularly the major parties, often through their central office produce corflutes of their leaders and so on which are distributed to candidates across the State. Obviously, that is funded by the central office out of its allocation or cap on expenditure. Would it need to be included in the expenditure of the individual campaign that receives those corflutes or would it be considered as part of the global expenditure?

**Mr MALTBY:** If there is room within the statewide cap to fund that activity that would be okay. If the individual campaigns wanted to purchase that material from the head office that would work, I would think. So I do not see that being a particular problem either way.

**Mr SHOEBRIDGE:** A single accounting for the resource. There may well be seats that depend upon some funding from the central office to get those types of materials out. There may be other seats that are in a position to buy them from the Federal office, but a single accounting.

**The Hon. MICHAEL VEITCH:** It depends on whether you have 15 polling booths or in the case of Burrinjuck 92.

**Mr SHOEBRIDGE:** Yes.

**Mr MALTBY:** That is a good point. A per electorate cap may need to be considered in the light of the complexity of campaigning in particular seats given their geographical size, number of booths.

**Mr SHOEBRIDGE:** The Canadian model does that. It takes into account the geographic spread and the difficulties of electioneering, which seems proper.

**CHAIR:** A number of submissions talk about the requirement of third parties to register if they intended to spend a certain amount in a campaign period. Do you support that and what level do you think is an appropriate threshold to require them to register to raise money and spend money on a campaign?

**Mr SHOEBRIDGE:** The New Zealand and Canadian models have similar points. Once the statewide expenditure exceeds a relatively modest cap then there should be an obligation to register—statewide something in the order of \$10,000. The New South Wales Greens do not have a firm or fixed view about where that threshold would be but it needs to be relatively modest.

**Mr MALTBY:** It also needs to reflect that there are people who comment on the conduct of elections from a journalistic point of view who are not necessarily players in the campaign. I am not suggesting it is an easy matter to get right. If there are advocacy groups that have a point of view they would reasonably be expected to register when they cross the threshold.

**CHAIR:** Do you think the disclosure requirements and the campaigning periods that apply to candidates and political parties should also apply to third parties? So that if the defined campaign period is three months, as suggested in your submission, or nine months, as suggested in other submissions, those same time frames and same disclosure requirements about the source of funds should apply to third parties?

**Mr SHOEBRIDGE:** Definitely in terms of the time frames they should absolutely apply because it would make it a nonsense to have different time frames for different restraints. The New South Wales Greens submission puts in place three months. That works relatively neatly with the calendar in New South Wales. There would be no issue in principle in terms of extending that time period to six or nine months, no issue in principle at all. You do need disclosure requirements for third parties. Whether they would be as onerous as for political parties is a matter for debate.

**Mr MALTBY:** In our discussion about that limit on time, we were conscious of the need for issues-based campaigning to proceed through the normal course of the parliamentary cycle but that the voter base generally becomes interested in an election only relatively close to the election period. That is when the

saturation media advertisements and other things generally take place. So that is where you want to concentrate your control. Having complicated controls over areas where most of the campaigning is issues based is probably not necessarily entirely helpful. That is why we are looking at probably a shorter time than maybe some of the others.

**CHAIR:** Are there any circumstances in which you would support full public funding of election campaigns?

**Mr SHOEBRIDGE:** The New South Wales Greens take the view that individuals have a legitimate right to participate in democracy and that includes via a modest financial commitment to their party or candidate of their choice. We would not want to see that capacity for people to make a modest but real commitment to their party or their candidate of choice prohibited. Indeed, you will be talking to the constitutional experts after this. One would imagine an absolute ban would face more significant constitutional problems, which would be a requirement for a full public funding model. It does not seem right in principle and it would seem to face constitutional problems.

**CHAIR:** On the issue of public funding, one way to ensure that public funding takes account of the cyclical nature of politics may be to calculate the level each party receives in public funding by reference to the number of first preference votes over the previous three elections rather than the most recent election. Do you think that is a reasonable proposition? Do you understand it?

**Mr SHOEBRIDGE:** I do understand it. It would take out some of the cyclical highs and lows. Some form of consideration of success over a period of electoral cycles would seem to be proper. That recourse would lead to difficulties in terms of newly formed parties and how they fit within such a model. It may make for additional complications that would need to be taken into account. There would be a weighing up—you would have more certain funding for well-established political parties but how newly formed parties would fit within that system would create potentially a rod for the legislators' back.

**Mr MALTRY:** It also depends upon the proportion of State funding to other sources of funding. If we are talking about the primary source of party funding being public funding, then smoothing it is probably more important than it would be if it were based on membership and other things. It is reasonable to say that parties that have a larger membership base or are generally more established will inevitably be able to run and finance the bigger campaigns. The public funding component in there is only a component of that.

**CHAIR:** The Committee does not have any more questions today. There may be some issues about which we would like further information from you. Could we send that information to you and you respond hopefully by 8 February 2010?

**Mr MALTRY:** Certainly.

**Mr SHOEBRIDGE:** Yes.

**CHAIR:** You are welcome to make any further comments you wish to make arising from submissions published today. On behalf of the Committee I thank you both for coming here this morning and for your submission.

**(The witnesses withdrew)**

**MARK NEEHAM**, State Director, Liberal Party of Australia (New South Wales Division), Level 9, 140 William Street, East Sydney, 2011, sworn and examined:

**CHAIR:** Mr Neeham, in which capacity are you appearing before the Committee?

**Mr NEEHAM:** As State Director of the Liberal Party of Australia (New South Wales Division).

**CHAIR:** We have received a submission from the Liberal Party. Is it your wish that the submission be included as part of your sworn evidence?

**Mr NEEHAM:** Yes.

**CHAIR:** You are welcome to make an opening statement before we commence questions.

**Mr NEEHAM:** Thank you. It gives me great pleasure to represent the Liberal Party of Australia (New South Wales Division) at this Committee meeting today. The Joint Standing Committee on Electoral Matters was tasked by the then Premier of New South Wales, Nathan Rees, to inquire into public funding of election campaigns in New South Wales. The terms of reference for this inquiry have been based on the previous work of the Committee into campaign finance. The former Premier asked for interested parties to specifically consider the issue of a ban on all "but small political donations by individuals" and to consider this concept "in conjunction with significant increases in public funding".

It is a sad but necessary truth to remind the Committee that the issue of campaign finance reform is on the agenda because of New South Wales' reputation being tarnished by the perception that vested interests are using money, given as donations, to buy influence with this Government. The submission lodged by the Liberal Party of Australia (New South Wales Division) represents the views of our parliamentary, organisational and professional wings of the Liberal Party.

Our substantial submission addresses the terms of reference as provided by the Committee and illustrates our party's commitment and the commitment of our State parliamentary leader, Barry O'Farrell, to this process and to the substantive issue of campaign finance reform. Without having seen all the submissions prepared by our opponents, it is hoped and expected that they have also carefully considered the seriousness of this issue. It is my view that any failure by a political party to adequately deal with the terms of reference of this Committee in their submission should be construed as an inability to support the key premise of campaign finance reform and to continue to endorse the donations-for-decisions culture that has afflicted this State.

I take this opportunity to remind the Committee members of the words of the Labor member for Coogee, Paul Pearce, who on 9 December 2009, following the removal of another Labor Premier, was quoted in the *Wentworth Courier* as follows:

Nathan Rees was coming to grips with the poisonous, muddy developer-type politics that has been going on since the mid-'60s. There was a view that the reason they moved against Nathan was that he was going after the developer, and that's not to suggest that Kristina played any part in that; she just became the benefactor of their desire to knock off Nathan. The test is how Kristina is going to respond to that.

With the aforementioned words of the now Premier's own colleague the expectation is even higher on New South Wales Labor to deliver and produce a weighty and considered commission that carefully considers the concerns of this Committee. A failure to meet community expectation will reflect poorly on not just New South Wales Labor but the Premier of this great State.

The basis of the Liberal Party of Australia (New South Wales Division) is predicated on an open and transparent political process in which the community can have confidence that its political leaders are operating in the best interests of the public and not beholden to selected groups, including the union movement. In addition, there must be a level playing field for the principal players. Elections should be a battle of ideas, policies and principles, not a battle of war chests. Incumbents should not be able to spend double the combined total of their opponents, using money extracted from the businesses they regulate or from the unions they represent.

New South Wales Labor's spending of \$16.8 million was almost double the combined declared electoral expenditure of all other registered political parties: \$8.9 million with the Liberal Party spending \$5.2

million. New South Wales Labor's expenditure on political advertising was almost triple that of all other registered political parties.

Specifically the key points of our submission are:

1. The community should be put back at the centre of politics.
2. Only those who have a right to vote in Australia should be able to contribute to elections with their financial support for campaigns. Unenrolled individuals, organisations, trade unions and corporations do not have votes so they should not be allowed to influence the democratic process through donations.
3. An annual cap on donations at a low level, similar to Canada, to ensure no individual can exercise undue influence.
4. Support for a cap is contingent on a comprehensive ban on donations from other organisations, including trade unions.
5. Support for expenditure limits for candidates, parties, Legislative Council groups and third parties, to be set by an independent arbiter.
6. The spending cap would commence at the beginning of the financial year prior to the election.
7. Increased public funding to enable political parties to continue to operate.
8. Third party expenditure limits to be imposed and those undertaking expenditure be required to register and disclose the source of their funds and their actual expenditure.
9. Government advertising subject to review by the Auditor-General.

Our support for the above environment is reliant on a level playing field, predicated on the view that only enrolled individuals should be able to donate, with donations from corporations, trade unions and other organisations being banned. Specifically, we would not support banning donations from corporations unless donations from trade unions were also banned. The issue of campaign finance reform is a two-way street and success can only come with both major parties agreeing to a regime which is beneficial to all the people of New South Wales.

**The Hon. MICHAEL VEITCH:** Our representatives today have been talking about some of the administrative burden around the current practice, particularly with regard to the Commonwealth and State requirements. In your submission you talk about having clearly delineated accounts for each of the jurisdictions. What is your view about the administrative burden that that would create?

**Mr NEEHAM:** We currently have a similar system in operation. We keep separate bank accounts for Federal campaigns, State campaigns and the administration of head office, and for the party. So it would not be too much of an additional burden for us. The reason we have proposed such a model for legislation is that firstly we believe that a national approach is needed, and I agree with Matt on that. But in the absence of things happening at a Federal level, we would propose that this is the best way moving forward. Taking into consideration that we and most of the other political parties that have been represented here today have to fight elections at both a State and Federal level, it would be easier to have three separate accounts, and that the State account and the administration account be controlled under State legislation and the Federal account be subject to Federal legislation.

**The Hon. MICHAEL VEITCH:** I asked this question of one of the earlier representatives. It relates to a \$1,000 cap on donations. What happens if a person holds office at two levels? For instance, a person may be the mayor of a local council and also the State member of Parliament. What are the accounting arrangements for the individuals there? I understand that with regard to the Liberal Party the money is centralised, whereas other parties may hold it in accounts at a local level.

**Mr NEEHAM:** We certainly do not allow candidates or MPs to receive, handle or spend the money; it is all done through the party organisation. The current legislation requires that only the party agencies are legally entitled to spend that money. It is a system that we already have in place.

**The Hon. MICHAEL VEITCH:** The individual would clearly have to delineate between the two roles they have?

**Mr NEEHAM:** Absolutely, yes.

**The Hon. MICHAEL VEITCH:** This is one of the problems with trying to come to a position on public funding. It relates to Independents or start-up parties and how you would adequately fund them for the election that they may contest. One of the models suggests it be per vote. However, you cannot do that until after the election has been conducted, and then you receive the dollars. For some start-up parties, but more importantly for Independent members, that could disadvantage them in their campaign. Do you have any suggestions as to how we can overcome that?

**Mr NEEHAM:** Certainly in our submission we have advocated for keeping the current system of public funding for elections, but in addition the administration fund, which would be an annual payment to political parties based on their vote at the last election. I do not think there would be any need at this stage for payment of the administration fund before the next election, but certainly the caps would come in.

**The Hon. MICHAEL VEITCH:** In-kind donations is another area that creates opportunities for loopholes, and in particular with regard to the definition of what volunteer labour is. Do you have a view on that? It seems to me to be agreed that doorknocking, letterbox dropping and polling booth workers are genuinely related to volunteer labour but then you start to move into professional services, such as an accountant doing the books. Do you have a view about the cut-off for in-kind donations particularly as it relates to volunteer labour?

**Mr NEEHAM:** We have advocated a period of the start of the financial year in which the election is held, so nine months roughly. But I certainly agree with you that doorknocking on polling day and so on should not be included in that, together with our members turning up at our offices asking what they can do. Everyone around this table would agree that they do that out of the goodness of their hearts. But, as you say, when an accountant volunteers their services as an accountant that would fall under the definition, unless they relate to the branch treasurer, which within the Liberal Party is an elected position; you have to put your name on a ballot paper. If it was an accountant coming forward offering their services, that would certainly fall under a disclosable amount.

**The Hon. MICHAEL VEITCH:** Would you agree that if there were to be a cap on what an individual can donate to a party, cash and in-kind contributions should be within that cap?

**Mr NEEHAM:** Absolutely.

**CHAIR:** A lot of the submissions and verbal submissions today have talked about a cap of \$1,000 on donations. If the Government adopted a level of \$1,000, what do you think would be the reasonable disclosure level for donations?

**Mr NEEHAM:** We said in our submission we are very happy with the current \$1,000 disclosable limit. We have not actually set out what we believe the cap should be on the donations. We have said that an independent arbiter should be the person responsible for setting that, whether that is currently through the Electoral Funding Authority. We have also expanded it to a reformed Electoral Funding Authority with additional members on it. I do not think it is for a political party to say what they should disclose or what the cap should be, but an independent arbiter could set that.

**CHAIR:** Assuming a cap of \$1,000 on donations is recommended by an independent arbiter, what do you think the appropriate threshold for disclosure of donations should be?

**Mr NEEHAM:** You certainly need a disclosure threshold that is different to the cap in my view. I think that would be the same recommendation from the independent arbiter. They would have to take into account a whole lot of circumstances when reforming the system; it is not just one part of it, there are across-the-board changes involved. I think we will wait to see what the recommendation is. Whatever the recommendation is, the Liberal Party will continue to willingly conform with all legislation.

**CHAIR:** The National Party has suggested that party membership fees should be exempted from the cap on donations but should be subject to a separate cap that is equal to or less than the cap on donations. Is that something you could support?

**Mr NEEHAM:** Absolutely. As part of our understanding with three different bank accounts, our membership fees would go into the administration of a bank account and could not be spent on State campaigning—that is, membership fees of up to whatever the cap is on donations. Similarly, those members may then make an additional donation to the State campaign should they wish to. Our view is that parties should try to be a bit more self-reliant as well, as well as the public funding part. They should be able to raise funds through membership fees to supplement their administration, but not to the State campaign.

**CHAIR:** Is the New South Wales branch of the Liberal Party happy to do a full public disclosure of its accounts on an annual basis in return for receiving public funding? If one of the conditions of getting money for the Political Education Fund, or whatever replaces that, is that details be disclosed of your membership fees, donations you have received for State campaigns, donations you have received for Federal campaigns, and the printing of your account summaries, is that something that the Liberal Party would have been privy to?

**Mr NEEHAM:** Do you mean publicly disclosing, as opposed to just to the Electoral Funding Authority?

**The Hon. DON HARWIN:** I think we put in the submission that we would disclose that to the EFA, have we not?

**Mr NEEHAM:** Yes.

**CHAIR:** So you would disclose it?

**Mr NEEHAM:** Yes, we would be very happy to disclose.

**CHAIR:** What about public disclosure and making it available on a website, or something like that?

**Mr NEEHAM:** Yes, we would be in favour of that. As part of my background, when the Political Parties, Elections and Referendums Act was introduced in the United Kingdom I worked for the Conservative Party. We published our annual accounts on the website. They were available to anybody who was interested. It was the same in Western Australia before I moved to New South Wales.

**CHAIR:** One of the issues that has been raised in a number of submissions is the issue of when disclosures are made. There has been some criticism that having disclosure systems that provide all the details after an election does not really give voters the information that they perhaps might want to know in terms of who has made donations to particular candidates of political parties. Do you see any problems with disclosure on the run, or weekly disclosures during the election campaign period, administratively or otherwise? Do you see any problems with that?

**Mr NEEHAM:** It would place an administrative burden; there is no doubt about that.

**Ms LEE RHIANNON:** Can I ask why? Is it because you have to actually enter the information, you have to record it and do that job? So much of that is done electronically now, so why would it be an additional burden?

**Mr NEEHAM:** The disclosure we do currently to the EFA is a huge task. Every six months we are bringing in all the information from our voluntary party units, which are over 600 across the State—similar to the Labor Party. Getting that information, consolidating it, and then submitting it is quite a task. If the law was that, we would do it; but the question is: Would it place an extra administrative burden on the party? Yes, it would, and we would probably have to take on additional staff to comply with that.

**CHAIR:** I understand in New York they have a campaign system in which they have online disclosure in the lead-up to an election. Is that something that you have had any experience with, or exposure to?

**Mr NEEHAM:** No.

**Ms DIANE BEAMER:** Earlier we spoke about membership fees not being reportable up to the limit. I am going to suggest that very few political parties would go near a limit on membership fees of \$1,000: you would lose a lot of your members in a lot of electorates. One of the things that the Labor Party does, of course, is have affiliated unions. Do you see those as membership fees, or as a donation? You said quite categorically a few times that trade unions should not be allowed to donate. They affiliate, and that is different from running a campaign or a donation.

**Mr NEEHAM:** Yes, absolutely. We have covered this in our submission. We see the affiliation fees as separate to union donations. I think all political parties have a different history and different structures.

**Ms DIANE BEAMER:** And you do respect that?

**Mr NEEHAM:** We have said that, rather than going into the State account, that would go to the administration of the party.

**Ms DIANE BEAMER:** The crux of the issue really is about the third party campaign that is run. Do you see the third party campaign—and I will talk about the elephant in the room—that a trade union can make as having a much lower cap, if we are going to put caps on expenditure from political parties in an electorate, than that?

**Mr NEEHAM:** I think they would be similar, but I think we would have to look at what the caps were for the parties before we discuss that.

**Ms DIANE BEAMER:** Do you have a figure for using caps for electorates?

**Mr NEEHAM:** We have suggested \$100,000 per electorate for however many districts the party decides to stand in. So it would be a maximum of up to \$9.5 million.

**The Hon. DON HARWIN:** That is the party expenditure.

**Mr NEEHAM:** Yes.

**The Hon. DON HARWIN:** I think actually the question was about the third party cap.

**Ms DIANE BEAMER:** Yes.

**CHAIR:** The notion that third parties should not exceed the expenditure of a candidate or political parties in election campaigns. Is that it?

**Ms DIANE BEAMER:** Yes.

**Mr NEEHAM:** I think so. I think that if a third party is spending more than one of the political parties—

**Ms DIANE BEAMER:** But should it drown out a message? I will go to "Your Rights at Work", which was loud and expensive.

**The Hon. MICHAEL VEITCH:** And successful!

**Ms DIANE BEAMER:** And successful. If it comes near the actual expenditure of the political party itself, is there not a danger that you drown it out by single issues?

**Mr NEEHAM:** There is a possibility of that, yes, but I think we would need to see what the cap was on political parties before talking about setting examples.

**Ms DIANE BEAMER:** So you think they should be near each other?

**Mr NEEHAM:** No. I am saying that \$9.3 million for one single-issue campaign would be excessive, if a political party is going to spend that.



**Ms DIANE BEAMER:** I am just interested in perhaps turning your mind to the idea of setting a percentage. That might be something that you want to take on board and come back to it.

**Mr NEEHAM:** Maybe we could respond in writing. I could write to the Committee, if that would be helpful.

**CHAIR:** On page 25 of your submission, you outlined a tiered structure for the payment of party administration costs. Parties with 25 or more members who have been elected are allocated \$2 million per annum; those with 10 to 24 members in Parliament, \$750,000; those with five to nine members in Parliament, \$500,000; and those with one to four members in Parliament, \$250,000. Are those membership numbers lower House members, or are they combined with the upper House?

**Mr NEEHAM:** They are the total number of members in Parliament.

**CHAIR:** Was there a particular rationale in the establishment of those figures?

**Mr NEEHAM:** We looked at how many the current party status was in the Parliament and looked, with change of government—what may happen with various things and how the parties may progress through the tiers—and came up with those numbers.

**Ms LEE RHIANNON:** When your colleague from the National Party, Mr Franklin, spoke earlier, he said that there may need to be consideration for different allocation in public funding for regional-rural seats because, obviously, of the different costs. I was wondering what your response is to that.

**Mr NEEHAM:** We would have to give it some thought and come back to you. We certainly see the current system that is in place—the public funding of elections—as working, and we would want to continue with that. That is how they are funded, but if there is a ban on corporate donations and other donations from third parties, then of course our view is that there would need to be increased public funding. We think the current system works.

**Ms LEE RHIANNON:** You made a comment about the money that comes in from members. If I understood you correctly, you said with regard to the Liberal Party—and I think you were advocating this—it should be spent only on administration. Was that what you meant to say? Is that the position of the Liberal Party, considering that smaller parties, starter parties, could well be using that money that comes from members for their election campaigns?

**Mr NEEHAM:** We have said that membership fees should be used for the administration of the parties. It therefore will go into the administration bank account, as we have proposed, and not spent on election campaigns. In terms of assisting starter parties and newer parties, we have made a provision in there that there may be provision for the EFA to make a contribution to a political party that is starting up, based on how they are tracking in an opinion poll conducted by the EFA.

**Ms LEE RHIANNON:** You also made the comment that you were pleased with the \$1,000 disclosure limit, which is obviously good to hear. Are the New South Wales Liberals in any way making representations at a Federal level, considering—we are seeing it again today in AEC data that when your Federal colleagues were in government—that your Federal colleagues were the roadblock on bringing it down from the current level of \$11,200?

**Mr NEEHAM:** I cannot really comment for my Federal colleagues.

**CHAIR:** With respect, I do not think that is the issue.

**Ms LEE RHIANNON:** Okay. It is a big problem, and it is a problem in New South Wales. However, I will move on. In your introductory remarks, when you were spelling out the amounts of money raised in the 2007 election, you ran through some discrepancies.

**Mr NEEHAM:** That is right.

**Ms LEE RHIANNON:** They were considerable. My recollection was that approximately \$14 million was raised. But is it not correct that the Liberals spent much less money than the Labor Party? I wonder why

that was because you actually raised an amount similar to the amount Labor raised, which I think was approximately \$14 million. You had a Federal election coming up and you had to allocate millions of dollars for it. I just felt that you had left out that bit of the equation when you spoke in the early part of your contribution.

**Mr NEEHAM:** Yes. The figures I was talking about meant that if the Liberal Party had raised more, it would have spent more on the State campaign.

**Ms LEE RHIANNON:** But you did raise more, and it was allocated to the Federal election campaign. You did raise approximately the same as Labor raised. The records show that.

**Mr NEEHAM:** Yes, but as I said, we have structures in place already that separate funds raised for a Federal campaign and funds raised for a State campaign. It is not like the New South Wales division gave it to the Feds. It was always the New South Wales division's money, but it was already raised for the Federal campaign.

**Ms LEE RHIANNON:** But it was raised in New South Wales. The \$14 million was raised in New South Wales and for various internal reasons. I just thought that needed to be clarified.

**Mr NEEHAM:** Yes, okay.

**CHAIR:** Was that a comment, rather than a question?

**The Hon. MICHAEL VEITCH:** Following Ms Rhiannon's question about the administration fund, would the Liberal Party be advocating that people could donate to a political party solely for administration, and that the money would not be used at all for campaigning?

**Mr NEEHAM:** I think what I say in our submission is that if you do make a donation to the administration fund, that would reduce the amount of administration funding you would receive for that political party. So the membership fees are on top of the funding, but if you start receiving donations for the administration, that would reduce your payment.

**CHAIR:** Your suggestion in relation to unions is that affiliation fees of unions that are paid to the ALP come off the total amount of money that is funded by the political education fund.

**Mr NEEHAM:** That is correct. It would go to the administration fund.

**The Hon. JENNIFER GARDINER:** Similarly the Liberal Party submission talks about the held assets provisions that recently came into play in Nova Scotia. Similarly if a party has held assets that are income generating, that income would similarly have to be deducted from eligibility for public funding. Is that right?

**Mr NEEHAM:** We are bearing in mind that certainly we have assets in the State that are mainly property, and they produce an income. I think it is good that political parties are more self-reliant, and not reliant on handouts or donations. We would hope that that would form part of the legislation.

**The Hon. JENNIFER GARDINER:** That should be part of the model and should be taken into account?

**Mr NEEHAM:** Yes, absolutely.

**The Hon. MICHAEL VEITCH:** On page 29 of the submission, you make some interesting comments regarding the upper House and parties contesting just the upper House, which is the Legislative Council, and the expansion limits. A fair bit of time in your submission has been spent on the \$100,000 being the top for each of the lower House seats, and then you come to the New South Wales upper House. At 6.8, you refer to it being appropriate to make a distinction between parties. At the end of that paragraph you mention independents who then contest the Legislative Council within a group, and how that is to be treated. Would you be able to flesh that out a bit more for us? In a process like this, that is something that can be quite easily forgotten. People do contest the upper House as independents, and they also take the opportunity in some instances to form a group.

**Mr NEEHAM:** Yes. I think that we have said that it would be up to \$2.1 million for a registered party contesting the upper House, which is up to \$100,000 for each member or candidate they may put forward. We

are not actually making the suggestion about what is appropriate in relation to your final point. We have just made a point that this Committee may wish to investigate further.

**The Hon. MICHAEL VEITCH:** There is opportunity for people to nominate to multiple candidates—almost ghost candidating.

**Mr NEEHAM:** We came across a scenario that we had—

**The Hon. DON HARWIN:** Effectively, to flout the third party rule.

**The Hon. MICHAEL VEITCH:** That is right, yes.

**Mr NEEHAM:** In preparing this submission—and I am sure the other parties found this as well—every time we came up with an idea, it had some effect further down the track that was not desirable. It is not an easy process. We hope we have been able to make a contribution. We actually think you should consider certain things like that.

**CHAIR:** Mr Neeham, on behalf of the Committee, I thank you very much for your submission and for your evidence. I suspect that there are a couple of questions we might need to follow up with you. I am sure that will not be a problem.

**Mr NEEHAM:** No problem.

**CHAIR:** We will email that to you. If you have any comments that you wish to add following the submissions that have been made today, you are more than welcome to forward those to the secretariat.

**Mr NEEHAM:** Thank you very much.

**(The witness withdrew)**

**(Luncheon adjournment)**

**GRAEME DAVID ORR**, Associate Professor, TC Beirne School of Law, University of Queensland,

**JOO-CHEONG THAM**, Senior Lecturer, Law Faculty, Melbourne University,

**GEORGE JOHN WILLIAMS**, Professor, School of Law, University of New South Wales, affirmed, and

**ANNE FRANCE TWOMEY**, Associate Professor, Sydney Law School, University of Sydney, sworn and examined:

**CHAIR:** I welcome Associate Professor Graeme Orr, Dr Joo-Cheong Tham, Associate Professor Anne Twomey and Professor George Williams. We are excited to have you all here this afternoon. Of all the sessions we have had this is the session to which I have been looking forward the most. I again welcome you this afternoon.

Is it the wish of all the experts who are present this afternoon to have their written submissions form part of their sworn evidence?

**Dr ORR:** Yes.

**Professor WILLIAMS:** Yes.

**Dr TWOMEY:** Yes.

**Dr THAM:** I circulated draft extracts in confidence.

**CHAIR:** I think all the witnesses present at the moment have seen the discussion paper that was circulated by the Electoral Commissioner as evidence presented on 9 December. In his discussion paper he talked about the principles that should underpin the reform of the electoral system. He identified four key principles: protecting the integrity of representative government; promoting fairness in politics; supporting parties to perform their functions; and respect of political freedoms. Starting with Dr Orr, could I obtain an opinion on whether you think those overarching principles are necessary, whether they are desirable, and whether they cover all the things that they should cover?

**Dr ORR:** They are quite unobjectionable. There is the question of balancing them when you are not legislating in the abstract, so you have to think about the nature of politics in New South Wales, the ongoing issues and concerns that have caused inquiries such as this to be underway for many years now and, practically, the things you are seeking to achieve in reforming the field. Principles are important to keep in mind but they are not the animating concerns.

**Dr THAM:** It is probably no surprise that I agree with those principles. Admittedly they are abstract and general principles, but I think they are crucial to have at the forefront of debate. The danger is that without any governing principles, without some kind of moral compass through this debate, we will delve into a morass of regulatory detail. Basically, we risk having extended debates on questions about complexity and practicalities with no firm anchor as to how to guide us through these debates. These abstract principles are important. People are debating how to prioritise them but I think those principles should be at the forefront of any debate.

**Professor WILLIAMS:** I find the principles utterly unobjectionable. I cannot see any problem with them being the objects clause in a piece of legislation, or something of the kind, and being very useful in that way. Of course, they do not take the debate any further than that, and they do not give us any particular guidance. I might briefly relate the principles that I would put on the table that drive me in thinking about reform in this area. These are the things that I would do more specifically. Firstly, I am looking for a system that changes the primacy to one of public funding away from private funding and the legislative scheme should reflect that. Secondly, when we are dealing with those non-public funds the scheme should be as comprehensive as possible in dealing with those funds, and that all potential participants, third parties and the like should be drawn in as part of that regulatory scheme.

Thirdly, I think that any scheme must deal with both demand and supply when we are dealing with political funding and donations. So I would be looking at both caps and expenditure as part of a system. I believe that unless you deal with demand and supply there is a level of futility in dealing with these problems. Fourthly, obviously I think it has to be constitutionally valid, so it must pass the key legal tests. You can never

be 100 per cent certain. As a constitutional lawyer I would never put it to you that you should try to achieve 100 per cent certainty, as you will not get anywhere if you do that. It needs to be robust enough for you to think it is likely to survive challenge. The last principle that I would put on the table is that you have to minimise compliance costs, and it must be an efficient and cheap system to run. The last thing you would want are some of the problems that we have in the United States of America and elsewhere where compliance costs are so high that they themselves lead a trend towards excessive fundraising. Those are the principles with which I would start in seeking to move forward in this debate.

**Dr TWOMEY:** I agree that the principles set out by the Electoral Commissioner generally are unobjectionable but there is a level of greater complexity in balancing those principles. That is where things get a bit difficult. One of the things that concerned me a little about the Electoral Commissioner's principles was that notion of a level playing field. The problem with politics, of course, is that inherently in the nature of politics you have winners and losers. Inherently in politics there are differences between parties and differences between the levels of support for parties. For example, if you were taking a notion of a level playing field to the extreme, you would say that every person who sets up a party should be funded equally in the same amount. I think most people would regard that as absurd, or at least problematic.

Sometimes you get clashes between the principles. You can see that particularly coming out in both Canada and the United States where different emphases are placed in their Supreme Courts relating to notions of equality and level playing fields as opposed to free speech. In the United States Supreme Court you see free speech winning out over notions of equality and level playing fields. In Canada you see them at a much more equal level, and equality may well override free speech. We can talk about having four sets of principles but, in the end, there will come a point where one may need to have primacy over the other.

**CHAIR:** Earlier I neglected to ask you whether you wished to make an opening statement. I will give you an opportunity to do so now.

**Dr ORR:** I did not prepare one but in my short submission I have reiterated what I have written and said for about eight years in this field. I think you should be focusing on expenditure limits in particular, but the big elephant in the room is government advertising. There is no point in dealing with electoral expenditure and then leaving the kinds of problems we have with government advertising all over Australia. I endorse what Dr Tham said in his confidential draft submission about the need not to let constitutional concerns be the cart leading the horse in this regard. If there is a shared will amongst the political parties, machines and parliamentarians about the broad features of regulation, if there is a will there certainly is probably a way in which it can be done.

**Dr THAM:** Thank you for an opportunity to make an opening statement. I will make some key points basically that are drawn from a report I am currently preparing for the New South Wales Electoral Commission on the question of political funding, some parts of which I have circulated in confidence. As I mentioned a few moments ago, it is crucial to start with the aims or the principles of the political funding regime. Those four aims that Electoral Commissioner Colin Barry put forward are the aims to which I subscribe. I do not wish to reiterate those aims but I wish to elaborate on various points. The first key principle of protecting the integrity of representative government is uncontroversial. When we think about these various principles we can elaborate and give further specification to that.

The aim of protecting the integrity of representative government translates in more concrete terms to preventing various forms of corruption. You have seen in my draft abstracts that it identifies various forms of corruption that a political finance regime should seek to prevent: corruption through graft; corruption through undue influence; and corruption through the misuse of public resources. The second aim is protecting fairness in politics and, in particular, promoting electoral fairness. I make the point in my draft abstracts that promoting fairness is not the same as providing identical treatment. It is true, as Associate Professor Twomey said, that we are dealing with electoral contests, and contests inherently involve winners and losers. However, those contests must be fair. That is the aim of that principle. I think that, too, is an uncontroversial principle.

One can think about the mantra “free and fair elections” that clearly involves the principle of promoting fairness in elections. When we think about free and fair elections we see that the fourth principle is about respect for political freedoms and, in particular, respect for political expression and respect for freedom of political association. You will see in my draft abstracts that there is a deep connection between respecting political freedom and permitting fairness in politics. The connection comes this way: promoting fairness in politics, at its heart, involves promoting the fair value of freedoms. One cannot think about freedom—one of the aspects with

which I deal with in my draft abstracts—simply in terms of "freedom from". What I mean by that is freedom from legal restrictions.

One must think of freedom as meaningful freedom—the "freedom to". The "freedom to" must depend on resources and, specifically, the relative ability of political activists to engage in political debate. Often it is put forth as a tension between freedom and fairness or equality concerns, and to some extent there are tensions. But one should not assume that too easily.

The other principle, or the fourth aim, is supporting parties to perform their functions. I think this is clear. Even Neville Wran in his second reading speech in the 1981 election funding bill—and I am paraphrasing here—identified political parties as the pillar of New South Wales parliamentary democracy. A political finance regime should be anchored in that principle.

When I take these principles and evaluate the New South Wales political finance regime it seems to me that there are five clusters of problems or deficiencies, if you like. Despite the 2008 amendments, there are deficiencies in the disclosure regime. Secondly, the sale of access and influence is pervasive. It is practised by the major parties. In my view it basically forms a type of corruption through undue influence. Thirdly, we have basically a phenomenon of an arms race, or what I would describe more correctly as intensifying arms races, giving rise to unfair electoral contests. Fourthly, the health of parties is being undermined by the preoccupation with fundraising. Fifthly, we have poor and lax regulation of government advertising.

It seems to me that in response to these problems the elements of a comprehensive reform package should comprise the following: a more robust disclosure scheme, in particular more frequent disclosure in the time leading up to elections; election spending limits; contributions limits with various exemptions, including exemptions for volunteer labour and membership fees; mechanisms to improve the internal accountability for corporate and trade union political donations and contributions; enhanced regulation of conflict of interest, and specifically enhanced regulation of lobbying; public funds provided through what I would describe as a party and candidate support fund; and, lastly, stricter regulation of government advertising.

My final remarks will be directed at the constitutional issues and at the specific question of whether we should move forward as part of a Federal or national scheme or whether the New South Wales Parliament should go it alone, if you like. It is my strong view, and one that is elaborated in my draft extracts, that under current Federal electoral law there is no constitutional impediment to enacting a reform package. I emphasise that the package must include properly designed contribution and election spending limits. You will see from my draft extracts that I take issue with the report written by Associate Professor Twomey on these particular issues.

I think the Twomey report basically has two central difficulties or central weaknesses. One is that it overstates the difficulties arising from the implied freedom of political communication. Secondly, and this is a key point, it fails to properly substantiate its key recommendation of preferring a national regime to New South Wales or State-based measures. It is my strong view that New South Wales should take steps to enact a comprehensive political finance regime and in doing so take the lead in this area of political finance as it took in relation to the pioneering 1981 Election Funding and Disclosures Act.

**Professor WILLIAMS:** I will not reiterate the principles that I started with in answering your first question but certainly I start from the point of view that there is a need for reform. I will not go into that any further; it seems to be well accepted. The second point I would make as a constitutional lawyer is that there is no doubt in my mind that reform can be achieved. There are undoubtedly impediments but I think it is possible to get around those impediments. In fact, the problems of enacting this type of scheme are far more significant in some other nations that have done it than they are in New South Wales. In particular, the freedom of speech rights in other nations bite far more significantly than they do in Australia. For me then, when I am asked whether the Constitution gets in the way of a scheme such as this, the answer is no, it is a matter of working through the problems and achieving an outcome. I see the main impediment to achieving a scheme of this kind as being one of political will, not constitutional limitations. I have no doubt that if there is a desire to do it, it is possible to enact a quite robust scheme.

That said, I do agree that the best possible scheme, if it is achievable, would be a national integrated scheme, if only to look at the compliance costs that can result from having multiple schemes. I think a national integrated scheme would be the best scheme but I do not think that is an excuse to wait. I do not think we can guarantee any such scheme will arise. We cannot guarantee that the national scheme will be suitable for New

South Wales. If there is a desire to move forward here, as I think there is, clearly New South Wales should move ahead now. If New South Wales does move ahead it will demonstrate that there is considerable room for leadership in this area and we are at a stage in the debate where other States are looking to see what New South Wales and other jurisdictions do. There is some space to be filled by New South Wales by showing some strong leadership in this area and coming up with what is the best possible State scheme for this jurisdiction.

I think also in assessing whether to move ahead we need to recognise that the test is not "Have we got the best possible scheme? Is it a perfect scheme?" The question is: Does it amount to a significant improvement on the current major problems that the funding of political parties and participants faces in New South Wales? Here again I would say there is no doubt in my mind that it is possible to legislate consistent with the Constitution for a very significant improvement on the current system. I have no doubt that any system that replaces what we have will have its own problems and issues that will need to be ironed out over a period of time. They will relate to the vague incomplete difficulties that stem from the Constitution. Again, I would say there is a problem, there is no doubt in my mind it can be met and the only question is how we work around those issues and achieve the key policy goals that parties in New South Wales have spoken strongly about.

**Dr TWOMEY:** The point I wanted to make when I came and which has probably been even more reinforced since I came here is that the report I wrote for the New South Wales Government some time back has occasionally been misrepresented in the media as saying that the State could not go ahead with its own regime for constitutional reasons. The report does not say that at all, and never did. The report says, and this reflects my own opinion, that reform of political funding is very important. Personally I take the view that it is extremely important and my concern is that the constitutional restraints that exist on what a State can do alone at a State level are likely to result in a number of loopholes in the State legislation, which will be necessary for the purposes of making sure that the legislation is constitutional. The problem that is likely then to arise is that because there are loopholes it is likely to undermine the effectiveness of the system and the consequence of this will be people coming along and saying, "Well, we paid a lot more of taxpayers' money to the political parties but we are still finding parties being influenced politically in relation to donations and the like that come in through influence, through the back door or other means", because you cannot completely isolate New South Wales from the rest of Australia. That completely undermines the whole cause of reform of the political donations system. My underlying approach to this is yes, it is important to do and it is important to do it properly, but I prefer not to establish a scheme that is undermined by potential loopholes that come about as a result of the constitutional issues. That is the reason the report says it would be preferable, not that it is constitutionally mandatory, if we had a national system to avoid those sorts of problems.

I have been having a little look at Dr Tham's submission and there is some quibbling towards the back, which I will not go into detail about, as to whether the Commonwealth would have the legislative power to deal with certain things. Clearly the Commonwealth does not have the legislative power to deal with certain matters in relation to State regimes. That is why it has to be a cooperative system. There is no point in the Commonwealth trying to legislate alone on this in relation to the States and there is no point in the State trying to legislate alone on this to the extent that it affects potentially Commonwealth elections. Because the State political parties, such as the State Labor Party, the State Liberal Party and the State National Party, raise funds for the support of candidates in both Commonwealth and State elections, there are going to be real difficulties in quarantining constitutionally the State aspect of that from the Commonwealth aspect. You can see what is going to happen. The money is just going to circulate around through the back door and it will undermine the system.

That is where I am coming from. I am not coming from a position of not wanting reform of political donations. On the contrary, I really do want reform of political donations, but I am just suggesting that the preferable way of doing that is the most effective way and that if we have half a go at it and undermine it, because it does not work, people will not want to make the extra effort to do it properly.

**CHAIR:** Thank you all very much for your opening statements. Professor Twomey, on the issue of loopholes and the difficulties between the Federal system and the State system, one of the suggestions, I think in the Liberal Party's submission, which will be available I think from today, is that the political parties that are contesting elections should establish separate accounts for separate campaigns—a Federal account, a State account and an administration fund—and their entries should be transparent. Would that go some of the way to addressing the complexities or the challenges and potential loopholes of a Federal integrated system and a State system?

**Dr TWOMEY:** Clearly that would be absolutely necessary to make the State system work at all. That would be required. I guess my concern is that people would still say—this may well be just perception rather

than reality—"Ah well, the X party is still influenced by political donors because the X party knows that even though those donations now come through the Commonwealth rather than the State it is beholden to X party for the purposes of funding its administration or its Commonwealth candidates." The State party of course then does not have to spend any money of its own in relation to those things so it diminishes its amount and puts it into the State category and the influence still flows back through the party system. That is the fundamental concern with it. Certainly you would have to try to have some sort of quarantining system but how do you quarantine influence?

**Professor WILLIAMS:** Can I make a quick comment on that? I accept the point that it is extremely difficult to close loopholes in a State scheme but I think even with an integrated scheme the likelihood is there will still be loopholes. It is very hard to regulate in this area. It will be a constant battle to improve the legislation, but that is an appropriate battle. I think the approach cannot just be a matter of closing all the loopholes but rather to fundamentally reshape the system in a way that reduces the incentive to find a loophole in the first place. For me that means particularly paying attention to the demand side of the equation so that there is not the great incentive to raise extra millions of dollars through third parties, party structures or the like. If there are significant limits on the amount that can be spent on electronic advertising and perhaps direct mail and other forms of campaigning, you can have a system whereby once you have raised the amount you can spend and third parties are appropriately regulated there is not the incentive to find a loophole. Another key part of this to make it work is the public funding side. If there is a reasonable level of public funding that both again removes the incentive to find a loophole and also creates a perception in the minds of voters that people are taking public funding and still rorting the system through finding loopholes, it may be a significant political price will be paid for that. It is part of the cultural change within the system as well.

I see those as crucial and in many ways more important than some of the other things that we put on the table. Even then it is still not going to be perfect, but with those things it will take a significant amount of heat out of what I recognise are strong points about the inadequacies of any legal regime.

**Dr ORR:** If the political parties are willing, contrary to tradition in Australia, to have open auditable accounts and create those kinds of structures to fix some of the problems we have with the Federal nature of our political system, it will go a long way to making the system more workable and potentially more transparent. Professor Twomey is right to point out there are jurisdictional and practical difficulties about the fact that politics is increasingly seamless in this country. There are Federal-State overlaps in major issues from water to education and so on. They are becoming more real every day. What would be the situation with third party lobby groups, for example, who may wish to engage in what the Americans call "issue advertising" and soft advertising and so on? When we think about expenditure caps we have to think about limits on what type of expenditure. Dr Tham talked about limiting campaign expenditure, but increasingly expenditure is occurring at least throughout the year prior to an election and the whole cycle is much more intricate than it used to be.

**Dr THAM:** The debate on loopholes, to be meaningful, needs to be particularised. There is a real risk here that this label of loopholes is drawn up in a vague sense, to basically stalls the reform process. It seems to be that the loopholes that have been referred to are said to stem from the fact that party branches are part of a federal structure, as we all know. If we think about it that way, if that is the particular set of loopholes we are actually pinpointing, or focussing our attention on, then it seems to me those set of reasons do not apply to key elements where there needs to be reform. Clearly it does not apply to government advertising. It does not apply to regulation of lobbying and, in my view, it has very little force or diminished force in relation to election spending limits.

Where it does apply is in relation to contribution limits. Then we ask the question: Where do the loopholes come from? They do not really come from the fact that the New South Wales Parliament does not have power under its constitution to regulate the funds of State party branches, regardless of where the funds are going to. In fact, when we look at the current disclosure scheme, section 86 of the Election Funding Disclosure Act and its definition of donations, party branches currently have to disclose donations, regardless of what use they are put to.

If we take that as a point, what that means is—putting aside Federal constitution limitations for the time being—that under the New South Wales constitution, as I made clear in my draft extracts, the New South Wales Parliament has the power to regulate contributions regardless of what use they are being put to. The question then arises, what happens when the Federal Parliament decides to enact contribution limits? This is where the loopholes come from. The loopholes come if the Federal Parliament enacts federal contribution limits that are inconsistent with the laws that are enacted by the New South Wales Parliament. As I point out in my draft



extracts that is a real issue but, as Professor Williams pointed out, it is really unclear at this point what is happening at a federal level. Are we to make decisions about reform as to speculative prospects and so on?

**CHAIR:** Are there any further comments in relation to that?

**Dr TWOMEY:** Yes, I just want to disagree with one aspect of that, that is, the suggestion that just because the New South Wales Parliament can legislate in relation to disclosures that takes into account Commonwealth and State donations then it can necessarily legislate in relation to political donations that affect the various levels of government. I disagree with that. There is a difference between disclosure laws which can operate together without giving an inconsistency, so on that level of inconsistency they can operate together, but it is also a distinction between disclosure requirements that you shall disclose political donations and saying, "Thou shalt not give money to X." So they are prohibitive in nature and they are having a far more profound effect on the Commonwealth system of government. I do not think that the New South Wales Parliament would get away with legislating to say, "X, you cannot give a donation to a political party for the purposes of funding candidates in Commonwealth elections"—

**The Hon. DON HARWIN:** That is exactly what we did in December, was it not, in relation to property developers? If a property developer wants to give a Federal candidate of a State registered political party in New South Wales a donation for a Commonwealth election, it cannot.

**Dr TWOMEY:** I would have to go back and check that. I briefly looked at this last year when the legislation came through and I think I was looking for Federal problems. At the time I thought they quite cleverly got around it but I cannot remember why. If I could take that one on notice, I might come back to you and say whether I think that is the case or not. Anyway, getting back to the point, I think there is a difference between disclosure laws on the one hand and prohibitive type laws on the other.

**CHAIR:** One of the terms of reference of the inquiry is to examine whether there should be any regulation of expenditure by third parties on political advertising of communications. What are your views on the constitutional implications of that?

**Dr ORR:** Only the constitutional implications or the desirability as well?

**CHAIR:** Whether there are constitutional implications. Please comment on both.

**Dr ORR:** Fortunately I think they marry up. I think everyone at the table, in their submissions, and most people generally agree that if you are going to have expenditure limits on political parties then you need to have expenditure limits on so-called third parties and they need to be lower. And then there are questions about limiting collusion and so on. They are well established overseas. The desirability and constitutional issues seem to be essentially the same. If you assume there is an implied freedom of political communication in relation to governmental activities generally applying in New South Wales then you have to be concerned that you do not limit third party activities to the extent that they are unable to meaningfully engage in whatever types of advertising are either commonplace or still allowed, and in particular I am talking about broadcast advertising. So you have to set those caps at a reasonable level. Who knows what is a reasonable level is in terms of how long is a piece of string, but I think that is essentially a political matter rather than one that the courts are going to micromanage.

**Professor WILLIAMS:** I am happy to make a comment. Certainly to the extent you sought to regulate third parties engaged in Federal elections, I think there would be some very significant problems there. I agree broadly with Professor Twomey that great care needs to be taken to regulate any form of direct electioneering relating to Federal elections lest you encroach upon areas of Commonwealth expertise again. There is not a clear and certain answer there but I think you would be well advised to be extremely cautious. When it comes to third parties who are seeking to advertise or influence voting in State elections, I believe they can be regulated but again there are some tricky constitutional issues here. For me they get to the issue of not discriminating between third parties and political parties participating in elections creating a system that can be regarded as free and fair.

If you look back to the High Court's only decision in this area, in 1992 in the Australian Capital Television case, my reading of that decision is the great evil of that Federal legislation was the way it did discriminate and created an unfair playing field both between parties, particularly new parties and established parties, but also between third parties and political parties. I think you could firstly take the decision just to leave out third parties of the scheme but that would be quite risky to do because if nothing else you would undermine

the value of the scheme but also you would create the potential itself for an unfair playing field by enabling participants to participate through other means and actually you just end up discriminating against political groupings who are the most actively engaged in the process. So I think you have got to involve third parties.

I think constitutionally so long as you have a scheme that you have a sound and robust reason for enacting and that you can demonstrate is fair and reasonable and has caps that are appropriate then I think they are the sorts of goals you need to get to. For me here the issue again is not so much the constitutional impediment, although there is an issue here you need to address, but just how you design it in a way that actually achieves that goal of fairness without building in, as the prior scheme did, a bit of a loading one way or the other, which is what the High Court would be looking for in this area.

**Dr TWOMEY:** I agree with George. I think you can limit expenditure of third parties. I also think it is necessary to limit the expenditure of third parties or it would undermine the entire system. It is just a bit tricky to do. So you need to be aware of the constitutional rules, so to speak. You need to do it very carefully. You have to be aware that third parties do have a legitimate right in a democracy to express their views, be they business groups, unions, environmental groups, whoever, they are entitled to express their views and they should, therefore, be entitled to run what I think one court described as a modest campaign on the issue to be able to let people know their views. That does not mean being able to expend money in a completely unlimited way and swamp the airwaves. You can express your view clearly without doing that.

I think it is likely that the High Court would uphold limits on third party expenditure so long as it is done in a careful, reasonable, fair manner and those limits were set below the limits imposed upon the main political parties but not so low as to impede third parties from being able to clearly contribute to the political debate and express their views.

**Professor WILLIAMS:** Can I just quickly add one point that I think is important to put on the table? I would be extremely wary of discriminating between third parties in the legislation. I think that is where you run real risks. If you identify certain third parties who have a greater capacity to participate than others, unless there is an extremely strong reason for allowing that, then I think that would be very problematic. That is why I have some difficulties with the developer legislation that has been passed by this Parliament because even I can understand the goal, but I think it is constitutionally suspect to ever pass legislation that says one particular third party is prevented from acting whereas others are not, and why would not tobacco companies or all sorts of what might be perceived to be socially undesirable organisations equally be treated in that way?

The developer example is a good example of something that probably is unconstitutional and for that reason I would be saying yes, regulate third parties but do so in a politically neutral way without making value judgements as to the value of their speech, because free speech is relevant. It is where parliamentarians ought not to be judging that this is more valuable or this is not: it needs to be a relatively open marketplace.

**CHAIR:** In relation to third parties, is there general agreement that political parties and candidates should have primacy in terms of their caps on expenditure compared to third parties? Should third parties have the same disclosure requirements in terms of their funding sources as political candidates in the parties?

**Dr THAM:** The third party issue is really two separate issues. I mean, one issue actually relates to independent campaigning by third parties. This comes back to what was mentioned just a few minutes ago in terms of the privileged position of candidates and parties, simply by virtue of the fact they are the contestants, they are the ones actually competing for public office. So there is the question about independent campaigning. Another issue is the problem of third parties posing as front groups. This is where third parties either have coordinated campaigns with the parties or candidates and so forth. Electorate spending regime, and disclosure regime, has got to deal with both problems. In fact, when you go back to how the disclosure regime of the Commonwealth deals with it, it deals with it through the concept of associated entities, in dealing with front groups, and it imposes separate obligations upon independent third parties.

I agree with everybody, I think there is a consensus which clearly implicates implied freedom. I agree with everybody else in saying there should be care exercised in actually designing any election spending limits that apply to third parties. What I should say, and this is something I elaborated on in my draft extracts, is that the problem is not discrimination per se. If you look at the ACT case, the concern was not over the fact that third parties were given less space, if you like, to engage in political expression but that the discrimination, to quote, was "not justified or not legitimate". I think that is how we should be posing the issue. As a matter of principle I

definitely see strong arguments for high spending limits for parties and low spending limits for third parties. The question, of course, is how low does it become when it becomes unfair? That is a matter of judgement.

Can I just make two sets of comments? One is about selective bans, in response to Professor Williams' comments, and another set of comments. I do not actually think that selective bans are problematic. I am not endorsing the ban on developer donations. I am still forming my views on that. But why I say I do not think selective bans are problematic in principle or from the perspective of the constitutional freedom is that we can perhaps see that there are some categories of donors or some categories of donations that give rise to stronger suspicions as to conflicts of interest or corruption.

I will give you an example in terms of a regulation we find in Canada or in the United States of America where there are bans on government contractors giving donations. One can readily perceive perhaps that with that category of companies there are serious conflict of interest issues that do not apply more generally to other corporate donors. One might see there may be justification for actually singling them out. Again I am not endorsing developer donations, I do not have any fixed views at this point of time but I think selective bans are not necessarily problematic. It depends on what kind of selective bans we are talking about.

The last set of comments of Mr Harwin about bans that apply to State branches also affect Federal elections. If you look at the current regime, Queensland, for example, there are clearly bans on political contributions that could be used for Federal elections. In New South Wales, as you already know, there is a ban on anonymous donations. There is a ban on receiving money from companies that do not have an ABN. In Queensland there is a ban on foreign source contributions, contributions that could be used by the State branch for Federal elections. I think the point about not being able to regulate contributions that might be used for Federal elections needs to be more carefully examined.

**Dr ORR:** I endorse what Dr Tham just said. In my submission I do not think there are any problems with constitutionality of selective bans on contributions because it is much more defensible if you have got a rationale for property developer donations being banned. It is much more easy to defend a ban on something you can justify with evidence and appearance of corruption than having a general across-the-board ban on contributions, for example.

It is a bit of a furphy I think because we are talking about expenditure limits and we need to step back and say what are the parameters of the expenditure limits that you want to put into place. The first question is: Are we only dealing with election campaigns for a three or four month period prior to the fixed State election? If so, we might be able to look at limitations on all political expenditure in that time, and it is relatively easy to have a system where the parties have a certain cap and third parties have other caps, and then it is a question of enforcement, collusion, co-operation.

What is much more difficult is to deal with the issue of political advertising generally across the board, given that we live in an age, relatively speaking, of something close to a permanent campaign, and given that the one third party we have not mentioned is government—government advertising. If the Howard Government could advertise \$150 million on WorkChoices and the Australian Council of Trade Unions [ACTU] could not respond with an unlimited campaign then I think we would have seen something of a farce in terms of democratic equality as well as liberty. At the moment I assume we are all talking about election expenditure restrictions, but are we really talking about something broader—political advertising across the calendar?

**Dr TWOMEY:** Before we get off that point, could I add that the experience in some other countries—New Zealand, for example—is that you can have a two-layer version of restrictions on third party expenditure, so if it is only a small level of expenditure by third parties it is not regulated, but if you want to expend more significant amounts you have to register with the Electoral Commission and then you have to meet certain disclosure requirements and the like. That sort of system is probably more practical because there will be circumstances in which small business buy raffle tickets or whatever, or are involved in very low-level expenditure, and you do not want to tie up everybody in red tape, so one thing for the Committee to consider would be a similar sort of situation as in New Zealand.

On the issue of focusing on particular sectors and their contributions, like Professor Williams, I am a bit more wary about it. One of the problems with it also is certainty. For example, in the United States, with those restrictions on government contractors from expending or contributing, if you are the local deli that makes sandwiches and you have a contract with a government department to provide sandwiches—and you are the person who owns it—to what extent are you limited? Do you even have the faintest idea that you are limited in

relation to these things? There are all sorts of problems on a certainty basis as well. Having said that, the developer legislation I think was relatively well drafted to attempt to get around it, but you could see all the sorts of problems that were arising in it, particularly when it got to directors of companies, chief executive officers and their spouses and all the rest of it. Quarantining any of those things is inherently difficult and leads to unfairness, and that is why it is much easier to deal with donations across the board.

**Ms LEE RHIANNON:** I will come back to the implied freedom of political communication, but before leaving the issue of third parties, so often when we have this discussion there is the assumption that third parties should be allocated to spend and raise less money than political parties, and I really think it is worth fleshing that out more. I must admit that initially I had the same assumption and somebody pulled me up on it, saying, "We have a system of representative democracy. Why should candidates and political parties be given more money to run in an election? What are you basing that on?" I found that I did not have an immediately good answer to that, so I would be interested in your views, considering that one of the things we are trying to achieve by having a more level playing field is getting back to politicians and candidates debating what we stand for rather than having various influential mediums coming forward.

**Professor WILLIAMS:** I am happy to start with an answer. I think it is dangerous if you get into the territory of saying one voice is more important than another, even though I think you can certainly say there is something special and distinctive about candidates and about the organisations that support candidates. Nonetheless we are talking here not just about who is running for election, but who people are entitled to hear from who might influence their vote, and in that context I think it is very hard to push too far that candidates are more important or parties are more important and they should have more money. I certainly would not base an answer on that.

If I were to give an answer as to why perhaps you might draw a distinction and give a lower threshold for third parties, there are two reasons that come to mind. One is that perhaps the costs and other expenses associated with candidates and parties are naturally higher because of the extra things they need to do in terms of the campaigning process. It might be what they do on election day, it might be the logistics that go with running campaigns, and perhaps there are just businesslike answers as to why it is more expensive in addition to the advertising that third parties might do to run a campaign, but equally I would not push that too strongly either because I recognise some of the work that third parties do.

The only other answer I could come up with is that the problem with third parties is their potential to multiply and, of course, when you define third parties it is very hard to deal with the problem of just a new corporate entity being created or a third party splitting, and sometimes you might try to deal with that through associated entity provisions and the like but, if you are too generous with third parties, you do run the risk of just being swamped by the creation of multiple entities. So for me there is an issue about allowing third parties to run a modest campaign lest in the end we are really talking here about elections that are dominated by third parties because they are the ones who just create as many as you want and as long as they are at arm's length from each other—

**Ms LEE RHIANNON:** But if we are generous we can end up with lots of political parties. We have seen that problem as well.

**Professor WILLIAMS:** The barriers to creating a political party are traditionally far higher—not always, but traditionally in terms of the signatures you need and the compliance costs that go with it—and certainly a change I would like to see as part of this would be that, where a political party receives public funding, extra compliance mechanisms are introduced in terms of democratic accountability as part of the role of political parties and the transparency that goes with their accounts. I would say if the public is really going to be forking out the money in any more significant way, then political parties need to bear far higher responsibilities that go with that. That would be consistent with the sort of answer I would be giving. The difficulty of just creating parties—and I know that that has happened with the upper House here in the past with the creation of micro-parties—has been dealt with, or at least attempted to be dealt with in the past.

**CHAIR:** Are there further questions on the issue of third parties?

**The Hon. DON HARWIN:** Yes, based in part on what your general secretary said this morning in terms of asking some constitutional lawyers what a good limit might be. Professor Williams, following on from the swamping issue that you were talking about—and please all panel members chip in—if we limit it to one

constituency and say that \$100,000 is the candidate/party limit, would 10 per cent of that figure be an unreasonable burden on political communication for a third party, or would it need to be higher?

**Professor WILLIAMS:** I think it is actually the wrong way to ask the question because in the end the Constitution does not give you an answer to that question. What the Constitution says is that it will run a ruler across whatever amount you come up with and ask: How do you justify that? Is it a reasonable justification? Can differentiations be justified by public policy? I would be saying to you that what you need to do is come up with a well-reasoned, justified response both to what parties, candidates and also third parties might do, but if you come up with that justification then the 10 per cent figure you come up with does not strike me as inherently unreasonable, but I would be looking more at the evidence you have to justify that than I would be to saying there is any clear answer to it.

**Dr TWOMEY:** It would depend also on the cost, for example, of advertising. I have read judgments of courts—and I cannot remember which ones they are, but probably the United States Supreme Court and I think also European courts—where they have actually said that the amount that was allocated to the third parties only allowed advertising for one quarter of one page in one small newspaper, and that was it, and so they looked at what that money would buy you in terms of the extent to which you could make your view known. It may well be, depending upon the amounts that you are giving candidates and parties, that there is a higher threshold to begin with anyway in terms of being able to advertise on radio or in newspapers or whatever, and you would need to be able to take into account what that limit would buy in order to be able to ascertain whether the third party then has a reasonable chance at running a modest campaign.

Getting back to what Ms Rhiannon was asking about this, as to why you would cap third parties at less than candidates and parties, I would say you have to remember that the only reason the issue of capping the third party arises is because you are capping the parties and the candidates, and if there is no cap on the parties and candidates then there should not be caps on third parties, but once you have the purpose of capping the candidates and the parties, and the purpose of that is to bring down the costs of the election and to take money out of the process of the election and to bring down the warfare between the parties, once you are putting that cap on them then it is perfectly reasonable to also bring down that by capping the other—

**Ms LEE RHIANNON:** Yes, but why lower?

**Dr TWOMEY:** Because in the end, as Professor Williams said, there is the issue of swamping. If you got to the point where third parties were able to run a campaign with significantly higher levels of expenditure than the limited political parties and candidates, you would end up with a situation like you do in the United States where you have single issue third party campaigns that completely dominate the election and the actual issues that arise in terms of government just get completely swamped and wiped out of the system, and I think that is not necessarily a good thing from the point of view of democracy.

**The Hon. DON HARWIN:** Would there also be an issue in terms of capacity of a candidate to respond to multiple issue campaigns if the limit was higher than the candidate's own limit?

**Dr TWOMEY:** That is right, that is one of the concerns that does arise, and that is also a particular issue in respect of timing of expenditure as well. It is often related to blackout bans and the like in the last few days of a campaign because if you have limits on what you can expend and then three days before the election date a third party comes out with a massive advertising campaign saying that you, the politician, have lied about this or deceived there, and you have no money left in the kitty to respond, then there are real problems there too.

**Dr ORR:** We have to look at this pragmatically. You have to think about what you want to do in terms of not so much these abstract principles, but what is the nature and political culture in campaigning in this State and has it been fairly stable? I would suggest it has been reasonably stable over time, apart from the rise in government advertising. What you have to consider, for example, is the relatively centralised nature of campaigns, the party control of campaigns. There is not a huge amount of third party expenditure except by groups that are relatively well-known and generally respected business groups. Generally we are talking about trade unions, large lobby groups and established groups. That may change if we legislate. It might create a waterbed effect where we will get Swift Boat Veterans for Truth, but I suspect not, certainly not in the first decade or so because the Australian political culture is different from American political culture.

In part answer to your question, you have to think about things also in terms of the differential geography of this State. It is one thing to have a campaign in a centralised city seat. It is another thing in a rural

electorate where there may be television advertising at the constituency level. Generally the various approaches say you will have a cap for parties in nationwide campaigns and then you will have a cap per constituency. As far as I can see you would only be concerned in rural areas of campaigns directed at particular members. It tends to happen much less in the cities where most of the seats are.

**The Hon. JENNIFER GARDINER:** But it is standard in the country.

**Dr ORR:** It is standard, yes.

**Dr THAM:** It is clear to me that any democratic political finance regime has to allow meaningful capacity for third parties engaged in political campaigns. I think that is an important point. Why a differential level? Professor Williams and Associate Professor Twomey mentioned swamping. It seems to me that there are really two evils or dangers about third parties swamping political parties.

The first I referred to earlier in terms of a privileged role, not a dominant role, of parties and candidates as contestants for public office. There is one important implication that follows from that. The implication is about accountability. If people do not like a candidate or party, what can they do? They do not vote for the candidate or party. That same mechanism of accountability does not apply to third party campaigning. That is a crucial aspect to bear in mind. The second ground, and perhaps this is where it is more controversial, is a preference for more integrated and comprehensive politics rather than issue politics. Third parties tend to run on single, discrete issues whereas my preference would be if a party wants to run for political office in this State that it has policies for the whole State and not just policies about abortion or particular issues. They should have a role, that is correct, but they should not be allowed to dominate the election campaign.

**Mr ROBERT COOMBS:** That leads to the second part of the question of giving consideration to what model we use in going to a publicly funded system. You touched on that matter. We do not want to set the scene or have an environment where we have vexatious contestants, if you like, being able to benefit from public largesse. On the other hand, at the other extreme, we are trying to get away from the situation where there is a stigma or a perception that the more money you have the more influence you have. I believe an enormous amount of this Committee's time in our final deliberations will be spent on trying to get the balance right. In your studies or through your experiences overseas have you come upon a model or do you have suggestions about a model that strikes that balance? We are trying to keep in the field legitimate contestants and start-up parties and Independents but get away from this nonsense of a reliance on big corporations, trade unions or like organisations in funding our electoral process.

**Dr ORR:** To rephrase the question, are you looking at forms of public funding that will not lead to gaming of the system, the setting up of front parties or say the Transcendental Meditation party receiving a windfall?

**Mr ROBERT COOMBS:** Yes. At the moment the extremes are, on the one hand, that there should not be any corporate donations whatsoever and, on the other, that there should be some sort of freedom attached to the process. We will probably come to a conclusion whereby we go to a public funding model. To extrapolate the question, how much is reasonable for a candidate? How much is reasonable for a political party? Do we extend that system to the administration and operation of the party? So we are talking about far more than just an election campaign.

**CHAIR:** Dr Tham, you talked about the importance of funding political parties to exist and to cover their administration costs.

**Dr THAM:** Yes.

**CHAIR:** That covers in part what Mr Coombs was asking about. Is there a view shared among the panellists here that part of the public funding model should include costs to assist the political parties to perform that function in addition to the costs of those political parties to run campaigns?

**Dr TWOMEY:** I would be a little bit wary about going too far. You have to have some sympathy for the poor taxpayer, given that we all are that too. There is an important issue about ensuring that parliamentary parties are obliged to connect to grassroots voters. If parliamentary parties were totally funded by public funding and then had no need to go out and connect with grassroots supporters and tailor their campaign to meet the interests of supporters and the like, except to the extent that they need them to vote for them in the end, it would

detract from the system. So there is some interest in placing an incentive on parliamentary parties to interact with voters and to get voters to put their money where their mouths are and support political parties.

You have seen in the United States with Barrack Obama an enormous increase in Internet campaigning with very small donations given by people who had never previously donated to a party. It is possible to energise the grassroots and to collect funding there. What you might want is a balance between, on the one hand, substantial public funding but also an incentive for parties to be able to raise some of their own funding by interacting with and gaining the support of people. So the more support you get, even if the donations of supporters are capped, the greater the capacity you have to raise money. That also has to fit in with an expenditure model that limits expenditure as well.

There are various ways of doing that. Even when you get to the public funding side of things you also have to make an assessment as to what level of public funding should be given to political parties, candidates and the like. The traditional way of assessing that is in relation to how many votes they got at the previous election. That is not always going to be there where you have a new start-up party or a party that has gained significant support since the previous election. Again you probably need some kind of a mixed process where you look back not only the support the party received at the previous election but how many members does the party have now, what level of capped donations are they receiving from members and perhaps get some level of matching funding for that. You see it in places like, I think, Germany. I may have this is completely wrong; I read it this morning but I am not very good on statistics. It was something like 40 per cent of their funding came from votes at the previous election and 60 per cent of it was matched funding based on the support they had now on the amount of money they received. There are ways of mixing up the various interests to try to get a more fair and representative apportionment of what public funding should go to which parties and which candidates.

**CHAIR:** One of the issues that the Independent Commission Against Corruption raised was that funding should not necessarily be linked to areas that have the opportunity of being manipulated. If you are looking at party membership as a source of how you measure public funding for a political party, it may lead to opportunities for manipulation.

**Dr TWOMEY:** Branch stacking.

**CHAIR:** Essentially, to artificially ramp up your funding.

**Dr TWOMEY:** That is true.

**CHAIR:** Are there any other comments to the issues raised by Mr Coombs and the response from Professor Twomey?

**Dr THAM:** I should say quite strongly that I am against a system where political parties are completely reliant on public funding, for similar reasons that Professor Twomey has mentioned. One has to recognise there is a legitimate role for private contributions. The question is what type. The recommendation that the upper House inquiry made in this regard is quite right: to ban basically all political donations except for those \$1,500 or less. Those contributions or that kind of amount do not pose a real risk of corruption. It can be an important form of political association and political expression. So the first thing I say is that I do not support a system of total public funding.

The other thing I will say is it is important for us not to cast this debate—linking to an earlier set of comments—as private funding bad, public funding good. Public funding also gives rise to a number of risks or dangers. One is that it risks—and you will see this now with the uncapped election funding that is given at State levels and the Federal level—inflating campaign expenditure. In fact, this is what has been said at the Federal level. Rather than reducing the reliance of parties on private money it is an add-on that basically bumps up campaign expenditure. That is why if we are going to see increased public funding of elections, spending limits have to be part of the package. The second danger is public funding being unfairly biased towards the major parties. I take the point about frivolous or vexatious parties, but the point to be made is that it should not be evaluated from the views of the major parties as to what is respectable political opinion.

My views I am developing here I will finalise in my report that I will give the New South Wales Electoral Commission. As to the components of what seems to be a fair public funding scheme that not just supports the parties but also opens up the political process, there are two questions. One set of questions is firstly about eligibility. What do you need to do to be eligible for public funding? Another set of questions is

about once eligible how much should you be paid? It seems to me that eligibility has to depend on popular support. How many votes you receive is a good way to determine that. I take the point about branch stacking and corruption, but serious thought should be given to a public funding system that also bases eligibility on the number of party members.

**CHAIR:** Maybe not threshold levels.

**Dr THAM:** That is right. I am plucking a figure; I do not know what is a reasonable figure. Say with 500 or 1,000 members one becomes eligible for public funding. Moving on to the second level about how much you get, then you can have various components of that. You can have a certain amount of funds calculated according to the votes you have received and a certain amount of funds calculated according to the number of party members you have. Also another component could be matching funds. What I mean by matching funds is where public funding is given to match small contributions. So if a person gives maybe \$500 the public matches to some extent, maybe 20 per cent or 30 per cent. That is an important way of encouraging the kind of political contributions you want to see to invigorate the political system.

**Ms DIANE BEAMER:** The Committee has received a number of submissions that suggest we ban all corporate donations and only have individual donations from people on the electoral roll. That would rule out questions about whether we are stifling one sector, such as developers. It would not stop individuals who had government contracts but they could only donate a certain amount as a private individual, not through a company. I understand from what you say, Dr Tham, that you agree with stopping all corporate donations but to start at more of a grassroots level, local people and businesses in the area coming to a fundraiser, but capping donations at \$1,000.

**Dr ORR:** It sounds very much like an American-style solution. There obviously are issues about how the Labor Party works, its organisational base and so on. But if you want that American or Canadian approach then you will have to look to the future where you might get some of the Americanisation of the system which would suit Mr Turnbull, for example, quite well—not just his power generally but his power within the party because he has a lot of wealthy friends who can roll money together.

**Ms DIANE BEAMER:** But combine it with an expenditure cap. The Liberal Party has put up a cap of \$100,000, the Greens have said significantly less.

**The Hon. DON HARWIN:** I think it was an example. I do not think that is our—

**Ms DIANE BEAMER:** We have to look at a figure that is reasonable in running a campaign. If you take it from \$20,000 to \$100,000 but it is capped, it does not matter how many rich friends you have. If you have an expenditure cap of \$20,000 only 20 friends can donate \$1,000.

**Professor WILLIAMS:** I do have sympathy for the idea that those entitled to make contributions ought to be those entitled to vote on the basis that if you ask what the value is in a democracy of giving money it is a form of expression of someone who is entitled to participate in the democratic process. There is no particular value of corporations or legal entities being able to make contributions. It comes to again what functional role do they play within the system? Also from a constitutional point of view it is defensible that you limit it to natural persons because I do not think there is any strong political reason why corporate entities have any rights in this area.

**Dr TWOMEY:** Unless they are on the US Supreme Court.

**Professor WILLIAMS:** Unless you are on the US Supreme Court. They have taken a different view and they have a far more robust free speech guarantee, I suspect, than any democratic system. I would say that I do have some sympathy for that point of view. I would cap the amount that any individual can give so it avoids having a few rich friends with vast amounts of money. You might say each person can give \$1,500 or \$1,000 but no more than that. I would also be putting the expenditure caps on. I think that would be a very restrictive scheme but perhaps it would be a scheme that gets closest to meeting some of the ideal forms of democratic participation.

**Ms DIANE BEAMER:** Also it stops the whole idea that you have to raise vast amounts and the ever-escalating volume that people get stuffed in their letterbox.



**CHAIR:** On the issue of restricting donations from corporations, Dr Tham in your submission you mentioned that you feel it is not unreasonable for unions as democratic organisations, separate to and distinct from corporations for example, to be able to contribute to political parties. Is that a correct assessment?

**Dr THAM:** That is a bit too broad. My view is the view as expressed in the recommendation of the upper House inquiry, which is that the starting point should be a ban, as Ms Beamer has pointed out, on donations of more than \$1,500 of natural persons but subject to certain important exemptions. I mentioned this in my opening statement. One important set of exemptions which the Committee made was in relation to membership fees, including organisational membership fees. Trade union contributions in forms other than membership fees will be subject to the same ban as any other corporate entities. But when they are channelled through affiliation fees—trade unions as members of the Australian Labor Party—then there should be an exemption, as the upper House inquiry recommended, subject to a reasonable limit or level to those sorts of fees.

**Dr ORR:** Even though I agree with that in principle, I am not sure whether I do or do not in practice. It is just the largest loophole you can imagine. We cannot interfere too much with freedom of association of parties, so all parties must then be able to have business organisational membership, and then how is that business organisational membership price going to be structured? Then we are back into the whole millennium-forum-style problem.

**CHAIR:** One of the suggestions in the Liberal Party's submission was that affiliation fees be taken as funding, which is taken off the amount of public funding that a political party is given. For example, if a political party is eligible for \$10 million worth of funding and it receives \$2 million—

**The Hon. DON HARWIN:** That is for party administration, not for election campaigning.

**CHAIR:** That is right. The public funding that the political party was eligible to receive as part of its political education fund, or that funding which goes towards the maintenance of the political party—that amount which has come from a related entity, such as a union, is taken off the total amount that you ultimately receive.

**The Hon. DON HARWIN:** And, to be fair, from any held assets as well.

**Ms DIANE BEAMER:** In realistic terms, that means that unions affiliating the ALP would each do so at, say, \$3.50 once, and go off and do a third party campaign with the rest. I can see your loophole problem in saying there are ways around that. It is a matter of how you do it.

**Dr THAM:** Coming back to the principles I put forward earlier on, why do I see that pushing of current membership fees into third party campaigning as undesirable? I see it as undesirable for at least two reasons. The first is that if you have a ban on membership fees, including organisational membership fees—this is the point recognised in the past report—you are banning a particular part of the party structure. You are basically saying to the ALP, "You cannot have the party structure that is based on what is called indirect membership." It is also a structure that the National Party had for quite a long time. That is quite a severe limitation on freedom of party association.

Secondly, one of the other principles is about supporting parties in discharging their functions. One of the functions identified was a participatory function. Trade union affiliation involves an indirect form of participation, but it is nevertheless a form of participation. But if we are going to ban those kinds of affiliation fees and the membership it carries with it, we are basically saying, "Don't participate in a political party or engage with them in campaigning." But that can only have the effect of weakening the party system.

**Dr TWOMEY:** Although, surely, people who are members of unions can themselves voluntarily become members of a political party. Ultimately they have the freedom of choice. If they want to pay to be a member of a political party they always can, so that there is a level of freedom of choice there.

May I go back to one thing Mrs Beamer was saying about banning corporations full-stop from donating. I have no problem with that; I think constitutionally that is okay. But again, heading back to the position of the taxpayer, there is obviously going to be some reluctance to pay large amounts of public funding to political parties. It may well be more economically efficient to put a relatively low cap on corporations. For example, if you say \$10,000 as a cap for corporations, the donation of Westfield is going to have as much impact as the donation of the local fish and chip shop if they are both up to the maximum of \$10,000. So you are not able to buy your influence if you are a big corporation or a corporation that would otherwise be trying to

influence Government; your influence is completely diluted by the fact that your \$10,000 is worth the same as anybody else's \$10,000.

**CHAIR:** The same could apply to limiting corporate donations and individual donations by the same amount?

**Dr TWOMEY:** It could. Or you could make the corporate donations a bit higher, purely for the purposes of making sure that the amount of public funding was limiting the burden on the taxpayer. If the point of the exercise is to reduce both the risk and the perception of corruption, you can still do that in a way that minimises the public burden of the spending and maximises the private amount of the spending, so long as you do it in such a way that nobody's contribution is effectively more valuable than anybody else's.

**The Hon. MICHAEL VEITCH:** I want to take up the constitutional issues around funding as it relates to independent candidates, rather than political parties. My concern is that we will have a funding system whereby if you want to run as an Independent you face the collective might of the ALP, the Liberal Party or the National Party, who run in every seat in the upper House and who have the collective resource capacity, as opposed to someone who contests just a single Lower House seat or a single seat as an Independent in the upper House. There may be constitutional issues around setting up a funding model that may weight dollars towards a single Independent, to try to in some way ensure there is fairness in an election campaign for the sole Independent that may be contesting one electorate.

**Dr ORR:** By bringing in expenditure limits on the whole you should be somewhat levelling the playing field potentially towards Independents. I am just wondering where the figure of \$1,500 came from and why you would be setting it so low, unless you had a sense of egalitarianism, that a nation should be entirely equal. I do not think parties will clearly be able to fund themselves. We are not in the American system; people do not give the way the Americans give, there is no kind of associational culture. I am not sure why we are talking in four figures rather than five figures for a cap that would pass the test of "sniff it and see" in the street, where most people would say "the figure of \$50,000 is too big a donation; it is the sort of thing that is going to buy excessive influence".

**Ms DIANE BEAMER:** You are looking at \$10,000 as a limit—

**Dr ORR:** I said \$50,000—

**Ms DIANE BEAMER:** Before that you said five figures. Rather than looking at \$1,000, I take it that five figures would be \$10,000?

**Dr ORR:** I just suggested \$50,000.

**Ms DIANE BEAMER:** You said that is too big, did you?

**Dr ORR:** No, that might be a suitable limit to unions and other organisations that agglomerate people's interests—

**Ms DIANE BEAMER:** You were really looking at the lower side; I think \$1,000 has been mentioned. If you could as an individual donate \$10,000, you see it as being very important that we have a figure that you report on. What sort of figure would you see that disclosure threshold as being?

**Dr ORR:** Our disclosure threshold is reasonably low, and obviously it should be reported regularly.

**Ms DIANE BEAMER:** What sort of figure is "reasonably low"?

**Professor WILLIAMS:** \$100 or a couple of hundred dollars, or something like that. That is what I would set it as. If you are going to a dinner or something, say, for \$100 or less, you would not be expected to disclose it. But if it was higher than that, yes, I would be saying it should be disclosed.

**Ms DIANE BEAMER:** Would it be cumulative?

**Professor WILLIAMS:** Yes, I think you would have to—

**Ms DIANE BEAMER:** I find \$100 too low.

**Professor WILLIAMS:** Yes.

**Dr ORR:** \$1000 seems to be the suggested Federal level. You want to have parity there because you do not want people being caught out and headlines in the paper over what might be an administrative error.

**Professor WILLIAMS:** I disagree with Graeme on that. I think that even \$10,000 is enough to at least have the perception of a real risk of corruption, particularly if it is \$10,000 from multiple family members or from a group of people. I think the perception in the community would be that \$10,000 is a very, very significant donation. For me, that is why I would be focusing on \$1,000 or \$1,500, because I think that is closer to the mark, both as to where people might perceive the line exists as to where undue influence arises but also I think—and you of course would know better than me—you are starting to get to the point of genuine potential for undue influence when you get to five figures or higher. That is a very, very significant donation, particularly if you aggregate it with other people of a like mind who are seeking to achieve a like goal.

**Dr ORR:** Define "donation". I mean, if I am running as an Independent candidate, and presumably I can take out a second mortgage on my property—

**Ms DIANE BEAMER:** We have submissions to say that self-contributions should be very much capped.

**Dr ORR:** It is very problematic for people who are not part of an established political party. You also might have members of your own family who want to support you, and so on. Again, it is not corruption having someone close to you wanting to give that kind of money. We are generally talking about undue influence on a political party. I do not think you can buy undue influence for \$10,000. You might be able to buy access, but that is a different matter.

**Professor WILLIAMS:** But I think also that people perceive access to amount to some of that undue influence. I think part of the perception is that people might get more undue access than a person in the ordinary community would get. I think that is the reality, that access is a very large part of the problem. For me, in dealing with Independents on this issue we cannot just approach it from the supply side; there is also the demand side. I think some of the questions that Anne has put about allowing corporate and other entities to donate makes perfect sense if you are going to say, "We are expecting their campaigns will cost about the amount we are spending today."

If we are talking about tens of millions of dollars, the taxpayer should not have to pay that amount. I think it is entirely reasonable to say that. But I would much prefer to have a system which says those sorts of campaigns will not occur, where the law is drafted in a way that will prevent that occurring. We are putting in place electronic and other forms of limitations such that the Committee can come up with a recommendation that this is what it will cost. We are trying to design a system that we believe will still enable people to make an informed choice, but we expect that costs will be reduced by a factor of 90 per cent, or whatever you are looking at, in a way that the Committee can then say we do not believe it is necessary to have corporate donations and we think it is possible to fund what will be a greater reliance upon public funding, but not exclusive, and that the Committee can come up with a balanced scheme of that kind. But I think that unless you deal with the expenditure side, you are trapped into a lot of undesirable outcomes.

**Dr THAM:** I want to express strong agreement with what George is saying. The other purpose of election spending limits is that it contains a significant drop in private income. If set appropriately, it is going to contain to cost elections, even though the parties will be suffering a drop in private income because of contribution limits. They cannot engage in those big campaigns and the funds that are required to run those campaigns. An important point is that you see the reform package as an integrated package, where different things actually interlock.

**The Hon. DON HARWIN:** Professor Williams, you in particular have emphasised that others have supported the view that acting on expenditure caps is probably the crucial step. I am interested in exploring the type of expenditure caps that you favour. I took it from your opening statement, or perhaps it was an answer to an earlier question, that you probably supported the sorts of limits that applied to only particular types of electoral expenditure, not necessarily to the expenditure of the whole party over, for example, a four-year electoral term, as I think there is an attempt to do in some jurisdictions. For example, in the United Kingdom's

Political Parties Elections and Referendums Act 2000 just certain things are limited. The New Zealand legislation works a little like that as well.

Could I have the panel's comments on whether we should be trying to go for holistic expenditure caps on political parties, or just try to have expenditure caps on specific items of electoral expenditure?

**Dr ORR:** I think a working model, at least to introduce one and then revisit it in an election or two's time, would be one where you would say you have fixed terms here, and you could reasonably date back from the election period. You define "political expenditure" and you focus on expenditures that are public because they are the ones that are seen as having influence and they are the ones on which parties can vet each other. The litmus test for me would be what would you do about, say, market research expenditure, which is not something that necessarily is going to be done publicly, which political parties increasingly do, and which has a lot of value in informing their campaigns and so on. I would want to include that because I think it is close enough to what I call political election expenditure. But I would not be wanting, at least in the first round of regulation, to go beyond that six-month window where you are focusing on electioneering and gearing up for electioneering because of the problem I spoke about before—for example, WorkChoices and government advertising and issues that happened during the parliamentary cycle, when I do not think we are in a position to restrain or restrict those within a workable constitutional system.

**CHAIR:** Should the cap be on all expenditure in a defined period, or should the cap be on election expenditure, or should it be on election advertising and radio? Should we narrow it down?

**Dr ORR:** We would define what we mean by what I am calling political expenditure within that six-month period. I am saying that within reason you would want to include some of the borderline tests, which would be market research and those kinds of secondary expenditures that support the campaign, but then there are more difficult questions of auditing and vetting those.

**Professor WILLIAMS:** I think there should be one cap. You would not say that you can only spend this amount of this, and more for advertising this on that. You would let people make their own decisions.

**CHAIR:** That is right.

**Ms DIANE BEAMER:** I guess the question that the Hon. Don Harwin is asking is that if you are in a very large electorate, one of your big expenditures is actually getting from A to B. That is not advertising anything; that is just getting from one point to another point.

**Professor WILLIAMS:** Yes.

**Ms DIANE BEAMER:** If we said you can only spend so much and we clarified what you are spending it on—

**The Hon. DON HARWIN:** And I was talking about one limit just applying to a couple of different types of expenditure, for example, electoral advertising and addressed mail, et cetera.

**Dr THAM:** I think the definition of "electoral expenditure", which is currently defined in section 87 of the Act, is a good starting point. Basically I agree with what Graeme said: You can see it in terms of section 87 (1) (a) to (c) where it basically identifies the more public activity. Subsection (1) (a) covers all the various forms of advertising—electronic and so on and so forth—(b) includes expenditure on the holding of election rallies, and (c) includes expenditure on the distribution of election material. As you move down the various subsections, the activities become less public, if you like: travel and accommodation are mentioned, as is research associated with election campaigns, and so on and so forth.

**The Hon. DON HARWIN:** That is the PERA list that you are quoting from?

**Dr THAM:** No. This is the Election Funding Amendment (Political Donations and Expenditure) Act.

**The Hon. DON HARWIN:** PERA says much the same.

**Dr THAM:** The British Political Parties, Elections and Referendums Act also has a similar sort of system whereby basically there are eight categories of expenditure specified. Both are quite feasible models. I

agree with Graeme: I think six months out is a reasonable length in terms of when the election campaign spending limits should apply. My view is that there should be limits at the State level and limits at the constituency level. At the State level, you calculate it according to the number of candidates that a party is contesting. With the constituency level, you calculate according to the number of electors. I do not have a really fixed view on whether there should be a factor in there for geography or the size of the constituency. I just raise that as an issue.

The final comment I make is that, given the imperative of proper enforcement and that you are trying to basically focus on election spending limits on more public activity, you have to concede that election spending limits cannot contain the party costs as a whole. In my view, that perhaps should not be its aim. Its aim should be to try to contain where there is expenditure is seeking to influence the elections.

**Professor WILLIAMS:** I am in broad agreement. Six months for me is as reasonable a date as I could pick, although it may be that, over time, people extend that period out, given the nature of campaigning. But I think six months is a reasonable place to start. Yes, I would start with a similar list. I would say here is the cap and here are the items under it. We do not expect it is comprehensive, but we have nominated those items that might be problematic or contentious or, for whatever reason, need to be part of the cap. Yes, I think also there should be a party cap and a candidate cap. One of the ways of dealing with independents is that, given they will not have a party, is give them the benefit of the party proportion, so they would have a higher local cap.

**Ms DIANE BEAMER:** I was just saying that that might be a way through.

**Professor WILLIAMS:** Yes. You just pro rata it. You work out what they would have got if they were part of a party, and it might be 50 per cent more, or whatever it is. I do not know. But that is a way of ensuring that they are not disadvantaged at least in a pro rata way. I think that would be reasonable.

**CHAIR:** Those figures would depend on achieving a threshold at the actual election.

**Professor WILLIAMS:** Not necessarily. It does get tricky here.

**Ms DIANE BEAMER:** That is for public funding, but the amount it spends would have to be the same.

**Professor WILLIAMS:** That is right. If you are contesting the election, if you have nominated, or even if you intend to nominate given that we are dealing with six months out here, in those circumstances we would be saying that the cap operates, and it has nothing to do with prior performance.

**CHAIR:** If we are talking about election caps being six months out, I guess one of the other things we need to do is close nominations at least six months before the election.

**Professor WILLIAMS:** You would not have to do that. You would need a lot of public education but you might say that you are eligible to nominate if you have complied. That is one possibility. You might ensure that the Electoral Commission is putting out notices in the newspapers and elsewhere that if you intend, or have any idea of nominating, be aware that these limits are in place and that you are subject to the law, and that you will be breaking the law if you nominate having spent in excess of that amount. Of course if you do nominate and you do spend in excess, whether before or afterwards, well you suffer the consequences.

**CHAIR:** How do you regulate people who are not candidates?

**Professor WILLIAMS:** They would be subject to other forms—third parties and things like that—but we are talking here about the very narrow class of people who actually nominate. Obviously you need to tell those people that if they think they might be nominating, they should be aware that they may be incurring legal obligations that may affect their ability to nominate.

**Ms DIANE BEAMER:** And it may be retrospective.

**Professor WILLIAMS:** It would not be retrospective as long as they are told about it.

**Ms DIANE BEAMER:** But having made a decision, you have already been part of a campaign for something else, which is like a third party campaign. You would have to make sure that people were very well educated.

**Professor WILLIAMS:** To put it in another way, you would be looking at the amount of expenditure caps relating to third party caps, and things like that. So long as they were not dramatically out of kilter, you would not necessarily have a big problem because individuals, presumably, would fit within the third party expenditure caps anyway, so they could not spend more than a certain amount. Presumably that would be less than what a candidate could spend.

**Dr ORR:** It seems to me that the problem is a practical and jurisdictional one. As Professor Twomey pointed out, if you have say a six-month period and you have this incredible overlap of Federal-State issues, you will have a situation potentially in New South Wales where you might be cracking down on advertising which otherwise would be perfectly legitimate and legal throughout the country. The definition of election material is material that is likely to affect voters, and something that is likely to affect voters at the State level is probably also likely to affect voters at the Federal level.

**Ms DIANE BEAMER:** In my electorate, they have been very discerning.

**Dr TWOMEY:** It would also be problematic if you extended your expenditure caps to general party activity because party activity would more likely cross the line between Commonwealth and State sorts of things. You need to confine yourself to State expenditure for State candidates in a State election. Once you start getting into the area of general party expenditure, you are going to end up with crossing problems with the Commonwealth.

**Ms LEE RHIANNON:** In reading material for this session and listening to you—and this is going back to the big picture, which I think brings us together—constitutional law is incredibly complex. That is obvious to us. But it really comes across to us that there are very few certainties.

**Dr TWOMEY:** Yes.

**Ms LEE RHIANNON:** When I was reading your material, I did feel that it does not appear that you are assuming that there is an implied freedom of political communication. My understanding is that the High Court has not found that there is an implied freedom of political communication that applies under the New South Wales Constitution. Is it not the case that we have assumed that the High Court would find there is an implied freedom of communication, but clearly that is contestable? I would be interested in whether the panel would agree that it would be contestable.

Could we not even approach this in a different way? You have that assumption, which is the foundation for your paper, but could we not actually approach it in a different way—that reform could in fact enhance the democratic process? The various changes that have been put forward, which are now largely the subject of agreement—it is quite interesting how it has evolved with political parties coming to a pretty similar position, which is the Canadian model—could enhance the democratic process, and that could be our foundation. I am interested in the panel's views about these issues. There seems to be many assumptions and many contestables, and I would be interested in your viewpoint.

**Dr TWOMEY:** You are dead right that the High Court has never held, at least as far as I know, specifically that the implied freedom of political communication applies to New South Wales. One of the problems with constitutional law is that it is a bit like reading tea-leaves. All you can do in some cases where there is not a decision on the subject is to read the tea-leaves. Reading the tea-leaves on a particular issue, we do have findings about the Western Australian Constitution—that it does have an implied freedom of political communication. The South Australian Solicitor-General conceded that they have an implied freedom of political communication. The court is at least accepting that concession and has held at least in two States they have it.

Whether you could argue that there is one in New South Wales is addressed in more detail in my book on the New South Wales Constitution. My view is that it is six of one and half a dozen of the other. I would not be saying for absolute sure that it is. The reason that this paper is based on the premise that a court would find that is to be cautious because, in the way you are framing your law, you should at least work on the cautious assumption that the High Court would find there is an implied freedom of political communication to make sure that your law is valid. It may well be that they find otherwise; but, again reading the tea-leaves, it is probably

more likely than not that a court would find that there is an implied freedom of political communication in New South Wales. That is enough to make me want to be cautious to make sure that any law is consistent with that to ensure that it is valid. There would not be much point in creating a system that got knocked down.

The second point of your question, which was whether this sort of system would actually enhance the system, is also spot-on. The test that the High Court uses to decide whether a law is in breach of the implied freedom of political communication, at least at the Commonwealth level, says that first of all you have to work out whether there is a burden on political communication. Any sorts of limitations on political communication on their face will amount to a burden. But then you have to work out that, even if it is burdened, is the law made to achieve a legitimate end? The High Court I think would accept that avoiding corruption is a legitimate end. The next level of test then says: Is this law reasonably appropriate and adapted to achieve that legitimate end in a manner that is consistent with or compatible with the system of representative and responsible government?

That is where your point comes in. You would say, yes, we are doing this for a legitimate end, which is to avoid corruption or the perception of corruption; that this is consistent with a system of representative and responsible government, and that therefore it is constitutionally valid. That is the process you need to go through to tick off all these things. If you can get there, regardless of whether the High Court holds that you have an implied freedom of political communication, you are home and hosed. That should be the aim—to get to that point.

**Professor WILLIAMS:** From my point of view, I think that it is fifty-fifty. I am probably even a bit less likely than Anne to think that it would be implied from the New South Wales Constitution because it is quite different to the Western Australian Constitution. But it is arguable: it could go either way. Nonetheless it very likely would be found that the Federal freedom that we know exists does apply to protect certain things that occur at the State level because of the way State parties and candidates are integrated with Federal political debates. That has been found by the High Court. I do not have any doubt that there is some scope for implied freedom to apply in this area where there is any intermixing of candidates, policies, parties or the like. Of course, that is the daily bread and butter of politics in New South Wales. I think you will get into that territory one way or the other.

But that said, as to how it applies—even though I think it will apply some time—it is very, very uncertain. We are dealing here with a doctrine created in 1992. There is not one of the judges remaining on the High Court from that decision. It was then unanimously endorsed by the High Court in 1997. Again, the court has undergone a radical transformation.

I cannot think of a case since then when the High Court has applied the freedom to strike down a law. There have been judges who have talked about it. If we are reading tea leaves we are looking at a very old cup of tea. Nonetheless, the doctrine is solid and we are working on the back of a unanimous High Court decision, so we have that. In my view, the work of this Committee is central to that question of enhancement. I endorse and agree with what Anne has said. What will the High Court do in assessing any law passed by the New South Wales Parliament? After discovering that the implied freedom exists in some form it will say, "What was the purpose? Was it for enhancement or to stifle political communication?" If it is the latter, end of story and the law will be invalid. It will look particularly at *Hansard* debates.

In 1992 I worked as an associate at the High Court during the Australian Capital Television [ACTV] case and I remember spending long periods reading committee reports. Those were the issues at which judges looked carefully in oral argument to find out what was said in submissions and what was said in reports. At that point was the committee attempting to achieve a legitimate object of enhancement? There were problems with the committee reports and that was a significant part of the law falling down. I urge the committee, in its report—

**Ms LEE RHIANNON:** You are talking about enhancements?

**Professor WILLIAMS:** I say to the Committee, "You need to frame your conclusions carefully and strongly. You are seeking to improve the quality of democracy in New South Wales. You have identified problems and you have rational and coherent reasons for finding strong justifications, not so much for restrictions. However, you might say, "It may be an issue of volume but we are trying to increase the quality and to give voters an informed say." Expect your conclusions to become part of the key record of the constitutional issue.

**Ms LEE RHIANNON:** In a situation such as this they would be looking at weighing up these different possibilities and that enhancement aspect for the democratic process could come through?

**Professor WILLIAMS:** Absolutely. If you came to the conclusion that this will not enhance the process but you will do it anyway, you will be in big trouble. The High Court will say, "If our own Committee could not find that it will enhance the process how can we possibly uphold something because it fails the very basic test of reasonableness and the like." You need to work out these things in your own minds and you need to come to a conclusion that you think is justified and that you think will improve the quality of democracy in New South Wales.

**Dr THAM:** I strongly agree with George's comments. Just picking up on Ms Rhiannon's last point about enhancing the processes—and I drew this out in the draft extracts—at least one High Court judge acknowledged, and perhaps it is acknowledged more generally, that one can seek to regulate freedom of political expression in order to enhance it. An example is probably defamation laws where you place a burden and limits on people's ability to speak. However, the purpose is to enhance the quality of deliberation. In my view—it is a point that I drew out in the draft extracts—election-spending limits can be seen to have a similar character. We are trying to prevent people being downed out in a sense. We are limiting people's freedom to speak but in the hope and with the aim of opening up the political process—a richer democratic and political process.

**Dr ORR:** I want to follow up on what George said relating to the extent to which the Committee can be in relatively multi-partisan agreement about the problems it is trying to address and the general shape of the regime that it wants to put in place, not necessarily all the details. In judicial Realpolitik that will assist to make it constitutionally fireproof.

**Ms LEE RHIANNON:** What you just encapsulated seems to go to the heart of what we are trying to do.

**Dr ORR:** Consent is important for a number of reasons. However, a conservative High Court is much less likely to hoe in and extend something that it has not extended in the electoral sphere since 1992 if it feels that would overturn an apple cart that had multi-partisan support.

**Dr THAM:** Expanding on Professor Orr's comments, the importance of this process of coming out with a reform package based on democratic deliberation. It is important from a constitutional point of view—the comments that Professor Williams made earlier. Clearly, it is also important as a matter of principle. In my report I will be recommending that once the Committee has handed out its report and the Government decides to proceed—one can imagine the Committee putting forth particular principles and endorsing particular measures—there should be an exposure draft that is subject to a separate inquiry and open to public submissions before the final bill is tabled in the Parliament. I think that in principle that would enhance the process but it would also be important from the point of view of constitutional validity.

**CHAIR:** You referred to an exposure draft arising from the report. I think there is broad support for that principle. One of the challenges the Committee faces is finalising the report, putting it on exhibition, having legislation drafted and getting it to the Parliament in time to be effective for the next State election. There is a great deal of community expectation. All political parties accept that we have to deliver a system in time for the next election. The challenge would be to have the full range of community consultation, an exposure draft and what have you, ready in time for 2011.

**Professor WILLIAMS:** It may be that the timelines are somewhat truncated. It would be good to get an exposure draft but, equally, it is understandable that it should be done within a framework that can be done for the next election. The New South Wales Parliament has a record of acting quickly on occasions when it wants to, but you do not want to move too quickly on this occasion. If it is acting quickly in a way that stifles legitimate debate, assent and the like, that will bubble up again when it gets to the courts.

**CHAIR:** The point I am making is that we are damned if we do and we are damned if we do not. We must obtain community input and feedback in the process in order to get in a system quickly. If there were a later challenge we would have failed the broad community support.

**Dr ORR:** Referring to all the issues you have facing you, the expenditure limits and limits on advertising ultimately are time specific in relation to the looming election. Secondary to that are contribution



limits and how you deal with public funding and things like disclosure. Some of these things are occurring 365 days a year. Restrictions on political advertising and expenditure on elections are things you need to put in place first. You then need to work around that. Those are the things that have to be in place well before the election period.

**Dr THAM:** I agree with Graeme's comments. I think we should be looking at phased implementation. The thing about contribution limits is that the parties are raising the money right now. It is hard to see contribution limits put in place that effectively will affect fundraising for the next election. It is happening right now. But election-spending limits can have bite. I strongly agree with what Graeme said.

**Dr TWOMEY:** I support what the Electoral Commissioner said the other day about bolting things onto existing Acts. If you are going to do this you need a new Act. Bolting things onto existing Acts will only cause more problems.

**CHAIR:** I suppose that is the complexity of having it finished in time for the next election.

**Dr TWOMEY:** I agree. I think you could do it on a phased basis. Part of it could be implemented immediately and part of it could be an exposure draft that is set out for the community in which you say, "This is what we intend to do."

**CHAIR:** That is a really interesting point. Maybe as an amendment to the current Act we could place restrictions on campaign expenditure. We could then deal with the other issues in a new Act and replace the Act when it is finished.

**Ms DIANE BEAMER:** It would be a bolt but we would take it off shortly.

**Dr TWOMEY:** The difficulty is showing good faith to members of the community who have expectations. How do you show that good faith? In one of the more notorious efforts there was Paul Keating and his L-A-W tax cuts. Potentially you could pass a new law immediately with a view to bringing into effect the provisions concerning expenditure but with a commencement clause that states that the other provisions in the Act do not commence until some period well after the election. During that period, if community concerns are raised about particular provisions, you could go back and amend them before the other parts of the Act came into force. At least you could then go back to the community and say, "We have enacted something; it is law and it is on the books; but we accept that it may need further consultation. It will come into force automatically on a certain date after the election unless it is amended before then by the new Parliament that is elected at this next election." It is something that is there and it is something that is tangible rather than being a mere promise. That might have some legs.

**The Hon. JENNIFER GARDINER:** On that latter point we might run into trouble if everyone starts off from a reasonably equal footing, rather than having the principle of fairness in politics. I think there would be some qualms about that. One way of phasing it in might be to delete the local government aspect of this reform until the next Parliament. I do not know what you think about that. It is one way to help get through a package relating to the State Government. There are a couple of practical things. One of the consensus recommendations of the select committee was that there should be some public funding of party administration. We talked a bit about that but I wondered whether that was accepted as a general view, depending of course on the model. Is there consensus on that issue? You have expenditure caps from a statewide point of view but also at a constituency level. Would political parties still be free to allocate their expenditure wherever it was politically fit for them to do so?

**Professor WILLIAMS:** My view is yes. I think the party should have a cap but it should be free to make its own decisions about how it spends it. Those would be strategic decisions relating to marginal seats and to all sorts of things. That should be a party's choice and I do not think the law should assist it in making those decisions. I think it should be left completely up to the party. I make one comment relating to the last discussion. I must admit that I do not have as much sympathy for delay in this area. It has taken a long time to get to this point and it is more than a year until the next election. I have worked extensively on other complex legal reforms including, for example, the Victorian Bill of Rights, which was a much larger reform. That got done in about five months. It always comes down to one thing—political will. I do not have any doubt that there is the capacity to put out an exposure draft and to get all this done in a three-month to four-month period if there is the desire to do it.

For an exposure draft you might go for a shorter period: it might be only four weeks or something like that, but that would be acceptable. From the point of view of the public, people would be horrified to think that a year is not long enough to legislate in this area, given that the debate has been running for several years. I think the Parliament risks delays in this area. I can accept staggered implementation if there were good policy reasons for that. That might mean that we focus, in particular, on the expenditure and other issues here and there. That is acceptable for public policy reasons. However, I would not accept that there is not enough time to do this properly. I do not think that people in the community would accept that generally.

**CHAIR:** Any further comments?

**Dr THAM:** I agree with taking out local government. As you know, I am writing a report for the Electoral Commission. We decided that there was not enough time for me to deal fully with the topic of local government elections. As I understand it, the local government elections are not due until 2012, so there is much less urgency in getting a regime in place.

**Dr TWOMEY:** I agree. Local government is much more complicated. You do not have such a strong party structure and you have far more Independents running.

**CHAIR:** Council sizes are all different.

**Dr TWOMEY:** Yes. It is a completely different ball game and it needs greater attention from experts in the field—greater attention than I could ever give to it. I think many other people would feel the same.

**Professor WILLIAMS:** I accept that as well for local government.

**CHAIR:** Referring to local government, the principles that we adopt relating to funding reform should stand the test for local government. However, the way in which we implement it might need to be different. Once we sort out and implement the principles we can go back and revisit local government after the State election and look at the vagaries and nuances of big councils, little councils, university wards, popularly elected mayors, and all those sorts of differences.

**The Hon. JENNIFER GARDINER:** I refer to the administrative fund. Do you have any comments relating to the administrative fund?

**Dr ORR:** This question was asked earlier about funding of parties for their ongoing administration.

**The Hon. JENNIFER GARDINER:** To compensate for decreased donations.

**Dr ORR:** I think it is taking us down a serious track to say that there should be extra funding. Parties indirectly are already getting a fair amount of support within parliamentary resources and so on. I have concerns about the saleability of that.

**The Hon. JENNIFER GARDINER:** Some parties do not.

**The Hon. DON HARWIN:** It also depends on the tier of government.

**Dr TWOMEY:** There are also issues that arose in relation to One Nation where if your system does not require you to connect the public funding with actual expenditure there are risks of profiting out of public funding. That is something we should try to avoid. There are some risks in using public funding to fund parties generally rather than as compensation for actual expenditure. I think that is a factor that needs to be considered. From my point of view, I think I would prefer the public funding to be directed at compensation for actual election campaigning costs and other methods of raising money be used, such as from private individuals or potentially corporations, that are capped, for the purposes of funding parties.

**Dr ORR:** The reality in Australia is that parties are not mega machines. Visiting, say, the ALP's national office in Canberra, it is not a large organisation. We are still historically running on the model of volunteer organisations. I am not sure why you would necessarily be funding political parties for their general administration expenses when that remains something that should be done on an essentially voluntary basis. The real issue is the ratcheting-up of expenditure on election campaigns or political advertising communication as parties become less mass-mobilised entities and there is less of that traditional British-style campaigning of

going out and putting party platforms or manifestos under doors and so on. Maybe you might want to think about ways of public funding—item (f), I think in your reference—and whether you want to encourage that kind of electioneering by providing that some funding can be used only for the provision of party manifestos to put under doors, or through some other mechanism.

**CHAIR:** One of the suggestions in a submission was that funding for political parties should be dependant on parties being willing to open up their accounts and their books for scrutiny.

**Dr ORR:** Academics would love that. We have been trying for years to get basic information about parties and they just will not give it to us.

**CHAIR:** In order to receive public funding for administration costs one of the requirements on a political party would be that they had to publish their accounts publicly, as well as with the Election Funding Authority, for their campaigning as well as their administration costs.

**Dr ORR:** I am a strong supporter of freedom of association of parties but I am also on record as saying that we should already have a system in place like the British system of publishing party accounts and auditing of party accounts. The fact is that for 20-odd years parties have been receiving large amounts of public funding after elections that they can use prospectively to pay off debt or for party administration. That is up to them, but we really should have a similar model to what corporations and trade unions already have. That will provide some further accountability for party members as well as for onlookers, the media and so on.

**CHAIR:** The next issue we need to move on to is government advertising and parliamentary allowances.

**Dr ORR:** There is one other issue we have not yet touched on with regard to expenditure and that is what you are going to do. What are the consequences of going over the limits?

**CHAIR:** Does it invalidate the election, for example, if you have spent more than you are allowed to?

**Dr ORR:** Historically, expenditure limits were applied at the candidate and local level and we had that scenario in the early 1980s when a couple of Tasmanian MPs were unseated at the State level. Then we moved to a pure laissez-faire system of expenditure and we have not yet recovered from that. I think you need a system where there are significant potential deterrents, not just on the registered officer or secretary or treasurer but on the party leader—systems including double penalties for going over the limit on public funding but also the potential of serious political consequences; in other words, people not being able to stand for re-election—for example, party leaders as well as the apparatchiks who have to carry the can. This is not unheard of. It is common in European countries, for example, to have that kind of political consequence.

**Ms LEE RHIANNON:** In which countries does that exist?

**Dr ORR:** Germany and France, as I understand it.

**Ms DIANE BEAMER:** Once elected and found to have breached you cannot stand again?

**Dr ORR:** It would happen anyway if you had a system of strict liability where the leader as well as the apparatchik was responsible. The consequence if the Director of Public Prosecutions was willing to go after you and you were convicted would be that you would suffer actual legal political consequences, not just the—

**The Hon. MICHAEL VEITCH:** There is already a list of preclusions from being a public candidate in New South Wales elections.

**Dr ORR:** They are very strong in Queensland, for example, following the Shepherdson roting inquiry.

**The Hon. MICHAEL VEITCH:** So you are advocating that a breach of the expenditure limits could be added to that list of reasons why you cannot be a candidate in public elections?

**Dr ORR:** Otherwise you have the problem of people knowingly going over the limit and copping some kind of fine, as corporations do all the time.

**Professor WILLIAMS:** I think it depends on the nature of the offence, but if someone has deliberately misused the system to create a circumstance where they have an unfair advantage and have so won the election, then yes, I think that should be a consequence. On the other hand, if it is reckless, inadvertent, a small amount or an accountancy problem and things like that, in those circumstances that consequence should not follow and there should perhaps be a fine. If your opponents are stuck in what they can do and you rort the system and you win, it is hard to see how that is not a reasonable consequence and you should be denied the fruits of what happens when you rort the system.

**CHAIR:** We cannot go back to the old method again.

**Professor WILLIAMS:** Absolutely, and that is why I say you need graduated offences because if even the most minor breach means you lose your seat it is too harsh. There will be circumstances in which that is not reasonable. I would be looking at intent, in particular the magnitude of the offence. If it is in the serious category, then yes. If it is in the serious category it probably is an example where you have a very significant and unfair advantage and you have deliberately sought it.

**Dr TWOMEY:** Similar things happen in relation to bribery, so you would be looking at similar penalties to electoral bribery.

**CHAIR:** In the ICAC's submission to the inquiry it says the legislation should provide sanctions for non-compliance with the legislative provisions and it mentions that the intention to deceive should not be an element of any offence related to false disclosure.

**Dr ORR:** False disclosure of expenditure or of contributions?

**CHAIR:** Of expenditure.

**Dr ORR:** Because otherwise it is too difficult to prosecute. I think you have to put in place a system of strong potential deterrents, in particular because bribery is not quite the metaphor and neither is the nineteenth-century approach to restricting expenditure at constituency level. We have very centralised parties with centralised controlled expenditure, so you need to have mechanisms and threats and potential penalties that will fall heavily on those people who have the power, which tends to be a very small number of people in the head offices.

**CHAIR:** Is there a general acceptance of the view that penalties for exceeding expenditure caps should depend on the nature of the offence? If it is a minor, inadvertent exceeding of the cap it would not carry a full-scale penalty, whereas if you have doubled the amount you should be spending the scale of penalties would escalate. Is that essentially agreed?

**Dr TWOMEY:** Yes.

**Professor WILLIAMS:** Yes.

**Dr ORR:** In principle we then have to ask who is going to be handing out these penalties. If it is a court in a kind of semi-criminal case, the courts usually have some discretion. If it is an administrative body or the Electoral Commission deciding how much public funding to withhold, that is a slightly different kettle of fish.

**Professor WILLIAMS:** It would have to be a court, would it not, given the seriousness of the offence. There would need to be a fair trial. Also, the experience is that if you give any power like this to the Electoral Commission they are not going to use it. They have not in the past because it is very difficult for electoral commissions to get involved in these issues. It is best if it is just dealt with by the appropriate authorities.

**CHAIR:** That is very useful.

**Dr ORR:** If you have a criminal burden of proof you are not going to get—we often talk about financial and accounting matters, for example. The penalty would be an administrative penalty of withholding, say, double the amount you went over in your public funding. That is not something I would want to throw into the hands of a criminal court because it is not going to end up being a real deterrent. You might have one or two cases that will flop and everyone will shrug their shoulders and laugh at the system.

**Ms LEE RHIANNON:** Are you saying you do not think it should be a criminal court matter but a matter for the Electoral Commission?

**Dr ORR:** If the penalty is administrative and it is being applied on the party, for example, I do not see why that should be held to the criminal standard of the burden of proof. On the other hand, if we are talking about disabling a Premier or a senior political figure from standing in a future election, that is something that would have to have a high standard of proof.

**CHAIR:** It sounds like we might need some more questions on this issue. Getting back to the issue of government advertising and parliamentary allowances, I think Diane had some questions.

**Ms DIANE BEAMER:** We have had a chat about exactly what is government advertising but who makes the decision that it is not political? What are your thoughts on what we should do about government advertising?

**CHAIR:** Dr Orr made strong mention of this issue.

**Dr ORR:** My proposal several years ago was that you have to cap government advertising in the way you cap political expenditure, even more so if you bring in caps on election expenditure. I was accused by Senator Abetz of adopting a pocket money approach and insulting government, but I do not think you can simply go with the idea of having the Auditor General dabbling in issues of content. It is not just about content. You can always selectively choose which campaigns you will advertise on and then put the big money into those campaigns. That is exactly what the Auditor General said in his recent report in New South Wales. The alternative approach, as Professor Twomey has suggested, is you might have a period of six months out from the election where there might not be any government advertising campaign or, alternatively, you might have a bipartisan approach whereby the Leader of the Opposition or the leader of any party with more than a certain number of members of Parliament has to approve the continuation of that campaign advertising, and try to quarantine the extended election campaign period.

**Ms DIANE BEAMER:** So it is not content that you are particularly concerned about, it is any sort of advertising?

**Dr ORR:** It is the very nature of being able to choose issues.

**Ms DIANE BEAMER:** We always have elections in March. Say we have gone through a period of bushfires and we want to explain to people what "catastrophic" means and it is tagged from the New South Wales State Government. Are you saying you could have a system whereby we could run it past the Leader of the Opposition and say, "What do you think of this?"

**Dr ORR:** That is extending the current convention that is meant to apply during the caretaker period. You might extend that over an extended political advertising period and call it six months before the elections. The other issue is whether you are concerned about governments being able to do the Work Choices kind of thing or what the Beattie Government did with health by having huge campaigns in the second year of its term to try to soften and mollify the electorate on particular issues. Do you try to find a way around that by Parliament taking back control over the purse and saying "No campaigns"—campaigns being defined as anything over, say, a quarter of a million dollars—"Your total budget for that year will be \$10 million or \$20 million." If you need more you will have to come back to Parliament and say there has been an outbreak of SARS or something and you need more money to run the campaign. You then say, "If you block us we will accuse you of imperilling public health" or something that everyone would agree is important?

**Dr THAM:** In this area there are two key principles. Firstly, acknowledging legitimate government advertising at the time and second, dealing with the problem of party political government advertising. It seems to me in New South Wales there are a number of deficiencies in terms of the accountability framework that relates to government advertising. One is simply about disclosure of information about government advertising. The current arrangement whereby the Department of Services, Technology and Administration publishes only information about the media placement costs of various campaigns is quite inadequate. The Auditor General has called for more specific information regarding public campaigns, objectives of campaigns and detailing particular items of expenditure and so on. The other area where it is actually deficient is basically the guidelines that apply to government advertising. They impose a quarantine period in relation to government advertising

that is two months out from State elections. There are two problems with that quarantine period. One goes to the length, and I agree with Graeme and Anne's comments about the six-month period that applies in Queensland being a more appropriate length. It also has the virtue that you are putting in election spending limits for six months and consenting to that.

The other deficiency is the exception to the current guideline where it says the period is two months except for appropriate public information. That is one of the exceptions. Is not all government advertising supposed to provide appropriate public information? If you cast a necessary requirement on government advertising as an exception it has huge potential to render the quarantine period meaningless. It is my strong view that that exception should be abolished. The other issue in terms of the framework governing government advertising in New South Wales, and this is where people have different views, relates to regular independent scrutiny of the guidelines.

There seem to be two models. One is the one that the upper House inquiry recommended where it basically involves the Auditor-General, based on the Ontario system. This is opposed by the New South Wales Auditor-General, who has resisted involvement in that way and basically has recommended another model, of strengthening the peer review system, including another independent member in the peer review team to specifically attest that the advertising is not party political. I do think those two models definitely warrant further examination by this committee.

I should say that the first model, as you are probably aware, in terms of involvement of the Auditor-General is, in fact, the model that is currently operating at a Commonwealth level. I was just reading submissions. There is currently a Senate inquiry into the role of the Commonwealth Auditor-General in policing the guidelines. For what it is worth, the views expressed by the Commonwealth Auditor-General are that the system seems to be operating very effectively.

**Professor WILLIAMS:** I would certainly agree that I would be looking to the Commonwealth system for this. I personally would have real problems with caps or rigid time limits just because I do not think you can predict the need for government advertising. It may be bushfires, medical emergency or the like and I do not think it is realistic, particularly over a recess, to expect Parliament to be recalled to look again at increasing the amount. So I think the key here is to actually go to a system where you do have independent scrutiny; if it is not the Auditor-General then another group of people who have the confidence of not only the Government but also other parties within the Parliament, even the Independents. That to me seems to be the only workable system but it does seem to be working well at the Commonwealth level so far.

**Dr TWOMEY:** I have some concerns about this. I have to say I have got a bit of a different view. I recollect, and I cannot remember the detail now, looking at the new Commonwealth system with the Auditor-General checking, and looking at the conditions and rules, but, quite frankly, you could drive a truck through those rules in terms of getting up politically favourable advertising. I was not impressed by them at all. I think it is inherently problematic. If you ever get any independent officer and require them to assess what is political and what is not, if you are the Auditor-General or the Electoral Commissioner or anybody else you are, first, not going to want to do it because, second, it undermines your role when you start getting into fights about what is and what is not political with Government.

Yes, I put in my submission a suggestion that you should just ban the lot of it. I know that was probably a bit radical and going a little bit over the top but I do have a strong view that an awful lot of government advertising borders on the completely useless. I was very frustrated when I used to work for the Cabinet Office that in dealing with particular problems people either had one of two views: one, you legislate, and the other, you hold an education campaign. In most cases both were not the appropriate response. Legislation does not solve everything and neither does an education campaign; it just costs a lot of money.

I would have thought if you did actually ban government advertising—apart from job advertising in the newspapers—but if you banned electronic advertising for six months, first, you would save an awful lot of money. Second you could use that awful lot of money to fund your political parties—a little bit of cost saving and economy. Third, do we really always need to have anti-smoking and road safety advertisements on all the year? Giving us a bit of break for six months on all those sorts of things would probably not be a bad idea. In fact, you would probably have an enormous sense of relief and happiness in the community at large if they were not being bombarded with government advertisements all the time.

There will be some circumstances where there is an emergency and some sort of government advertising is needed but they will be pretty rare, and there are ways to deal with them if necessary. Yes, you could have some sort of exemption if you got the agreement of the Leader of the Opposition and parties with X-amount of representation or whatever to deal with emergencies. But why not take a clear-cut approach? Instead of trying to ascertain whether an advertisement talking about an extra lane on the Iron Cove bridge is informing people about the new lanes on the bridge or about advertising "We are a wonderful Government to have made an extra set of lanes on the Iron Cove Bridge". Why not ditch all that altogether for the six months prior to an election? I think it has some merit.

**Professor WILLIAMS:** What happens when people get to the Iron Cove Bridge and discover there are extra lanes—

**Dr TWOMEY:** They use their brain, George. That is part of the problem with government advertising as most of it is just states the bleeding obvious. Ultimately people are a lot more sensible than governments give them credit for. A lot of these education campaigns are frankly just silly. They are telling you things that you already know, including if you have got little markers on the road showing where the lanes go, you follow them!

**Dr ORR:** That a small amount, relative to GDP, is going to be wasted on that kind of advertising is not the concern. The concern is, as the Auditor-General suggested, if you have got these campaigns like Investing in a Better Future that have been selectively chosen for large-scale television advertising—and this is where anything without a kind of cap is going to be irrelevant—the Auditor-General is not going to be called to say, "You are not allowed to touch this area of advertising, you can only touch these." It has got to be an Executive decision about which campaigns are going to run. So you need some limitation on the unlimited potential of government advertising.

The Senate committee inquiry will probably say that things are working reasonably well currently federally because, first, the Rudd Government is running very high in the polls. Second, it has not felt the need yet to roll out its big climate change campaign. And we still have the backwash or the concern that is lingering over the WorkChoices issue, but that will disappear as the rubber hits the road and we get to much more contentious and competitive political times federally.

**The Hon. DON HARWIN:** Professor Orr, as this has been a particular area of interest to you this afternoon, have you studied the Ontario model in detail? Do you have an opinion about it?

**Dr ORR:** Not in detail, so no, I would not want to commit myself.

**CHAIR:** Do you have a view about how parliamentary entitlements are factored into caps on expenditure and whether they fall within candidates' expenditure or whether we simply tighten up the eligibility rules for using them or put restrictions on when they can be used in the electorate cycle six months out from an election, if that is another timeframe we have adopted for donations and expenditure? Have you turned your mind to that issue, and how we might deal with that?

**Dr THAM:** I will take it on notice.

**Dr TWOMEY:** One comment to make, I guess, is that the United Kingdom has separate funds to try to balance that up a bit. For example, funding goes directly to fund the Leader of the Opposition's office. There is funding for people who are not getting the benefits of incumbency. So that is one way to deal with it but I think probably the better way to deal with it is placing some kind of limitation on those allowances and what they can be used for, particularly in the last six months before the election. That is probably the more sensible way to deal with it.

**CHAIR:** Some of the submissions essentially suggested that we have to accept that there is a fundamental advantage to incumbency; that you cannot simply legislate against or put too many restrictions on it. It is what it is. It exists and it is real. Perhaps those entitlements might come within that fundamental acceptance, that incumbency does have some advantage and you cannot even the playing field.

**Dr ORR:** It is just like government advertising at a certain level—

**CHAIR:** But it applies to all members of Parliament.

**Dr ORR:** Yes, it is a bit more even than the Executive's control.

**Ms LEE RHIANNON:** To add to that, I think there are some entitlements that have come under more criticisms than others, particularly in the case of New South Wales in 2002 when Premier Carr introduced a new mailing allowance for lower House members of Parliament. It was seen, as that was coming into the 2003 election, that it would particularly help Labor people in marginal seats. I always thought it was unusual that the Coalition agreed to it.

**The Hon. DON HARWIN:** About \$60,000 a year to put out newsletters.

**Ms LEE RHIANNON:** Yes, and it is seen as an enormous advantage and certainly an advantage that is not just in the last six months before an election but enables them to get out there and spruik their wares. I do not know whether you were joking about taking it on notice but do you have any views on those sorts of allowances? Your views would be useful because it is a complex matter.

**CHAIR:** I ask you to put your views in writing if you prefer.

**Professor WILLIAMS:** I think it just depends on the scope of the scheme. If we are looking here at just the last six months, which seems to be the focus, then you would certainly include those within that period. Outside that I think there is obviously an issue but it is not so much the question of how does it relate to political donations and expenditure but it is just a question of what is an appropriate parliamentary allowance. I would resist, I suppose, winding it too much into the scheme we are developing, just because I think it is a serious but separate issue.

**Dr THAM:** I agree with George. I suppose it is similar to government advertising in the sense that, you know, parliamentarians have legitimate duties which should be funded and discharged. On the other hand you do not want the situation where, I would describe it as corruption through misuse of public resources, where those entitlements are used to boost the electoral advantage. It seems to me one is again similar to government advertising: you need specific provisions against party-political or the use of parliamentary entitlements for electoral advantage, you need independent scrutiny of the user entitlements and you need to ensure that the amounts involved are not excessive because, for example, the last point, even if with what we might consider legitimate use of parliamentary entitlements, the mere fact that you use it gives an electoral benefit to the parliamentarians.

**CHAIR:** Thank you for your attendance. It was a long session and we all significantly benefited from your expertise and advice. We are very grateful for your time this afternoon.

**Dr ORR:** Thank you not only for the invitation but for offering to pay some of our expenses, which Federal committees do not do.

**(The witness withdrew)**

**(Short adjournment)**



**ROBERT BORSAK**, Chairman, The Shooters Party, sworn and examined:

**CHAIR:** Thank you for the submission we have received from The Shooters Party. Is it your wish that the submission be included as part of your sworn evidence?

**Mr BORSAK:** It is.

**CHAIR:** You are welcome to make an opening statement before we begin questioning.

**Mr BORSAK:** I think that our submission at this inquiry and the previous submission made back in 2008 really say it all as far as we are concerned. I know some things have changed between our submission in 2008 and now, but I think probably the key issue for us at this time is the inequitable situation in I think the public education funding and The Shooters Party. We are probably the only minor party in the upper House that does not get any funding and has never received a penny under that arrangement since it was set up in 1993, and I think we would like to see that situation change—in fact I know we would like to see it change.

**CHAIR:** We have heard this morning from the major parties—the Nationals, the Liberal Party and the New South Wales Labor Party as well as from the Greens—and I was wondering if you could outline some of the issues facing smaller parties, and your experience in our parliamentary system?

**Mr BORSAK:** In relation to smaller parties, and certainly this relates to The Shooters Party, which is the organisation that I have been involved with since I first became chairman back in early 1995, running parties like ours is particularly difficult. Of course, money is always an issue. It is very expensive. We do not have any fixed abode, any party structures, any full-time or even part-time staff half the time, and it is very expensive to crank over organisations like that continually with volunteers looking for people who are going to be supporting you between elections and obviously running up to elections, particularly with recent changes to the electoral funding side of things where we are having to put in audited statements every six months. It is quite an exercise for an organisation like ours to get that done. We achieve it, of course, but getting audit opinions from one six-month period to the next, when it is basically a nil return for both our members, is really an imposition, and it is quite an expensive imposition that we are now wearing and we do not have any way to offset it. We are hiring people and paying an audit fee every six months to get those things done, and it is really quite difficult.

**CHAIR:** Do you have a suggested way of dealing with those challenges?

**Mr BORSAK:** I suppose it all depends, at the end of the day, what this Committee and the Government wants to do in terms of changes to the electoral funding situation. As far as minor parties are concerned, I think it is almost an over-imposition having to put in a return every six months. Once a year would be enough—probably at the same time as we do our justification to the Parliament that we have our 750 members and that sort of thing. I think that would be fine, but not every six months. Either that, or fund us to do it. Off the top of my head I cannot think of what the dollars are, but for our organisation the amount is quite significant.

**CHAIR:** A number of the submissions that have been presented in discussion today have talked about the requirement to ban donations from organisations other than registered voters and to cap donations at \$1,000 per political party per year and \$1,000 per independent per electoral cycle. This would include bans on corporations, unions and interest groups. What are your thoughts on capping donations from individuals at \$1,000 per political party per year?

**Mr BORSAK:** The Shooters Party does not support that. The cost of running campaigns and the difficulty of raising funds makes it very, very difficult for organisations such as ours. In our previous submission, I think we stick with that situation. We are certainly not interested in seeing unions, business or other people not being able to donate whatever they think they need to be able to donate to a party to run an election campaign. The simple fact of the matter is that the amount of dollars that get spent on election campaigns seems to grow from one campaign to the next. That has certainly been our experience. What we want is to see a situation where being able to have an equitable slice of the media pie, if you like, can be made available to the minor parties just as much as it is to the major parties. Putting caps on the amount that an individual can donate may help some of the larger parties, but certainly will not help a party like The Shooters Party.

**CHAIR:** If those restrictions on how much money can be donated by individuals were introduced along with reforms to provide additional funding for the ongoing operations of political parties, would you see that as being a more equitable way of moving forward and one that protects the integrity and perception of integrity of the electoral system while still providing a relatively level playing field for minor parties?

**Mr BORSAK:** It depends on what the formula ends up being, I suppose. Smaller parties obviously get less votes, so if there is some sort of formula-based arrangement, if it is going to be a level playing field once we get to the election, then we are going to need more dollars per vote than the larger parties get per vote. That is the way we would look at it. I think it is pretty important for us to be in a position when we approach an election—and it depends on what other restrictions come around in that process, and what the balance is—to be able to grow our appeal by growing the dollars that we get.

That is one reason why we are not particularly enamoured of the fact that organisations such as unions, hunting and shooting clubs, for example, or groups of interested parties, conservation organisations, et cetera, be limited as to how much they can be allowed to donate or be banned from donating. I think that limits and/or stops the political process.

**CHAIR:** Does The Shooters Party have affiliations that pay an affiliation fee to be part of your party?

**Mr BORSAK:** Yes.

**Ms LEE RHIANNON:** Could you explain that? Who is affiliated and how does the affiliation work?

**Mr BORSAK:** We have a number of areas of membership in the party. You can be an ordinary member, you can be a corporate member, you can be a life member, et cetera. There is a whole ambit. They can take up a membership that runs along those lines. We have a number of members. Obviously the majority of our members are ordinary voting members, like myself for example, but there are other members.

**Ms LEE RHIANNON:** Often when the word "affiliated" is used it refers to organisations that are affiliated to your party, such as unions affiliated to Labor? Do you have that? Are any sporting shooters clubs affiliated to The Shooters Party?

**Mr BORSAK:** No.

**Ms LEE RHIANNON:** Just individuals?

**Mr BORSAK:** Just individuals.

**Ms LEE RHIANNON:** And different levels of membership?

**Mr BORSAK:** That is right. Our constitution states that you cannot be a member of The Shooters Party and be a member of another political party and/or represent another organisation.

**CHAIR:** Currently the threshold for eligibility for public funding is 4 per cent of the primary vote in the Legislative Assembly or the Legislative Council or the other proviso for funding is getting elected in the Legislative Council. Do you consider that this threshold is appropriate—4 per cent of the primary vote or getting elected in the upper House?

**Mr BORSAK:** It is getting elected in the upper House, not 4 per cent of the vote in the upper House.

**CHAIR:** It is either/or.

**Mr BORSAK:** That is right, either/or.

**The Hon. DON HARWIN:** It is very rare that someone will get 4 per cent and lose.

**Mr BORSAK:** That is right. I think it is appropriate, 4 per cent is fair.

**The Hon. MICHAEL VEITCH:** One of the many models that have been proposed in the submissions is that there is also a cap on the expenditure limit of the party organisations at campaign time. Could I garner your views about capping or regulating third party involvement come campaign time?

**Mr BORSAK:** Could you tell me the definition? I have not seen these models. What is your definition of a "third party"?

**The Hon. MICHAEL VEITCH:** A corporation. Your Rights at Work campaign would be a good example of a third party campaign where I am a candidate and someone else runs a campaign of their own.

**Mr BORSAK:** And it can be seen to be supporting the Government or your party or something along those lines? We would not be particularly interested in seeing a cap on that either. I think organisations, whether it be a union, a green organisation, a business-related organisation or even a shooting organisation, should be allowed to stand up in the public arena and have their say in relation to things that they think are important democratically. Not always will those organisations, as you see quite often with the Labor Party, voice opinions that are necessarily in the short term in favour of or supporting the Labor Party or the Government. I think it would be a real oppression of organisations to be able to say what they think. Those organisations and unions are a good example and industry is an excellent example. They represent a significant interest group in our society that needs to have a democratic voice as well, even though our society only measures each vote per person. The reality is there are aggregations and sectional interests that are important and need to be looked after. As I said before the union movement is one, the business sector is another, conservation groups are another and hunting groups are another. You could go on all the way through. If like-minded people are stopped or limited from voicing their opinions, especially in the run-up to an election, I think we hurt our democracy.

**CHAIR:** The premise under which this Committee is examining these interests is that in order to ensure the perception of integrity in the electoral system we need to restrict the flow of large donations into political parties. One of the ways to try to reduce the demand for money is to put caps on the cost of elections. If political candidates and political parties such as The Shooters Party are restricted in how much money they can spend in order to improve the integrity of the electoral system, the question arises should interest groups and third party groups also be the subject of restrictions on how much they can spend? Your view is that the principle of giving people the right to have their say is more important than restricting expenditure and fundraising for political parties?

**Mr BORSAK:** Yes, that is right, it is very important. Your supposition or premise that we should be limiting the amount of money that can be spent as well is not something we support either.

**CHAIR:** It may give smaller parties are more level playing field if the bigger parties, which have more resources, are also the subject of expenditure limits.

**Mr BORSAK:** Yes, but there are benefits of incumbency. As I said earlier, these organisations have large party machines that do all sorts of interesting things for them, and so they should. In our particular case, you would have to tilt the dollar per vote pretty steeply to make it equitable and a level playing field as far as we are concerned. If you were to look at the current situation you could call it a free for all, which I suppose to some degree it is. Being an old accountant I would rather see full and proper disclosure with the right audit certificates signed off at the time and be done with it. Let everyone raise the funds where they need to and spend it the way they need to, subject to whatever the Government of the day decides is going to happen. I am not very enamoured of the New South Wales taxpayers suddenly having to pick up this huge bill for funding State and local government elections. How much money is it going to cost us and where is it going to come from? I would rather see the money spent on hospitals and transport and all the other things that are important in this State. I do not think our democracy is that sick that we need to be thinking as closely about this as you are.

**Ms DIANE BEAMER:** We have received many submissions that recommend for various reasons the capping of expenditure and donations. Often it is couched in terms of expenditure for lower House seats and overall expenditure for the Legislative Council. In your situation where you do not run lower House seats—

**Mr BORSAK:** Not currently. You never know what we might do next time.

**Ms DIANE BEAMER:** In the last 18 years you have had a representative and currently have two representatives in the upper House. The Committee has to grapple with this idea as well if we are going to cap

funding of statewide campaigns that are run by parties already elected. Given we have received a great deal of suggestions along those lines and it may not come out the way you are lobbying—

**Mr BORSAK:** Lots of stuff does not come out the way I want it.

**Ms DIANE BEAMER:** Do you have any thoughts about what should be realistically imposed on your statewide campaign at the upcoming State election?

**Mr BORSAK:** Can I take that on notice? I had not really put my mind to that. All I can say is if I looked at our funding arrangements in the last two elections—2007 and 2003—we doubled our available funds that we raised from supporters. If I can double it again in the next election, I think I am going to do that much better again and I think I am on track to do that. I do not really understand the model you may be proposing or the types of model you may be proposing.

**Ms DIANE BEAMER:** It is in an embryonic state. We are gathering evidence.

**Mr BORSAK:** I do not want to be in a situation where I commit myself one way or the other because I do not really understand it.

**Ms DIANE BEAMER:** I am more than happy for you to take it on notice. If we were to go along the lines of capping, it would be helpful for the Committee to understand your particular circumstances.

**Mr BORSAK:** I am worried that in the longer term—and granted you are saying there is not a model—the sort of cap in my mind almost says we have a certain bunch of people in Parliament at the moment and we will make an arrangement that these people will get funded X, Y, Z—let us just forget for the moment whether they are lower House or upper House—through some funding arrangement. I am sure the way it will be worked out will ultimately be equitable because the people who are in Parliament, the incumbent people, would see it as being fair and equitable. But to some degree what I would be worried about is that we do not pull the drawbridge up and stop other organisations, minor parties or Independents from getting a leg up somewhere along the line.

I was around back in the days when The Shooters Party first got started and I saw the stuff that was going on here at the time and some of the things that were said at the time too—that The Shooters Party should never be here and all sorts of things. We are long past all that rubbish but the reality is I would not want to see a situation where we have pulled the drawbridge up. I am sure it is for all the best of intentions but we could end up in a situation in the future where an individual or a small party, whatever their bent or representation may be, cannot get up a head of steam because they cannot get enough money together to be able to be properly represented in the electoral process during the election campaign. They are the sorts of things that would exercise my mind, just off the top of my head, having read some of the things I saw in the report that came out from 2008 the last time I think you sat. If you want to put a question to us we would love to be able to sit down and think about that particular one and talk to you about it.

**CHAIR:** What we would like to see happen arising from this Committee's report, which will be circulated and an opportunity provided for comment, there would be a draft exposure bill that outlines the method that these reforms will take. That would be on exhibition and people would have a chance to comment on it. Whatever is resolved we hope to be able to include stakeholder input and the community as well.

**The Hon. DON HARWIN:** You said earlier in your evidence that the disclosure laws were an expensive imposition. I think perhaps we were a little remiss in not taking more evidence on that this morning. I wonder if you could expand on that. If you could also say how much it is costing you to comply with the new rules that were brought in at the beginning of 2008 that would be helpful to the Committee.

**Mr BORSAK:** This is off the top of my head; I do not have the numbers to hand. We have a party secretariat which is run on a part-time basis by volunteers; we have a party accountant and auditor. I am the registered officer of the party so I have to sign off on these returns every six months. It might be costing us \$10,000 every six months to pull these reports together. I am happy to sign off on behalf of Messrs Smith and Brown. Inevitably, especially in this part of the electoral cycle, they are nil returns. I think it would be much easier if we just did it once a year for the smaller parties, or any party, at the same time as we are doing our justification to the Australian Electoral Commission. I just do not think that sending in lots and lots of paper that has zeros all over it all the time—that may not necessarily be the case for the larger parties; they might be

getting money in all the time, but certainly from our point of view, apart from membership renewals and the odd donation that comes in with those, there is not a hell of a lot to be gained and from a cash flow point of view our party is going backwards in between elections. I just do not think that that is really an equitable situation. That is almost approaching a situation, in my view, where it is a drawbridge-type thing.

**The Hon. DON HARWIN:** \$80,000 across a four-year term?

**Mr BORSAK:** Yes. That is a hell of a lot of money for a party like ours—and that is just the costs of compliance, just to be in the game. You have not asked any questions of me in relation to the public education fund, but that is something where we are particularly miffed. Since 1993, again because we do not run in the lower House, we have not got a zack out of the process. Especially since this was talked about in 2008 and nothing has been done about it; that has not happened either. I think it is important that The Shooters Party amendments be made and recommendations be found that a party like The Shooters Party, or an Independent who may be represented only in the upper House, gets some equitable cut of that education pie. In the 2007 campaign The Shooters Party spent \$164,000 on the education process. We have not had a penny of that back.

**The Hon. DON HARWIN:** What exactly did you do with that \$164,000? What was the nature of the education?

**Mr BORSAK:** We spent it on basically educating the electorate in relation to the fact that you have two votes and that it is important that people understand that when they go to the polling booth they can vote for the Government or the upper House, whatever they choose.

**The Hon. DON HARWIN:** What did you do? Were they newspaper ads, television ads, radio ads, leaflets—

**Mr BORSAK:** Newspaper, radio, leaflets, and posters. We actually continue to do that now. I have just ordered another 50,000 flyers which have exactly that message on one third of the content of the flyer, because it is important that people understand the difference between the upper and lower Houses.

**CHAIR:** In your view, one of the reforms that should be considered is ongoing funding for minor and new political parties, so that they can meet their operational costs?

**Mr BORSAK:** Yes.

**CHAIR:** Whether or not they are a party in the lower House, they should still have access to that sort of political administration fund?

**Mr BORSAK:** That is right, administration and education fund. They are two very important things to a party like ours. The cost of compliance, as Don says, is a huge impost on an organisation like ours. Again, I get back to what is going to happen to the embryonic organisation. Where would the Greens be today, for example, if they had to start under a new regime like that? Where would The Shooters Party be today if they had to start under a new regime if it comes about in that fashion? It is going to be a hell of a lot harder, and it will get harder and harder. Then, if there is a minimum amount of money you can raise from individuals, and you cannot get any money out of organisations and you cannot get any money anywhere else, where is our democracy going? Who do you get enough money from to be able to get started? You cannot get up the critical mass to get going.

**CHAIR:** Would you support caps on expenditure and donations if in your mind the issue of public funding was at a level sufficient to ensure that minor parties and new parties were able to effectively compete in the political process?

**Mr BORSAK:** We would have to consider it. We are pretty much against any caps on expenditure, but we would certainly have to consider it—depending on how the numbers stack up I suppose.

**CHAIR:** Do you think that the additional cost to taxpayers of ensuring that minor parties and new entrants to the political process are suitably funded is a reasonable cost to ensure access to the political process?

**Mr BORSAK:** Yes. If you are going to put an exposure bill out there, if you have a recommended model, I think you need to tell the public how much you believe it is going to cost—what the costs are going to

be over one year, four years and over a business cycle or a parliamentary cycle. You need to tell the public whether you are proposing to do that for both State and local government. If you are talking about local government, which I think you probably are, I think you need to tell the public how much that is going to cost, et cetera. I am not entirely convinced—and you may have got a lot of submissions along those lines—that there is a level of corruption and other things going on within the system.

**CHAIR:** A perception of corruption I think is the issue.

**Mr BORSAK:** Yes, a perception of corruption, exactly.

**Mr ROBERT COOMBS:** That is the issue we are trying to grapple with. On the one hand Mrs Beamer in her contribution earlier was correct: the overwhelming majority of the 28 submissions we have received say we want to remove this perception that exists in relation to access and decision-making whereby large corporations or large groups in affordable positions are able to make these contributions. I suppose the easy thing to say is that we need to limit those contributions. It impacts probably more significantly on parties such as yours which rely, I would think, on some of those donations and contributions in order to exist. I think both the Chairman and Mrs Beamer are inclined to say: We are not talking about just saying we are going to cut those contributions and that is it; it would have to be met by some other funding source, and it is probable that the considerations will go to giving greater access to public moneys in these situations. You said earlier that it depends on the formula.

**Mr BORSAK:** Ideologically I am opposed to it, but it would depend on the formula and how it all worked out in the wash-up and how it would meet our tests in relation to it all. As I said, we are not particularly that well dealt with at the moment in relation to the public education funding. You might argue that that will all be rolled up in this exercise anyway, and perhaps that is true.

**CHAIR:** The constitutional experts we had here previously basically advised the Committee that whatever arises out of this Committee the issue of fairness is one of the principal objectives we need to meet. That ensures that minor parties and new entrants to the political process are not disadvantaged by whatever reforms we undertake.

**Mr BORSAK:** I also think that if you really are keen on moving towards a public funding model you really do need to explain to the electorate exactly how much it is going to cost and where the money is going to come from.

**CHAIR:** And why we need it?

**Mr BORSAK:** You will be explaining why, but you need to explain the dollars and cents in relation to the whole thing and how you think it might be split and all those sorts of things. It is a very large step to take. As I said, I am worried about the drawbridge effect, that we do not leave ourselves in a situation where the incumbency—and that includes, even in a small way, The Shooters Party—where it advantages us to the disadvantage of other people who may legitimately want to get a leg up in the political process in the future.

**CHAIR:** Which is again why I made the point about the advice we have received from the constitutional experts. Their rider to us is that unless whatever system we adopt is fair to new entrants, it is likely to not withstand a High Court challenge.

**The Hon. MICHAEL VEITCH:** One of the issues that have been raised with us in relation to the funding model is that there would be a cap on donations from individuals and that that cap could include money and in-kind donations. For instance, if it was \$1,000 you could contribute cash of \$500 and there could also be \$500 worth of in-kind donations. Your organisation obviously relies heavily on volunteer labour to engage your constituency. Can I garner your views about the inclusion of in-kind donations? If you were to define volunteer labour in a political campaigning sense, how would you define it? What sorts of jobs are undertaken as a volunteer labourer?

**Mr BORSAK:** With regard to the first part of your question in relation to in-kind donations, if it is an impost now to account to the Australian Electoral Commission every six months on relatively simple things, what is it going to be like if we have to somehow measure the in-kind donations, whether it is six monthly, 12 monthly or once every four years, that are coming from all sorts of people doing all sorts of things for our party? I am sure that the same happens in all political parties.

In answer to the second part of your question as to what sort of things happen for our party, it can be anything from conducting fundraisers to providing office facilities, photocopying, mailing, using email facilities, getting printing done—you name it. Anything can be done along those lines. If a definition is written ultimately so that it is quite wide, it will catch all of those things. I am not convinced in my mind that from an accounting point of view we would be able to capture all that correctly and make full, complete and proper disclosure. I would be a little worried that we did actually capture it all and we did actually report it correctly—not for a want of trying. If you are going to be looking at that sort of accountability, you need to think carefully about what areas you want to have handled in that fashion.

In my mind it also goes to what I was talking about earlier. A lot of the parties, I think the National Party for example and even to some degree The Shooters Party, and certainly the Greens, if you have community-based organisations—and the Labor Party certainly arose out of that part of the world a lot longer ago than The Shooters Party did—a lot of these are community contributions of individuals and community-organised people. If we have to get right down to that level and start accounting for all their time or their in-kind donations of boot leather, if you like, walking around handing out how-to-vote cards, we are not doing ourselves a favour as a democracy for doing that because—

**CHAIR:** I think what has been considered is excluding volunteer labour when it is on election day: doorknocking, letterboxing, distributing pamphlets, helping out at the campaign office, running errands, and that sort of thing. The sorts of things they are trying to capture, I think, are if someone is donating office space that has a commercial value, if someone is offering to design, layout and print your pamphlets for you for free—

**Mr BORSAK:** I can understand exactly what you are saying: There is a commercial value to that and you would have had to buy it, it is a donation, et cetera. But still, that can be quite an onerous level of reporting. The Prime Minister was seen recently in his donated vehicle. For some reason or other the old ute became a cause celebre when in reality it probably should not have been. I just hate to think that we go too low down in the process and we again end up with an impost of reporting that will fall more onerously on the smaller parties because they do not have the ability, the expertise or the infrastructure, and the people and the brains on the ground, to get it done quickly and relatively easily.

**Ms DIANE BEAMER:** We want to do this in a fair way. We have had four political parties give their views today. Yours does differ from them but—

**Mr BORSAK:** That is the story of The Shooters Party. That is our job: to be different.

**Ms DIANE BEAMER:** In fairness, in reading your submission there was very little about capping or whatever.

**Mr BORSAK:** Because I do not believe in it. I am an old-fashioned capitalist.

**Ms DIANE BEAMER:** We have had people who have written to us saying this is the way to go. But in order to be fair we would have to look at some of the issues you raise about your ability to carry out the functions of a political party with the impost we have put on you, including the various forms of filling out documents, et cetera. With regard to the last one there has been a lot of criticism about in-kind donations, whether it be a ute, office space or a photocopier. We have to look at what has been advised as the political party funding for administration, and that has to be looked at in a way that captures those kinds of imposts on the people who are elected.

**Mr BORSAK:** To be fair, The Shooters Party does get a lot of that type of support in the run-up to various elections and it is an important part of what we do. Thank you very much for allowing me to appear here today. Hopefully we have contributed in some small way to your considerations.

**CHAIR:** On behalf of the Committee I would like to thank you for appearing today. Your evidence has been very useful for us, as has your opinion. If you have anything else you would like to add you are welcome to do so by way of official submission. If we have any additional questions we will try to get them to you as quickly as we can so you can provide a response.

**(The witness withdrew)**

**(The Committee adjourned at 5.16 p.m.)**