

REPORT ON PROCEEDINGS BEFORE

**JOINT STANDING COMMITTEE ON ELECTORAL
MATTERS**

**INQUIRY INTO THE ADMINISTRATION OF THE 2023 NSW STATE
ELECTION AND OTHER MATTERS**

At Jubilee Room, Parliament House, Sydney on Friday 12 April 2024

The Committee met at 10:00 am

PRESENT

The Hon. Peter Primrose (Chair)

Legislative Council

The Hon. Robert Borsak (Deputy Chair)
Ms Cate Faehrmann
The Hon. Bob Nanva

Legislative Assembly

Mr Stephen Bali
Mr Nathan Hagarty
Mr Tim James
Mrs Sally Quinnell

PRESENT VIA VIDEOCONFERENCE

Ms Janelle Saffin

* Please note:

[inaudible] is used when audio words cannot be deciphered.

[audio malfunction] is used when words are lost due to a technical malfunction.

[disorder] is used when members or witnesses speak over one another.

The CHAIR: Welcome, everyone, here today. Before we start I acknowledge the Gadigal people, who are the traditional custodians of the land we are meeting on here at Parliament. I pay my respects to Elders past and present of the Eora nation and extend that respect to other Aboriginal and Torres Strait Islander people who are present here or watching proceedings online. Welcome to the first hearing for the Joint Standing Committee on Electoral Matters inquiry into the administration of the 2023 New South Wales State election. We thank the witnesses who are appearing before us today and the stakeholders who have made written submissions. We appreciate your input into this inquiry.

Mr DOMINIC OFNER, General Secretary, NSW Labor, sworn and examined

The CHAIR: Thank you for appearing before the Committee today to give evidence. Please note that Committee staff will be taking photos and videos during the hearing. The photos and videos may be used on the Legislative Assembly's social media pages. Please let Committee staff know if you object to having photos and videos taken. Before we start, do you have any questions about the hearing process?

DOMINIC OFNER: No.

The CHAIR: Would you like to make a short opening statement before we begin questions?

DOMINIC OFNER: I do, thank you.

The CHAIR: Please proceed.

DOMINIC OFNER: Firstly, thanks for the opportunity to appear before the Committee this morning. I also want to take the opportunity to thank the hardworking staff at the NSW Electoral Commission for their work conducting last year's election, but also for the work that they do in between elections. The recommendations that we've outlined in our submission broadly fall within three themes: first, recommendations that relate to voting and the scrutiny and counting of votes; second, a series of recommendations that relate to New South Wales's campaign finance system, donations funding and disclosures, and the processes involved in that system; and, third, a series of recommendations that relate to party and candidate engagement with the NSW Electoral Commission.

Just in very general comments in relation to the issue of voting and vote scrutiny and counting, I do believe that, especially compared to Federal elections, the pace of the count at last year's State election was very slow. That did have a practical impact on a number of fronts, starting with whether the Government was in majority or minority. We do make a number of detailed observations and recommendations about how the count could be faster and more efficient without, obviously, compromising the integrity of the count.

I know that this Committee has considered and discussed at length in recent years and then after recent elections the issue of early voting. We do welcome the change that occurred at last year's campaign to limit pre-poll voting to one week. I do believe that consideration should also now be given to limiting the number of pre-poll voting centres and providing the list of early voting or pre-poll centres to candidates and parties much earlier than it was provided. I want to also just state at the outset that NSW Labor supports the Electoral Commission's recommendation to end the practice of political parties and candidates distributing postal votes.

On the issues relating to election funding, expenditure and disclosure, we are and have been of the view for a long time that more frequent and regular real-time disclosure is an important objective and is something that we should continue to work towards, noting the resourcing requirements for the commission and parties and candidates to comply with such a system. We do believe that the Parliament should work through the recommendations of Operation Aero and Operation Eclipse to lift the standards of governance across political parties and to ensure a better regulation and oversight of the activities of third-party lobbyists.

As those recommendations are worked through, I think it is important and it's something that we should be proud of in New South Wales—the fact that we do have some of the most, if not the most, stringent campaign finance rules in the country. While not explicitly relevant to this inquiry, as the Federal Parliament is working through potential reforms to campaign laws in terms of the introduction of caps on expenditure and donations, there is and there should be an opportunity to also advocate for a consistent approach to prohibitions and that the prohibitions that apply in New South Wales to developers, tobacco, liquor and gambling entities and close associates should also apply federally as well. I believe that the same approach should be taken when it comes to the regulation of lobbyists. The system we have here in New South Wales can be strengthened, but it should also apply to the Federal level.

Just finally, on the issue of engagement with the Electoral Commission, there is always room for improvement. The guidance material and pre-election webinars were welcome. However, I would note that there

was a noticeable difference between the level of outreach and engagement from the NSW Electoral Commission compared with the Australian Electoral Commission. For instance, the level of engagement that we had with the AEC in the lead-up to the 2022 Federal campaign and the July 2020 Eden-Monaro by-election included—while not in person because of the nature of the COVID situation at the time—face-to-face meetings with AEC officials.

That was very different to the engagement that we had prior to the 2023 State campaign and the February 2022 State by-elections. I recognise that this would require extra resourcing for the Electoral Commission, and I do hope that the new funding model that was introduced by the Government last year does go a long way to alleviating some of the previous financial and resourcing pressures the commission has obviously experienced. I'll leave my introductory comments there, Chair, and I'm happy to take questions.

The CHAIR: Thank you. I'll use my prerogative and ask the first practical question, if I can, Mr Ofner. You recommend that practical restrictions be placed on election signage on election day, similar to restrictions in Victoria. Can you elaborate on that, please?

DOMINIC OFNER: We've all seen what's becoming a situation the day before elections, or the afternoon before an election, where there is a bit of what is, I think, an arms race now in terms of booth set-up: setting up material on polling booths as early as two o'clock or 2.30 p.m. while parents are trying to get their kids out of school as part of school pick-up. I think that situation is actually becoming quite farcical and a poor reflection of the political process. There are also, I think, issues in terms of the environmental impact of the material that's printed and is by and large then thrown out.

I would also say something that I am very mindful of is that setting up material the night or afternoon before then does require people, and predominantly young people, to be guarding that material at booths overnight. I don't think that is appropriate from a work health and safety point of view. I do fear the day or the night before an election where I get a call that a young person has been injured—or even worse than that—while they've been out guarding election signage on a polling booth. I think that it's time to say enough is enough; it's becoming a bit silly. I don't think it's particularly effective, and we should look at what they've done in Victoria.

Mr STEPHEN BALI: Can we just explore that for a moment. What timings would you do? I pick up on your point of a phone call coming through, God forbid. There are examples where knives have been pulled on people; that's been publicly reported. Are we saying not before 3.00 a.m. on election day that you start putting these things up? There's got to be some type of ability to put things up, so what timing would you look at? And supplementary to that, even in the run-up? I personally find that we talk about the environment and everything else but on every telegraph pole—you name it. I know that councils like Blacktown have restrictions that you can only put it on the lawn of a person that's authorised you to put it there. I think that's a good thing. It should be kept away from streets. If you can just explore the aspects of what time you would suggest that signage on election day ought to go up and whether you would you have any restrictions in the run-up to the election as far as where you put signs.

DOMINIC OFNER: The issue of the timing is sort of answered by the limits on the material that can be put up. The issue of why people are setting up so early is because there's a race to get as much of the fence space as possible. If you limit how much can be put up, I think that deals with the time frame question. I would agree that the issue of plastering telegraph poles is something that should be looked at. South Australia has gone down that path, and I would think that it's worthwhile exploring their recent legislative change to prohibit election posters on telegraph poles.

The Hon. CHRIS RATH: As a follow-on, since we've got a flow of this style of questioning, would you support exclusion zones? I know that the ACT has it where you can't actually hand out how-to-vote cards or put up signage within, I think, 50 or 100 metres on election day. I take your point about safety and the arms race that exists in terms of putting up signage. I think we've all been there before and it's not a pleasant experience at all. Do you have any observations on the way they do it in the ACT and whether we should implement something similar here in New South Wales?

DOMINIC OFNER: The ability to hand out how-to-votes within six metres is something that we should maintain. Many of us experienced the 2021 local government elections where handing out was limited, and I think the practical experience is that did not work. Our submission does deal with the fact that that right to hand out how-to-votes within six metres is something that should be maintained—sorry, other than within the six-metre exclusion zone, handing out how-to-votes is something that we should continue.

The Hon. BOB NANVA: Registered political parties and participants receive significant public funds—somewhere in the order of about \$30 million in election campaign funds and \$15 million in administrative funding. You would agree, wouldn't you, that the public has a legitimate expectation that, in order to receive those funds,

parties and candidates should meet, or be compelled to meet, basic standards of corporate governance and capabilities?

DOMINIC OFNER: I think that's right. The fact that millions of dollars is being handed out or provided to political parties for administrative and campaign purposes necessitates the highest levels of governance standards possible. That's something that was raised in the 2014 expert panel report led by Kerry Schott. Obviously, something that those of us in the Labor Party are very experienced with is the recommendations of Operation Aero that dealt with things like risk management processes, accounting and fundraising. But I also think it's increasingly important, as we look at the fallout, and the very worrying and disturbing findings, of the Broderick report, for instance, and a lot of the work that's happened in terms of Federal Parliament complaint-handling processes—bullying, harassment and sexual harassment policies and processes—to demonstrate that political parties have high standards of accountability and governance there.

This is something that should be embraced, and done so in a mature way. I think we've all seen and experienced reform in this space that has been driven primarily for partisan reasons to favour one political party over another. That is something that we should be very conscious of and do everything possible to avoid, and bring all the political parties in this Parliament—major and minor and Independents as well—along the path to drive that reform. Because governance failures in one party, while there might be a short-term benefit to the opposing party, undermines confidence in the entire democratic system, which hurts everyone.

Compliance is, though, resource intensive. What's required in terms of auditing, vouching, the due diligence on prohibited donors and training of party members and candidates on compliance with electoral laws does take time. It requires money. And that's from the second of the major political parties. In terms of minor parties and Independents as well, I can imagine the burden on them is also considerable. I think a mature discussion about a way forward in terms of responding to the recommendations of Operation Aero and going way back to the 2014 expert panel report about how that can be implemented in a mature way to raise standards across New South Wales politics and political parties' internal governance.

Mr TIM JAMES: I take you to page 18 of your submission pertaining to postal vote applications. What evidence do you have for the proposition that there is the undermining of trust in our political system? And can I also confirm that Labor did itself seek to issue postal vote applications during the last election?

DOMINIC OFNER: I think the issue is that, every election, there is increasing media coverage about political party postal vote applications and that's something that we can't ignore.

Mr TIM JAMES: Media coverage?

DOMINIC OFNER: Media coverage at the last State election and previous elections. It's a recommendation that is first and foremost born out of where I think community standards and community expectations are on the issue. This is probably not something that was relevant 20 or 30 years ago, but the number of people applying for postal votes has increased significantly, and quite clearly the number of people applying directly with the Electoral Commission has increased significantly because of the online application process. That should warrant a review of what parties and candidates are doing, as well as in light of the media coverage that postal vote applications are now receiving. To your question about whether particular candidates in the party—yes, we did, but that was because that was seen as necessary in terms of the particular campaign. If our opponents are doing it, I think a level playing field that says no-one can do it is the best path forward.

Mr TIM JAMES: Beyond media coverage, can you point to any instances of fraud or impropriety—irregularities or otherwise—pertaining to PV applications issued by political parties?

DOMINIC OFNER: Not that I'm aware of. That's not to say that it's not a risk, particularly as more and more people are applying for postal votes directly to political parties.

The Hon. ROBERT BORSAK: Mr Ofner, I refer you to page 11 of your submission, where you talk about regular disclosure. That's a chestnut that comes out after every election and every inquiry. You talk about more and better and more timely disclosures of donations. You talk about putting more money into that side of things, but you don't actually get into the mechanics of how that would be done. Can you explain how the Labor Party would handle that, as a timely matter, because I've heard evidence in the past that it was all too hard? You're not dealing with any detail there. This is a motherhood recommendation. I don't disagree with it, but how do you do it?

DOMINIC OFNER: I think the starting point is, in an ideal world, that the system would be very much run and provided by the commission to allow that real-time disclosure. NSW Labor quite proudly undertake a system on our website of—

The Hon. ROBERT BORSAK: I will take you to the point of evidence from the now retired commissioner that their systems—and it's my word—are decrepit. How long do you think it would take to get to where you want to go? How many election cycles, let's call it that? One, two, three, four, five? It's not a matter of money. It's difficult.

DOMINIC OFNER: It's difficult, but even if it's difficult it's something that we should continue to work towards. Even if it is on an incremental basis, the objective of real-time disclosure is something that we should work out a path towards achieving.

Mr NATHAN HAGARTY: This flows on from that. I think one of the keys to having real-time disclosure is systems and IT. My question is around the use of IT in elections. On iVote, you've got a recommendation there that it would only be used for people with vision impairment. Can you speak about that and also just generally the use of IT for administering election systems et cetera?

DOMINIC OFNER: The party has had a longstanding view on iVote that it is something that should be limited in particular to people who are visually impaired. The 2021 local government elections and the iVote failure there, which resulted in the re-run of certain local government elections, is the ultimate proof of the concern that people have been raising about that system. On IT generally and the administration of systems, again we had issues in the election, as there were in the election before, in terms of the voter roll and the technology for marking off voters being a challenge.

In terms of the back-end administration, something that I know our finance team have found very difficult is the fact that, in terms of the vouching and the disclosure system, each upload is limited to a maximum of 25 items, which means that uploading 300 invoices or material samples that are required can take approximately six hours. We were looking as a party, just in terms of the party's return alone, at over 2,500 invoices that had to be uploaded as part of our disclosure. So that is a challenge, and I would hope that resourcing can be provided to improve that and, frankly, bring that into the twenty-first century.

Ms CATE FAEHRMANN: Your submission says that NSW Labor may seek to make a supplementary submission in relation to truth in advertising. I would be keen to pursue your views at this hearing, if we can. We're seeing in the Cook by-election some material distributed that looks very much like a Greens flyer but isn't. It's authorised by the Liberal Party. Where do you stand on that in terms of reform?

DOMINIC OFNER: I'm not aware of the specifics of the Cook by-election and material there. The issue of truth in advertising is obviously something that has been discussed federally. South Australia has legislation to that effect. I would not consider it to be the solution to the problem that you've outlined. If a complaint or an objection is made to a material for breaching that legislation, for instance, the risk is that if such a complaint is dismissed, the people being complained about can then point to the endorsement of the independent umpire—presumably the Electoral Commissioner—to say that what is being asserted is accurate. I think that's an unintended consequence that we should be mindful of. I understand and I assume that there will be more discussions, particularly driven by the Federal space, but I think it's something that at a State level people should not rush to implement or introduce.

Mrs SALLY QUINNELL: Mr Ofner, in light of the dramatic increase in people who are voting early, we've had a couple of submissions with ideas on how others see early voting counting happening faster on election day. Could you elaborate on what options you would consider appropriate for commencing early ballot sorting on election day?

DOMINIC OFNER: I would really encourage introducing, where possible, the system that they have either in Victoria or federally which allows not the counting of early votes but at the very least the sorting and piling of those votes. From the interest of those votes being counted and the results being known as soon as possible, it was very, very welcome at the last Federal election.

Ms JANELLE SAFFIN: Mr Ofner, I have two questions. One is to do with the electoral expenditure loophole that you talk about in your submission. Could you comment on that? Is that widely practised? The way I'm reading your submission, it's about having a level playing field by removing it.

DOMINIC OFNER: I'm not sure if it is widely practised. It wasn't something that NSW Labor did at the last State election. Essentially, my concern is that in, say, a place like the Sydney media market, the TV advertising expenditure that's incurred there is primarily to the benefit of the party generally. That expenditure really should fall under the party's cap. The risk I would see is some of that expenditure to help maximise how much the party can spend being allocated to individual candidates. But particularly concerning for me is the instances where the allocation is not consistent across all of the seats that are effectively benefiting from that TV advertising. I don't think that is within the spirit of the Act or the nature of the candidate cap system, and that's a loophole I believe should be addressed.

Ms JANELLE SAFFIN: The second question is to do with people's right to do the pre-poll. I recall in your submission you've got something about how it should be as of right—that people could go in and do the pre-poll. Could you comment on that?

DOMINIC OFNER: We really should have a situation where the laws reflect what is happening in practice now. The priority should be making sure that that pre-poll period is limited to one week and that there are fewer early voting centres. I think that would capture and actually address the concerns that people have in terms of whether early voting should be a right or still technically restricted to those specific reasons.

Ms JANELLE SAFFIN: I've actually seen where people get asked why and then people don't, so it's inconsistent anyway.

The Hon. CHRIS RATH: Since we have time, I wanted to ask about the prohibition that you are seeking on real estate agents and property developers from seeking public office—in particular, I assume, for local council elections. It's an interesting idea. I'm quite sympathetic to it. I was wondering if you could expand more on the problems that you see that it might try to fix if you did have that prohibition in place. Would you expand it also to include family members or people that might be associated with the person that is actually the real estate agent or property developer?

DOMINIC OFNER: NSW Labor's internal policy—and our rules—has been we, for instance, do not allow developers, real estate agents or close associates of developers to nominate for public office as NSW Labor candidates. It has been party policy that that is something that should apply as well to local or State elections. It's a rule we also apply to Federal elections. In terms of specific issues around family members or close associates, it's something that would capture people who the law recognises are close associates, in terms of where that falls with family members. I think that it's good to hear that there are people like yourself who share that view, and I would encourage that to be worked through in the Parliament about how that ban or prohibition can apply.

The CHAIR: Thank you. We've just run out of time. I remind all members that provision is made for supplementary questions to be asked. This is a bit of a speed-dating exercise, I'm afraid. I thank Mr Ofner for appearing before us today. You will be provided with a copy of the transcript of your evidence for corrections. Committee staff will also email any questions—and I note you didn't take any on notice, as I recall, but members from the Committee can also ask supplementary questions, so you will be provided with those. Thank you very much for appearing.

(The witness withdrew.)

Mr JOE LUNDY, Registered Officer, NSW Nationals, before the Committee via videoconference, affirmed and examined

The CHAIR: I welcome our next witness. Please note that the Committee staff will be taking photos and videos during the hearing. The photos and videos may be used on the Legislative Assembly's social media pages. Please let Committee staff know if you object to having any of this occur. Before we start, do you have any questions about the hearing process?

JOE LUNDY: No, no questions.

The CHAIR: Would you like to make a short opening statement before we begin the questions?

JOE LUNDY: Only a brief statement, Mr Chair, if I might. Firstly, thank you to the Committee for the opportunity to present. I know that these can be fairly challenging matters, particularly with various competing interests with political stockholders. I wanted to thank the NSW Electoral Commission staff for their professionalism during the 2023 State general election. They were always calm, and they were always responsive to whatever the NSW Nationals were asking. I would note for the Committee's knowledge, Mr Chair, that between the time of making the submission and the hearing today I've left the position of State director with the NSW Nationals. So I'm no longer in that position. I've drifted off into retirement, but I still hold the position of registered officer with the party, so I still hold that statutory position.

The Hon. CHRIS RATH: Thank you for appearing today. I was wondering if you could expand more on the suggestion in your submission about capping the donations received as part of membership fees, affiliation fees and party levies and other types of contributions. What problems have you seen and why do you think it would be a good idea to cap that? What sort of level would you suggest potentially capping those types of donations at?

JOE LUNDY: I'm not sure that I have made a suggestion to that effect—have I? Can you just refer me to that one?

The Hon. CHRIS RATH: I'll give you the exact page, if you want. I might come back to you.

JOE LUNDY: Apologies.

Mr TIM JAMES: The extent to which you have pointed to circumstances in which electors were not able to cast a vote—obviously, we had the situation with the online system not being available, and you have pointed to perhaps there is a need to enhance telephone-assisted voting. I think you've pointed to circumstances in which people are travelling, for example. Can you just expand on that? It's a very serious matter, isn't it, when electors are, in effect, by the system, precluded from being able to cast a vote? I would just welcome your further comment on that serious issue.

JOE LUNDY: During the campaign, our candidates and members of Parliament had a number of points of contact with constituents who might have been—and it was, in particular, electors on cruise ships, who might be travelling around the world and are unable to get to a polling place—I guess, disenfranchised by the inability to vote. That doesn't necessarily mean that they would have been able to vote had the early voting period been longer, because these cruises go for several weeks at a time. But the NSW Nationals believes that there should be some ability for people who are overseas on a cruise ship, perhaps, to cast a ballot; otherwise they're not able to do so. We had substantial numbers of constituents making contact with our candidates and MPs during the campaign. That's where that came from.

Mr TIM JAMES: Surely, in this day and age of multiple means of technology, it's not too much to ask that those people who are very mobile, as just about everyone is in this world today, would have an opportunity to be able to cast a valid vote, no matter—within reason—where they are and how they may be travelling?

JOE LUNDY: I would agree with that, Mr James. That is absolutely an essential part of our democratic process. I would also submit that there needs to be security around those ballots as well. I appreciate that there might be an appetite for the expansion of technology-assisted voting, but I would suggest that, if that were to be the case, that the electorate would need to have some confidence that that system would work and it wouldn't be corrupted or undermined like it perhaps was during the local government elections.

Mr NATHAN HAGARTY: Some of the other submissions speak to potentially banning property developers and real estate agents from running. In a previous life, I was a local government councillor and on the board of Local Government NSW, and this used to come up there. There was a divide between metropolitan councils and rural councils. A lot of rural councils pushed back against a ban on real estate agents because a lot of people who work on farms and live on farms have stock and station agent real estate licences. I want to get your view on a ban on real estate agents and property developers. What is your thinking there?

JOE LUNDY: May I just clarify? When you say "running", do you mean running as a candidate or do you mean donating to a candidate or party?

Mr NATHAN HAGARTY: Both—running as a candidate and also donating.

JOE LUNDY: Firstly, any preclusion to people outside the existing preclusions to running as a candidate—my view is that I don't think the Committee should consider things like that. In a democracy, it's important that as many people as possible have the ability to run for Parliament. That's in relation to candidates. In relation to making donations, the New South Wales ICAC's submission makes some pretty good recommendations around property developers, some of the ambiguities that may arise and additional preclusions that may arise as a result of expanding the prohibitions in relation to those people.

To the point in your question about stock and station agents and people in country areas, I could probably expand that and say that people in regional and rural Australia wear many hats as members of the community. There would be some pretty significant unintended consequences of expanding preclusions to donors. I'm not suggesting that that shouldn't happen, but I am suggesting, if it were to happen, that there should be some regional voices around the table making comment on how those might be affected. I guess I would give the example of the recent change to preclude registered clubs from donating to political parties and candidates. Without making comment on whether I think that's a good amendment or not, it has certainly caught up a lot of people who might be on the board of their local club, and now they are no longer able to donate to parties or candidates as a result of that. I think that was an unintended consequence of that reform and I think that there would be unintended consequences of further reforms.

The Hon. ROBERT BORSAK: Mr Lundy, in your recommendation 9 you talk about basically two things. The size of Barwon and you compare it to Blacktown—that's one thing. But then in section (b) you talk about negative campaigning tactics being legislatively prohibited. How would you propose to find what they are and how would you do that?

JOE LUNDY: That's a fine question and one that does not have an easy answer. Those two recommendations in the New South Wales Nationals' submission are actually a rehash of the submission that the party made to the 2019 Joint Standing Committee on Electoral Matters review into that election. The reason that they're both in the same recommendation is that I think the party just wants to be consistent with its recommendations across multiple elections so that, over time, we can build the best possible Electoral Act and best Electoral Funding Act to govern our elections.

To your question about how you would do that, that's a really challenging thing to do. It is very important that electorates are informed about decisions that their local member or candidate has taken during their tenure as a candidate or a local member. But what the party doesn't want to continue to see is the continual race to the bottom that I think we've seen over the past several elections, although I might note that the 2023 general election was broadly heralded as quite a civil election. Mr Borsak, I know that doesn't provide much of a framework for you to work within.

The Hon. ROBERT BORSAK: Yes. With respect, it's not an answer at all. Who would be the arbiter of what's negative and how negative it should be? Is there such a thing as a definition? It's like grabbing a plume of smoke, isn't it?

JOE LUNDY: Great, yes. Absolutely, and the NSW Electoral Commission made a point in their submission in relation to the commissioner not wanting to take on the responsibility of determining what is truth in political advertising. I don't want to speak for them, of course, but I suspect they probably would not want to take on what is a negative campaign or what is a positive campaign either. Perhaps there could be another body established to do something like that. I don't have all the solutions here.

The Hon. ROBERT BORSAK: It's called a parliament; that's what it is.

Ms CATE FAEHRMANN: I'm just looking at your submission. There's no recommendation, I don't think, in relation to this, but you raise the issue of just how difficult the new provision is in relation to fundraising and the aggregation of small donations. The Greens experience that as well, and I note that you say that it significantly discourages well-meaning volunteers from participating in fundraising initiatives—the need for everybody who attends an event to fill out the form and be registered on the electoral roll and everything else. Could you please expand a little bit for the Committee in terms of the difficulties of that arrangement, and also any recommendations coming from the National Party to make it a bit easier in terms of administration around fundraising?

JOE LUNDY: Yes, I think the Parliament has noted on a couple of occasions now that there is probably a threshold at which there can be some administrative benefits made—so the \$50 limit initially, and then that was increased to a \$100 limit, as you point out. However, the challenge that we find is that at any fundraiser—any event that you hold, should you wish to charge any amount of for it—whilst that aggregated cap is in place, you still need to know who the person is, you still need to know that they are not a prohibited donor and you still need to keep a record of all of that. Regardless of whether they give \$99 or \$101 at those events, you still need to know who they are, so there is no actual administrative benefit of that cap being in place because you still need to keep meticulous records of who all of those people are. I note that, yes, the Parliament has identified on a couple of occasions that there is probably a threshold to which it is satisfied that there could be administrative benefits for events like this, but that has not flowed on to the organisations that are administering these things.

Ms JANELLE SAFFIN: Mr Lundy, I've got just one question. You talk about the re-use of electoral material and have a particular recommendation about that. Could you talk us through it, please?

JOE LUNDY: Yes, certainly. In the lead-up to the 2023 State general election, we found that the NSW Electoral Commission issued a guideline in relation to the re-use of electoral material. I was not the State director or campaign director in the 2019 general election. However, my predecessors informed me that this was not something that was as firmly on the Electoral Commission's radar in that election and previous elections. It makes sure that, if we were to re-use electoral material that may be scattered across the State—it might be in a shed in Lismore, Ms Saffin, or just in a volunteer's home—we know exactly how much material exists in the wild and how much of a previous invoice we need to allocate to the expenditure count in order to satisfy the provisions of the Electoral Act.

While I appreciate the intent of the legislation—that you wouldn't want somebody purchasing reams and reams of electoral material in June the year before an election to use over the expenditure period after 1 October and before the election—it creates a strange situation where, potentially, if a member of Parliament or candidate has been a member of Parliament or candidate in previous elections and has accumulated material over many, many years, that material from decades ago, if it is displayed during the expenditure cap period, would be considered to have to be included in the expenditure cap. I'm not sure that was the intent of the legislation when

it was introduced. But it is an outcome that we are dealing with at the moment, and it requires some consideration. There is a point in time at which material is no longer—

Ms JANELLE SAFFIN: Relevant?

JOE LUNDY: If a corflute cost you \$6, \$7 or \$10 in 2011, does it still cost the same in 2023?

Ms JANELLE SAFFIN: I understand.

Mrs SALLY QUINNELL: Considering that election day in 2027 falls on Easter Saturday, as noted in your submission, when do you think would be an appropriate time frame for everybody to be notified by the Electoral Commission of the new date, in this rare occurrence that it's going to be moved?

JOE LUNDY: Yes, a very interesting one. I don't have an opinion on when the date should be. I think that is specified in the Act, as to who makes those determinations.

Mrs SALLY QUINNELL: Sorry, let me specify. When would you like to be notified of the new date?

JOE LUNDY: As soon as possible—tomorrow.

Mrs SALLY QUINNELL: Yesterday.

The Hon. CHRIS RATH: Sorry about before; I was reading the completely wrong submission, Mr Lundy. What processes do you have in place for identifying prohibited donors, and how burdensome have you found that at the last election? Obviously we want to make sure that we're not receiving donations that we shouldn't be, and every party's got their own processes. I was wondering if you could talk a bit to that process.

JOE LUNDY: Certainly, and that's perfectly fine. I've never made a mistake in my life, Mr Rath, so all good. In relation to the identification of prohibited donors, I would talk in broad strokes about that. It is significantly burdensome on our administrative staff. I appreciate that's why there is administrative funding for political parties in New South Wales, but it is a very large administrative burden. I would say—and this is testing my memory a little bit because I haven't read it recently—that the 2019 Joint Standing Committee on Electoral Matters, I think, made a recommendation that there be a database established for, in particular, development applications. Something like that would reduce the administrative burden on political parties and the amount of time we spend trying to make sure that we are compliant with the law. In terms of our processes, there is a big checklist that we have in our office—or that we had in our office, sorry; I should talk in the past tense now—which would go through all of the requirements under the Electoral Act to make sure somebody is not a prohibited donor. This could take hours and hours, these things, to make sure that somebody's not prohibited.

The Hon. CHRIS RATH: Obviously it's even harder for small donations. If it's a larger donation, you can pick up on it, but I assume it's quite easy for these smaller cash donations, like a raffle, for instance, to slip through the cracks potentially, inadvertently.

JOE LUNDY: We make sure that that doesn't happen because we have to by law. Examples of the things that we did in the office were to make sure that we have a list of every single person who attends every event and how much money they might have given at that event, and make sure that, prior to an event, we established that they are not a prohibited donor so that we don't take money from them at an event. That's then run by volunteers, of course. We have as much oversight as we possibly can from staff, but it's ultimately volunteers that are also the people that are administering these events. As you can probably appreciate, yes, it's a large administrative burden which takes a lot of time. I know that the NSW Nationals and every other political party in New South Wales does everything they can to mitigate any of those potential issues.

Mr STEPHEN BALI: Thanks, Mr Lundy, for your presentation. I really appreciate the mention of the Blacktown electorate in your submission.

JOE LUNDY: I thought you may.

Mr STEPHEN BALI: I heard yesterday that the Leader of the Opposition, when he came out to my electorate, got lost on the way out there, which is good—interesting.

JOE LUNDY: No comment from me.

Mr STEPHEN BALI: I hope you're not suggesting that if you live out in the country you're not going to have the "one vote, one value" principle. You gave the example of Barwon. My understanding is there are actually three electoral offices across that seat. Wouldn't it be more about providing more resources or offices, even if it's based on a certain number of kilometres or centres? I think it would be better to put more electoral offices into an area as opposed to having more seats in smaller populated areas.

JOE LUNDY: This is where we may differ in opinion. I am a proponent of moderated malapportionment. I believe that electors in larger geographic districts, who may not be able to, for example, walk to their local electorate office should they require some additional service, should at least be able to drive there within a day. It is a significantly large electorate, the electorate of Barwon, as are other electorates in New South Wales. The NSW Nationals have a policy position on the book that electorates should not be getting any larger; they should be getting smaller. The only way to do that at this stage, with the growth in electoral numbers, is to introduce some form of malapportionment. However, I appreciate that's not possible under the current Electoral Act outside of the existing bounds. I would probably leave it at that.

The CHAIR: There being no further questions, Mr Lundy, you have answered all the Committee's questions. Thank you for appearing before us today. You will be provided with a copy of the transcript of your evidence for corrections. I recall you did not take any questions on notice. If there are any supplementary questions from the Committee, we will forward those to you. Thank you very much for appearing.

(The witness withdrew.)

(Short adjournment)

Ms ALEXANDRIA RANTINO, Chief Operating Officer, Climate 200, before the Committee via videoconference, affirmed and examined

Mr SIMON HOLMES à COURT, Convenor, Climate 200, before the Committee via videoconference, affirmed and examined

The CHAIR: I welcome our next witnesses. Thank you for appearing before the Committee today to give evidence. Please note that Committee staff will be recording during the hearing. The videos and photos may be used on the Legislative Assembly's social media pages. Please let the Committee staff know if you object to having photos and videos taken. Before we start, do you have any questions about the hearing process?

SIMON HOLMES à COURT: No questions.

The CHAIR: Would either or both of you wish to make a short opening statement before we proceed to questions?

SIMON HOLMES à COURT: Thank you, Chair. I'll make the statement. I want to thank you for the opportunity to elaborate on our submission regarding New South Wales' campaign finance laws. Climate 200 is a crowd-funded organisation, supporting independent community campaigns. While Climate 200's primary focus is at the Federal level, having supported 23 candidates at the May 2022 election—11 of whom were elected—we also supported candidates at the most recent Victorian and New South Wales State elections. At the March 2023 New South Wales election, we supported six Independent candidates as a third-party campaigner. Two were successful: Alex Greenwich in Sydney and Judy Hannan in Wollondilly.

In appearing before you today, we are not here representing any Independent candidate but rather in our role as close observers and supporters of many underdog campaigns. We are here to advocate for a stronger democracy, based on the principles of fairness and integrity, and we are here to advocate for fairer elections. Our aim today is to highlight the major flaws in New South Wales' campaign finance laws that undermine the fairness and integrity of New South Wales' democracy. New South Wales' electoral laws may ensure a relatively fair fight between the two major parties—or, rather, Labor and the Coalition—but the system has practically locked out new entrants.

At a time when the Federal Government is looking at New South Wales for inspiration as it considers legislation to amend Federal election rules, there needs to be a better understanding of the defects in the New South Wales system. New South Wales' campaign finance laws have three main features: high public funding, heavily skewed towards incumbents and parties; donation caps that barely impact the major parties but hold back challengers; and expenditure caps that allow party candidates to massively outspend Independents and exacerbate natural disadvantages faced by challengers. These features unfairly constrain the ability of communities to run candidates who represent their values. These features rob voters of choice.

Let me start with public funding. Over the four years to the New South Wales election—the last election—the Labor Party and Coalition enjoyed a combined total of almost \$300 million in publicly funded benefits and \$26.5 million from the Election Campaigns Fund, funding that the parties get for primary votes—three-quarters of it paid before the election. The fund is so generous that it completely removes the requirement for the major parties to fundraise. The NSW Labor Party collected \$14 million from the campaigns fund for the

2023 election, yet it was permitted to spend no more than \$12.3 million during the campaign period. It's crazy that taxpayers provided more electoral funding to Labor than it was permitted to spend during the election. The parties receive the majority of this funding before the election, a benefit no Independent enjoys.

On top of this generous campaign funding, over the electoral cycle incumbents benefit from \$35 million in administrative funding, \$35 million in communications allowances, \$36 million in electoral allowances, \$165 million in travel and salaries, plus unknown millions for officers. Put together, this system creates a \$300 million wall of public funding—a wall that is almost insurmountable for challengers. Major party campaigns are essentially funded by the public purse. Freed from the burdens of fundraising, campaigns can lock in substantial staffing and communication plans early and focus on the hustings from day one. Meanwhile, Independent challengers start with nothing and receive no publicly funded support throughout their campaign. The only way that an Independent challenger can climb over this financial wall is to fundraise, fundraise, fundraise.

This brings us to donation caps. An Independent challenger starts with nothing, and there are brakes on their ability to fundraise. The candidate and volunteers spend much of their time trying to raise donations within very tight constraints, taking away from their time on the hustings. While it's extremely challenging to amass sufficient funding in small donations from well-to-do seats, it is nigh on impossible in less well-off areas. Perversely, if professional volunteers give their skills to the campaign, this time is capped. Given how this system advantages the major parties, and given how it takes away the hard slog of fundraising and makes it so hard for outsiders to compete, it is no surprise that there are moves to copy this system at a Federal level.

Finally, I get to expenditure caps. Major parties start with a range of inherent advantages. They're backed by well-funded, well-oiled national machines, benefiting from economies of scale, established infrastructure, centralised communication, staffing and knowledge. They enjoy well-established and far-reaching brand recognition and they benefit from voter habits. Much of this advantage is earned—we don't contest that—but we must also acknowledge that this strong position has been entrenched with taxpayer dollars over many decades, whether that be through electoral funding, communications allowances, salaries or pork-barrelling.

With the exception of pork-barrelling, we're not claiming these benefits are illegitimate, only that they need to be recognised as undoubtedly assisting an incumbent's re-election. A community-backed challenger starts out with none of this advantage. To be competitive, they must aim to connect with every voter. If the majority of voters have never heard of them, they don't stand a chance. While nothing beats shoe leather and the hard slog of the hustings, in modern politics it costs serious money to reach every voter. Just to pull even with an incumbent's inherent advantages requires significant expenditure. The tighter the cap, the more disadvantage faced by the challenger.

The expenditure caps in New South Wales fail Independents in three important ways. The design of the cap allows major parties to concentrate the majority of their expenditure on target seats. By averaging the major party's expenditure cap across all the electorates they contest, parties can easily spend five times as much in a priority seat as an Independent challenger. Number two, the caps effectively treat expenditure differently between the parties and Independents. Independents' expenditure items—administration, wages, legal, accounting—all count towards their expenditure cap, whereas for the parties much of this is uncapped. Thirdly, incumbents start the campaign with pre-existing name recognition, media coverage and publicly funded communications. To be successful, Independents must match the incumbent's reach. A tight cap limits the challenger's ability to overcome the party's major natural advantages.

In conclusion, the current design of New South Wales donations, expenditure caps and public funding ensures the New South Wales electoral system is far from a level playing field. It's much harder for a talented, strongly supported community Independent to break through than a party member. The New South Wales system perpetuates the political duopoly, but unlike our supermarket duopoly, it is the duopoly that makes the rules. It's not lost on me today that there is not a single Independent on this Committee. I hope we have explained that the Electoral Funding Act is failing to meet its primary objective to establish a fair and transparent electoral funding expenditure and disclosure scheme, and we recommend an independent inquiry into the design of New South Wales donation, expenditure caps and public funding.

Mr TIM JAMES: Mr Holmes à Court, page 1 of your submission speaks to a range of principles, including "transparency and participation in the electoral process" and "best practice integrity". With those principles in mind, can you please outline with what processes and engagement of how many people under what rules did you choose the six candidates that you would support?

SIMON HOLMES à COURT: Do you want to talk about this, Alex?

ALEXANDRIA RANTINO: Sure, I'm happy to. Climate 200 supports the community campaigns—so campaigns that initiate at a community level. Often in most situations, or in all of the cases, where we supported campaigns, they were community groups who had decided that their local member didn't represent their values and they wanted to find somebody from their local community to represent them. At that point, once they had found those candidates, they had come to us to seek our endorsement or support, and we look at whether those campaigns and candidates' values aligned. Climate 200 provides support to campaigns or candidates that are committed to science-based climate action, restoring integrity in government and promoting gender equity and better outcomes for women.

Mr TIM JAMES: What is the process by which the candidates are chosen for your support, and how is that community backed and engaging of people in our participative democracy? What is the process?

SIMON HOLMES à COURT: We don't choose candidates. Campaigns come to us, and we look to see whether those campaigns are values-aligned, whether they have competent teams behind them that demonstrate significant community support and, lastly, whether they are electorally viable. That's our process. We don't choose candidates. That's up to the committees or the campaigns that are running the candidate.

Mr TIM JAMES: How do you choose? When you say they're values-aligned, who is making the decision? So much of your submission seems to want to go towards more public funding, and yet it seems to me that they're very private decisions that are being taken by a small number of people. Can you try to unpack that for us?

SIMON HOLMES à COURT: Can I just stress that our submission does not call for more public funding. We think that the public funding settings in New South Wales are not well set. We're certainly—

Mr TIM JAMES: No, you're saying that Independents ought to be afforded more public funding in the way that party candidates are.

SIMON HOLMES à COURT: No, sorry, that's—

Mr TIM JAMES: Isn't that the central thesis—

The Hon. ROBERT BORSAK: That's the way it reads.

SIMON HOLMES à COURT: No, that's not in our submission.

Mr TIM JAMES: We beg to differ. Nonetheless, please proceed. I just want to try to get to the heart of the governance and the process.

SIMON HOLMES à COURT: If you could draw me to the section where we ask for more public funding for Independents, I would be keen to see it. Sorry, to your question—

Mr TIM JAMES: Yes, governance and process: How do you choose the candidates, and who is choosing them?

SIMON HOLMES à COURT: We don't choose candidates; we choose campaigns. Campaigns come to us, and we have a committee that looks to see whether our basic criteria are met, as is—

Mr TIM JAMES: Who's doing that?

SIMON HOLMES à COURT: We have a committee within Climate 200 that makes those decisions.

Mr TIM JAMES: How big is the committee?

SIMON HOLMES à COURT: I think these internal processes are not really within the scope of the inquiry.

Mr TIM JAMES: That's your view, is it?

The Hon. ROBERT BORSAK: Mr Holmes à Court, you're supposed to answer the questions. You really do.

SIMON HOLMES à COURT: Well, we have a number of people that make—

The Hon. ROBERT BORSAK: It is within the scope of the Committee to ask you those questions. If you decide not to answer them, that's up to you.

SIMON HOLMES à COURT: Yes, sure. As with any third-party campaigner, there will be a group that is delegated the responsibility to allocate resources. We have such a group.

The Hon. ROBERT BORSAK: Mr Holmes à Court, I've read your submission extensively. Obviously, it's a critique of the major parties. But what you fail to mention is that there are actually smaller parties—not using your terminology of "Independents"—whether it's The Greens, who have been in this place for nearly 30 years, or whether it's my party, that has been in this place for nearly 30 years, in both Houses. Why are they left out? They've managed to be able to form up, get created, get members elected, fundraise within the restrictions. How are they completely left out of your submission? How would they be treated, in your submission, in the future?

ALEXANDRIA RANTINO: Just to clarify, our submission isn't making any critique of the major parties. We've made no contention about whether there's anything wrong with representing a party, whether that be one of the major parties or one of the smaller parties.

The Hon. ROBERT BORSAK: Ms Rantino, with respect, you are doing exactly that.

ALEXANDRIA RANTINO: What we're critiquing in our submission is—

The Hon. ROBERT BORSAK: Your focus only on the major parties impoverishes your submission, in my view.

ALEXANDRIA RANTINO: I'll just finish my point. What our submission is critiquing is the legislation; it's the design of the system. We have a very small team at Climate 200, not very many staff, so we have limited capacity to analyse the impact of the legislation on every type of political actor. But we concentrated our analysis on the impacts on Independents, as well as compared to Labor and the Coalition, primarily because they are the contests that the campaigns that we supported were up against.

The Hon. ROBERT BORSAK: With respect, there are mechanisms with which you could actually have campaigns sorted so that they could work up a party arrangement. Complying with actually being a party in New South Wales is the most difficult in the whole of Australia.

ALEXANDRIA RANTINO: As we recommended in our submission, given we have limited ability to analyse the impact on various entities, that's why we're recommending that there be a further inquiry into the impact of the legislation to make sure that it does create or to assess whether it does create a level playing field between different actors. We think it's really important, the role of—Independents play a really important role in accountability. And it seems really not—I don't think that it's desirable that an Independent should have to form a party in order to be able to compete on a level playing field. Independents are important for democracy, so the rules need to be designed to enable them to compete on a level playing field.

SIMON HOLMES à COURT: For example, prior to the previous election, 75 per cent of the electoral funding was paid to your party prior to election day. Any Independent who was competing against you received no funding at all. We're not at all suggesting that they should receive public funding, but then they have their hands tied behind their back. When you enter into an electoral contest as a party, under the New South Wales laws, you have a significant advantage over the Independent.

The Hon. ROBERT BORSAK: What's stopping them funding themselves?

Ms CATE FAEHRMANN: Chair, I was wondering if other people could ask questions.

The CHAIR: Yes. I'll go to Mr Nanva, and then I'll come to you.

Ms CATE FAEHRMANN: Thank you.

The Hon. BOB NANVA: Thank you for your attendance. I think it's important, just for the sake of accuracy, to clarify something that was said in the opening statement regarding the major parties and the Labor Party collecting more from the Election Campaigns Fund than it was permitted to spend in the statewide campaign. I make the point that I was the campaign director in the last campaign, and I can assure you that that statement—albeit not maliciously made—is not accurate because it doesn't consider the party's expenditure on seat-specific and candidate-specific campaigns.

Putting that aside, the Act does provide a series of mechanisms which have not been addressed in your submission regarding third-party campaigner caps, which will now be close to \$1.5 million, and an uncapped expenditure environment of three years and nine months before you go into the capped period in October. Surely, in your view, those elements would ameliorate the incumbency advantages that you speak of, in that third-party campaigners would no doubt campaign in seats where Independent candidates are more likely to run because there is an organic dissatisfaction with incumbents that's felt across a broad section of the community. Don't those significant third-party caps and the uncapped expenditure environment ameliorate at least some of those incumbency advantages that you've referred to?

SIMON HOLMES à COURT: If there is any significant connection between the third party and the candidate, that would be deemed as in-kind support of that candidate, so we were very careful not to cross any lines there. But also, am I right that what you're saying is that a third party can help level the playing field where they're in a contest? Theoretically, they can. The third party is subjected to the same very tight donation requirements and doesn't receive any public funding, so you would be relying on an entity which has similar fundraising constraints and the similar lack of any funding. Our argument just is that the system—I don't think this is through malice; I think it was purely through oversight that Independents weren't considered when these current arrangements were put in place. The Legislature has set up a scheme where there is a pretty fair fight between established parties but Independent challengers are locked out. They're not funded and then they've got to find their own funding. For that funding, their hands are tied behind their backs.

ALEXANDRIA RANTINO: Just to the point about the impact of third-party campaigners, unless I'm mistaken, the unions can campaign in support of Labor in New South Wales, and there would be other entities that would be campaigning, putting out messages that support Liberal campaigns. Independents are also up against the campaigns of not just their political opponents but also their allies, and so I don't see how the existence of third-party campaigners like Climate 200 makes that much of a difference to levelling the playing field for Independents. But, as you said yourself, there is increasing dissatisfaction with incumbency, and communities are looking to support an alternative. We think it is really important that the system enables those alternatives to compete fairly.

Ms CATE FAEHRMANN: Your submission advocates for truth in political advertising laws similar to those enacted in South Australia and more recently the ACT. However, this Committee has also received submissions by the NSW Electoral Commission as well as constitutional law expert Professor Anne Twomey suggesting that it would be very complicated and there would be some issues with the Electoral Commission being that arbiter, if you like, of what is truth. What's your view on that? The Greens have made a submission to call for the same thing, but what's your view on the concerns being expressed by some about the ability to legislate to do that?

SIMON HOLMES à COURT: I think we don't have to imagine. We don't have to be too imaginative to look at this question when we have South Australia as a jurisdiction that has implemented such laws. We think the existence of the laws and the existence of a process, in and of itself, provides a check on people who may decide to push the laws. We saw in recent days the situation in the Federal Cook by-election where the Liberal Party has put out some misleading advertising that purports to come from The Greens, attacking, which is designed to mislead the voter.

Ms CATE FAEHRMANN: Exactly.

SIMON HOLMES à COURT: In a jurisdiction like South Australia, the authorising officer, I would posit, would think very carefully and would in all likelihood not put out such. Just the pure existence of a process and regulation, we think, would significantly improve the quality of communication and the integrity of communications between parties and voters or between political players and voters in elections.

ALEXANDRIA RANTINO: Just another point is, after the referendum, the Australia Institute did an exit poll on whether voters supported truth in political advertising. From memory, it was something like 86 per cent did, and that was irrespective of whether they voted yes or no. This is something that Australians think it's high time that we have. Considering how much taxpayer money is going to the major parties, I would think that most people, most voters, would expect that that money is used for truthful campaigning.

SIMON HOLMES à COURT: It's very important to realise that most of the funding in electoral matters is coming from the taxpayer, and the taxpayer has very reasonable expectations that it is being spent with integrity.

Mrs SALLY QUINNELL: In your submission you go after the communications allowance of incumbents. I'd like you to elaborate a little bit further on that, considering that a lower House member is representative of in the vicinity of 60,000 to 70,000 people. There seems to be a little bit of an attack there on the spending of money communicating with the people that the incumbent is representing, so I'd like you to please elaborate on that a little bit further. I note your sentence:

Independent challengers do not receive any public funding for communications, relying entirely on donations to promote their policies and credentials.

I'd like to point out that there's difficulty with all challengers against incumbents, so I just would like you to unpack that a little bit further, please.

ALEXANDRIA RANTINO: Yes, you're right, there are difficulties for all challengers. Our submission was focused on Independents because Climate 200 supports Independents, but possibly other minor parties would have the same concerns about how difficult it is for them to compete. Also, just to confirm, in our submission

we're not critiquing whether it's incorrect to have publicly funded communications for sitting MPs. In fact, of course you need to be able to communicate with your constituents on what you're doing while you're in Parliament. The point is that, throughout the entire electoral cycle, a sitting MP or sitting member is able to use that budget to communicate with their constituents and tell them what a great job they're doing, and that's an advantage. You can't deny that that is a financial advantage. Nothing wrong with it, but it means that for an outsider to be able to come and tell that community how great they are, they need to be able to raise money to be able to do that communication. By putting the brakes on their ability to raise that money, the system is making it really hard for their constituents to know that they have a choice.

SIMON HOLMES à COURT: It's absolutely not an attack on the parties, just that it is a benefit that is not recognised.

Mrs SALLY QUINNELL: It's not an attack on parties; it's an attack on sitting members.

SIMON HOLMES à COURT: It's absolutely not an attack. We are not suggesting that it should be constrained. We are just suggesting that it is an advantage that the incumbent gets. Their challengers need to have the ability—in fact, there is a constitutionally implied right of political communication—to get their message across, but don't benefit from that allowance. We're not saying they should have an allowance; we're just saying that they should not be impeded in getting that communication across. If it is tightly controlled and if the major parties do have the ability to significantly outspend—which they do from the poor design of the expenditure caps—then there is an advantage that is conferred to the incumbent.

Mr NATHAN HAGARTY: Given that your submission makes the claim that major parties and incumbents have an advantage here, in the four seats where you backed a candidate who didn't get up, do you think the voters got it wrong?

SIMON HOLMES à COURT: I don't think the voters ever get it wrong. I think that candidates did not have equal opportunity to communicate with voters. The voters don't get it wrong, but when the candidates have different constraints on them, or an uneven playing field, we don't get the best electoral outcomes.

The CHAIR: Thank you both for appearing before us today and giving evidence. You will be provided with a copy of the transcript of your evidence for corrections. I don't think you took any questions on notice, but the Committee staff will supply you with any supplementary questions that the Committee may wish to ask. We also have some indications that some members may supply you with supplementary questions.

(The witnesses withdrew.)

Mr THOMAS COSTA, Assistant Secretary, Unions NSW, before the Committee via videoconference, affirmed and examined

Mr ED YAP, Senior Legal and Industrial Officer, before the Committee via videoconference, Unions NSW, affirmed and examined

Mr DYLAN SMITH, Manager, Industrial Support, Public Service Association of NSW, affirmed and examined

Ms MARIANNE LEDIC, Manager, Campaign and Communications, Public Service Association of NSW, sworn and examined

The CHAIR: I welcome our next witnesses. I understand Mr Morey is an apology. Thank you very much for coming today and appearing before the Committee to give evidence. Please note that the Committee staff will be taking photos and videos during the hearing. The photos and videos may be used on the Legislative Assembly social media pages. Please let Committee staff know if you object to having photos and videos taken. Before we start, do any of you have questions about the hearing process?

DYLAN SMITH: No.

MARIANNE LEDIC: No.

The CHAIR: Would any of you like to make a short opening statement?

DYLAN SMITH: I will, Chair. The Public Service Association of NSW is the primary union within the New South Wales public sector, with 40,000 members working across all government agencies and departments. The PSA is not affiliated with any political party within New South Wales. Indeed, the nature of our work means we are constantly representing our members' interests to the government of the day regardless of its creed or

composition. At all times we are operating in a way that would be defined as falling under the regulatory control of the New South Wales Electoral Act. We note that this explains our strong interest in this legislation today.

Turning to the specific questions under consideration before the Committee, any trade union, particularly one representing public servants, has an intense interest in the conduct of free and democratic elections. The Economist Intelligence Unit ranks 185 nations annually in its democracy audit. There are only 24 nations currently classified as full democracies by that audit and Australia is one of those lucky few. As such, there is an onus on us as the premier State in this land to lead the way on protecting our legacy, and of primary importance to that is eternal vigilance against corruption.

Questions relating to corruption before this inquiry are critical. There are multiple examples from across Australia where property developers intertwine with those either seeking election or serving in office for purposes which are far from being in the public interest. As such, this group should be explicitly prohibited from making political donations. We would also contend that, given the availability of technology whereby any donations are made by an individual or organisation irrespective of size, these should be freely available in real time. This is particularly pertinent in the case of shell companies. Real-time disclosure will assist in ensuring the true source of all donations are identified and available to the public.

In terms of the issue of truth in political advertising in New South Wales, we find it difficult to identify any argument why this should not be a default position. We do not have to dig too deeply to find examples, here and overseas, where voters have been deliberately misled by orchestrated disinformation campaigns that are only finally discredited after the votes have been counted. A full democracy doesn't just rely on a free people but on a free and fully informed public making informed decisions. We fully support the introduction of truth-in-political-advertising laws. Thank you for the opportunity to make a statement.

The CHAIR: Ms Ledic?

MARIANNE LEDIC: I'm fine.

The CHAIR: Mr Costa or Mr Yap, do you have an opening statement?

THOMAS COSTA: No, thank you.

The Hon. CHRIS RATH: Thank you for the opening statement. I was wondering if you could expand more on the property developer donations and the shell companies that you mentioned. How widespread is it, or what sort of problems exist? We already have a ban on property developer donations. Are you saying that it is still happening through the back door through shell companies and that certain developers are getting around the system? How widespread is that problem that we should address?

DYLAN SMITH: I don't know if the PSA is in a position to talk about how widespread it is. It's clearly still an issue, given that our members in ICAC are dealing with matters related to that through local government on, let's call it, a semi-regular basis. The idea that it's occurring anywhere means that it should be looked at in detail and we support continued efforts to address any concerns that are raised.

The Hon. CHRIS RATH: Do you think it's happening with other prohibited donors as well or just property developers generally?

DYLAN SMITH: I couldn't comment.

The Hon. CHRIS RATH: Like people getting around the cap, for instance, or in alcohol or gambling? Obviously, there's a range of restrictions within the regulations at the moment. Property developers is one of them, but do you think there are other groups out there trying to get around the regulatory regime through shell companies or through some other mechanism, or is it just property developers?

DYLAN SMITH: I'm sure there probably are in a lot of fields.

Ms CATE FAEHRMANN: This is a question for Unions NSW. Your submission states that some of the administrative burden of recording expenditure can be quite cumbersome for unions—and for political parties, in fact—and you make the example of social media content. Could you just expand a little bit for the Committee with that example? Why is it so burdensome and what do you think should be done about that?

THOMAS COSTA: Certainly. We have quite a long history of experience campaigning in State elections and most recently in the social media environment, where it's increasingly important to be able to campaign online to get your message out effectively. The area that we're referring to in the onerous burden in reporting about that is that the requirements for us when we have to disclose how we have campaigned using social media requires that we essentially copy out each social media post that we have used and send that to the Electoral Commission but then also attach to it the resources that we used in doing so.

You can imagine in a campaign where hundreds of posts are being put up in real time across multiple online sites but also geographical locations, compiling those—having a list and itemising all of them—is quite an onerous activity, particularly for an organisation like ours, which is a small not-for-profit organisation. We are not officially a not-for-profit but we don't operate with a profit. Also, we only have a complete staffing level of 20 people. Our comms team is three people and our financial and administrative team is only three people, and they are the people responsible for compiling this disclosure. So it's an extremely onerous burden upon us.

We are not a political party. We are a campaigning organisation that spends most of our time campaigning outside of elections in an industrial environment, where we do not have to disclose or do this type of disclosure. It's not something we are set up to do on an ongoing basis. We essentially only do this type of disclosure when we participate in election campaigns, so we don't have an ongoing resource to do it. Another complicating factor that we've found in having to disclose around social media but also more broadly our campaigning activities is often, in our experience, that getting a clear direction from the Electoral Commission about questions about what needs to be disclosed and how is very difficult.

The commission has, at times, given us advice that has been wrong, and we've outlined that in our submission. At other times they've just refused to give us advice on what the legal requirements are. It's not just that we want a simple repeat of the law; it's when the law has been confusing or is new and unclear. The Electoral Commission has failed to be able to give us that advice or train our team in how to do that. We get very little support even from the regulatory body that is tasked with administering these laws, which makes it also more difficult because we take, then, a very, very extreme risk-averse approach, because we are a sophisticated campaigning organisation. We've been defined like that by the regulator in the past so we do not want to fall foul of these laws at any point. We want to be a best-practice campaigner and we want to be a best-practice legal actor in these matters. The failure to have a regulator that can instruct us when the laws are confusing about how to apply them is a problem for us.

Ms CATE FAEHRMANN: You're clearly talking about every social media post. This isn't paid advertising, in terms of reporting it. It's everything you're doing. It sounds like a potential solution or recommendation for this would be the Electoral Commission to have increased funding to be able to be the monitors of third-party campaigners and for political parties to do that themselves, potentially, as opposed to every organisation having to do it. As you said, every single post does sound ridiculous. Would that be something that would resolve the issue somewhat?

THOMAS COSTA: Yes. We would support increased funding to the regulator. That would alleviate some of the burden that we have in terms of having to self-disclose. I think anything that would assist us or assist the regulator in being able to monitor what we're doing and lift the burden of us having to self-disclose ourselves would assist. It is the interaction between us having to disclose the post but also the costs in developing the post that creates some of the onerous nature of it. Something more general would be, "You have spent X amount on social media," as opposed to on each individual social media post.

That would also be something that would assist and something that would reflect the reality of social media campaigning in this day and age. It's no longer like in the old days of campaigning where you take out an ad in a newspaper—you might do that three, four or maybe 10 times during an election—and you can print off each of those and then write next to them how much you spent on that advertising. That wasn't a very onerous exercise and we were happy to do that. It is not like that anymore. Printing off every single social media post that you put through a campaign and then having to cost it is just not a realistic ask in this environment.

The Hon. BOB NANVA: Flowing on from the question that Ms Faehrmann has asked, for the PSA, one of the core regulatory priorities for the Electoral Commission is support and guidance for electoral participants. How was your experience in that regard?

MARIANNE LEDIC: There are a lot of rules that you've got to follow. I completely agree with Thomas, that sometimes it gets very tedious and we really have to monitor everything we do to the last cent and you have to prove it. It does get tedious. It's not just the social media aspect; it's on every single thing that might even be considered that you are campaigning, when it could be actually our normal day to day. From October, when we start to monitor and record all the money that we're spending, half of the things are what we do in our normal day-to-day business. So we just have to put that forward.

I contact personally the staff there. Sometimes it's easy; sometimes it's not. When we did our submission for the costings, they were actually quite helpful where I missed something somewhere by accident. They didn't make it tedious for me there. But it is hard on them too. You can see that they've got to do all this work too. One thing that was really interesting this time was, last election, we supplied the staff that were working as part of that campaign, their monetary value of how much was spent, what they were doing—you know, if we were down at a train station handing out flyers. It had to be part of the money spent.

This time we still had to supply that, but it wasn't part of the money spent. So that was a little bit, "Why are we doing this?" We do what we're obliged to do, but it does get really big because these days social media is a different platform to putting an ad out in the paper, even on radio. We even had to go down to the point that for anything we did on radio, you had to tell the time and how long it was and how much it cost. We had that information because we're experienced campaigners and organisers, so we know what we have to do. But some of it is, "I don't understand why we're doing this." If this is everything we're doing, we literally have to go down to the minutiae, so it's interesting.

The Hon. BOB NANVA: It's a complex area of law.

MARIANNE LEDIC: Yes, I understand that.

The Hon. BOB NANVA: There are a lot of ambiguities about what may or may not be electoral expenditure.

MARIANNE LEDIC: Yes.

The Hon. BOB NANVA: When you have acquired guidance from the commission or resorted to guidance material from the commission, have you found that to be satisfactory or a bit wanting?

MARIANNE LEDIC: It depends on what it is. I've got the brains trust, so we sit down and we go, "Okay, what is it?" So I guess it's not that straightforward. We are just very prepared to be on top of it, but it needs to change. It can't stay the way it is.

The Hon. BOB NANVA: Are you suggesting that part of your day-to-day industrial activity, there can be a question mark about whether you need to allocate that, to some degree, as electoral expenditure during the cap period?

DYLAN SMITH: That has been our experience over the past at least two election cycles, where there will be ongoing debates within the staff around exactly what we need to be declaring. Are we declaring the whole of the vehicle expenses for the day that the organisers spent out there, even though they're only spending three hours on campaigning duties and the rest is their standard duties as an organiser? What level do we need to claim their salary as part of the cap? The cost of the vehicle—as I said, all these different things that you've got to really dig in. There have been times when you've gone to the commission and you haven't got that assistance. We've obviously taken the view that we have to declare what we believe to be correct, and it takes a lot of time. It really does. When you're talking about an organisation which is set up to campaign for a four-year cycle, suddenly, for six months, the rules change. It's difficult to adjust the way that we are set up to deal with that.

The CHAIR: Can I ask what you would recommend that may assist to overcome that problem, if anything? I'd ask Unions NSW as well. If you don't have a proposal immediately, maybe you'd care to take it on notice.

DYLAN SMITH: I think at this point we need to declare that the members of the Electoral Commission are members of the PSA. Clearly, additional staffing—additional experienced staffing—and support for them would obviously assist them in assisting us and all the other political entities that are participating in the election.

The CHAIR: Does Unions NSW have a view?

THOMAS COSTA: Yes. I will take the question on notice and answer it partially as well now. We do support additional funding for the commission, and we also support an increased role for the commission to provide training and advice on how organisations can best comply with the legislation, particularly in areas where the legislation might be newly amended or unclear. It has been, as I said earlier, our experience that currently we haven't been able to get that type of training and information to a level that's accurate enough for us to be able to have an understanding of the Act. As some of the others have said, we do often also have debates internally about how we are going to interpret the legislation. I'll give you one quick, real-world example.

We are an ongoing campaigning organisation. The majority of our campaigns are not electoral campaigns. We have a campaigns team and a campaigns lead. The lead and the campaigns team would meet every week on a Monday morning. During an election campaign, we've had to debate whether the supervisor's time, the lead of that team, is costed as being part of the expenditure on the campaign. The reason for that is it's not clear to us whether that supervisor's role is just ordinary business as usual, supervising their team—which they do all year round, every week, whether in an election or not—or if it is now specialist campaign expenditure because they happen to be supervising the same team that is working on the election. It may be the case that we are just over-disclosing expenditure that isn't actually additional expenditure that we've incurred for this election; it's just ordinary business as usual. But it's not clear to us which way we should go on that under the legislation, and the Electoral Commission has not been able to give us clear advice about that either.

The Hon. CHRIS RATH: To Unions NSW, at the 2023 election, did your organisation or your members give any political donations to any political parties or candidates outside of the Labor Party?

THOMAS COSTA: We are a peak body. We represent a number of unions who are affiliated to us. We don't have direct members as in the way of union members. Our affiliates have union members. It would be almost impossible for me to answer that question in any accurate detail, to know whether—

The Hon. CHRIS RATH: Sorry, I meant the unions that are affiliated to Unions NSW, not the individual members of each of those unions.

THOMAS COSTA: Again, it's also a question that I'm not able to answer because there is no obligation on our affiliates to disclose to us who they donate money to or whether they donate money or not.

Mr TIM JAMES: What about Unions NSW itself? Did it contribute a cent to any party or candidate outside of Labor?

THOMAS COSTA: I'm happy to take that question on notice. I don't have that information in front of me.

Mr TIM JAMES: Thank you. That would be helpful.

The Hon. CHRIS RATH: I suppose this is to both but probably more to the PSA. In terms of the truth in political advertising laws, how do you think it should work or how do you think it should be structured? What are some of the problems that you're trying to fix? You mentioned some in your opening statement. If you could expand on that, that would be helpful.

DYLAN SMITH: I think the South Australian laws are in their infancy. I noted the comments of the previous witness talking about how it appeared to be a very difficult process to put into place, but being difficult doesn't mean it shouldn't be done. I don't think that we have a clear understanding of how the laws work, so I won't comment on the models that are out there, but we do believe it is something that this Government should attempt to be creating and putting into place.

The Hon. CHRIS RATH: Fair enough.

The CHAIR: In that, who do you think would be best placed to regulate truth in political advertising? I put this to both Unions NSW and the PSA, because it's an issue.

DYLAN SMITH: We're happy to have a considered talk about that and maybe answer that on notice.

Ms CATE FAEHRMANN: Can I jump in on that matter as well. With this whole debate around truth in political advertising, there's a bit of a nuance in relation to this. I think part of the issue is that, yes, it's tricky having an independent arbiter to assess whether one political party's claim about another's policy is factual or misleading or a lie. But then there is deliberately misleading voters by—I'll use the example in Cook again—a leaflet being distributed by the Liberal Party that, for all intents and purposes, is supposed to look like it's a Greens-distributed leaflet. It's got The Greens branding; it looks 100 per cent like a Greens flyer. That is deliberately misleading. I would think reasonably—

Mr TIM JAMES: That's your allegation, with all due respect. You contend that it is, but you can't say it's a statement of fact.

Ms CATE FAEHRMANN: I mean, we can table it. As a Greens MP, I looked at it and thought it was ours until I read the text.

Mr TIM JAMES: It's a statement of opinion, let's just be clear.

The Hon. BOB NANVA: Point of order—

The CHAIR: How about we just put the questions to the witnesses?

Ms CATE FAEHRMANN: This is a typical Liberal Party dirty tactic that they are—

Mr TIM JAMES: You're putting it as fact, and, clearly, it's not fact.

Ms CATE FAEHRMANN: It's flattering, considering you think The Greens are such a risk in Cook that you did that. We'll wait and see. There's a sliding scale, isn't there, around having something like that? There are signs that obviously look like Electoral Commission signs—that has been dealt with, I think. Do you have any comment on that? I think the fear is that it's around ruling on policy and whether it's truthful or not. There are a whole range of issues in relation to ensuring that we do have political truth in advertising—and at elections, not just advertising, actually.

DYLAN SMITH: Sure. The devil is in the detail, isn't it? But it has got to be something that is worked through. I don't think that any regulatory body that has been created was ever easy to set up and develop. If we take a purely New South Wales example, there have been multiple changes made to NSW ICAC over the years to attempt to fix errors, or perceived errors, in the way that it operates. But step one is to make the decision that that's something that we need, that it's a body that we need, and then there needs to be a discussion about how that is set up to ensure that it meets the requirements that it has been set up to do. As most things in democracies, that's going to be a constant discussion as it goes forward.

The CHAIR: Does Unions NSW have a comment on that?

THOMAS COSTA: It's a question we'd like to take on notice. We haven't made a submission about truth in advertising, and it's something we'd like to look at in some more detail. I do share some of the concerns that were raised in the questions.

The CHAIR: Sorry, Mr Rath, I'm aware I interrupted you during your question.

The Hon. CHRIS RATH: That's okay, I don't have anything else.

The Hon. BOB NANVA: Some evidence has been provided to the Committee and submissions have been made regarding the role of donation caps and expenditure caps on entrenched incumbency of major political parties and incumbents. You may not have a view on that at all, but do you have a view, as electoral participants or third-party campaigners, on those concerns that have been raised? It's okay if you don't.

THOMAS COSTA: We definitely have very strong views about it. Before I start, I apologise for the balloons that keep popping up on our screen. I have no idea how that happens.

The CHAIR: We were taking it that you were satisfied with the response.

Mrs SALLY QUINNELL: Yes—thrilled, actually.

THOMAS COSTA: I assumed that it was a special button the Chair has, and they press it when you answer the question.

Mr TIM JAMES: I didn't get any balloons.

The CHAIR: That proves it! Please proceed, thank you.

THOMAS COSTA: We have had an opportunity to have a look at some of those other submissions that describe the incumbent advantage that major political parties have, and it's definitely something that we agree occurs. It is an advantage that third-party campaigners like ourselves do not have, and it places us in an inferior position going into a campaign. It is a reason why in the past we have fiercely defended the right for us to not have our expenditure capped, or our ability to act in concert with other unions, other community organisations or any other organisation in campaigning—because of the fact that if we are not able to do that, we just cannot get our voice out in equal measure to those incumbent major political parties within the political system.

The CHAIR: It looks as though you've satisfied the Committee. I note that you've taken a number of questions on notice. Thank you for appearing before us today. You'll be provided with a copy of the transcript of your evidence for corrections. Committee staff will also email you any of those questions that were taken on notice from today, and members may have supplementary questions that they will put to you as well.

(The witnesses withdrew.)

(Luncheon adjournment)

Mr IAIN WALKER, Executive Director, newDemocracy, affirmed and examined

The CHAIR: I welcome our next witness, Mr Iain Walker. Thank you for appearing before the Committee today to give evidence. Please note that Committee staff will be taking photos and videos during the hearing. The photos and videos may be used on the Legislative Assembly's social media pages. Please let Committee staff know if you object to having photos and videos taken. Before we start, do you have any questions about the hearing process?

IAIN WALKER: No.

The CHAIR: Would you like to make a short opening statement before we begin questions?

IAIN WALKER: Thank you, yes.

The CHAIR: Please proceed.

IAIN WALKER: Thank you for the opportunity. NewDemocracy essentially is trying to solve one problem: We think there's a gap between public opinion and public judgement. Public opinion can constrain elected representatives and, if you give people a chance to think, our five-second view and our 40-hour view are often different. I have a self-interest, which I want to put openly on the table. We exist to prove a point, and the point simply is that juries of citizens operating alongside elected representatives can be a productive innovation in the democratic system.

The analogy I'd love you to have in mind is that judges find juries complementary; they get given a clear and separate role. Can we see the same thing for our elected representatives? I wanted to start today with a simple anecdote. We often conduct workshops for MPs to give them familiarity with what we do. In one of these workshop trips, we had a number of members of the New South Wales Parliament, and conversation turned to political donations. Those members included Michael Daley, Scott Farlow, Tamara Smith from the Greens—I'm going to forget people and get in trouble—Adam Crouch and a group of MPs. They posed this problem.

They said, "The political donations system as it is involves me going to far too many fundraisers of an evening, and it exposes me to unlimited risk because I sit with people screened by someone else that I have no idea about, who can then take a social media photo and say, 'The member suggested we should invade China'. We do all this for a comparatively small amount of money and make most of the public hate us into the bargain." So our starting point was, if the view of this Committee and the wider Parliament is that the donations system today is not loved by elected members and is possibly not loved by the community, do we start to look at a different approach?

Our position to you, hopefully, is one of empathy. It's a tough job. How do we get people over that barrier of public trust—over that instant scepticism? We think it's by sharing the problem and letting people realise how difficult it is, and having them answer one question: How should we fund election campaigns? We think it's not a question of a technical decision and that there's no one right answer; there's simply an answer that the community trusts. If you are to take that view, the best way of finding out what an informed, representative sample of the community looks like is through a citizens assembly or citizens jury mechanism. We've outlined enough in the background paper, and that was the contention I was hoping to put before the Committee and explore with you today.

The Hon. CHRIS RATH: It's a very interesting concept. How would the citizens assembly be elected? Who would determine who's on the assembly?

IAIN WALKER: In our method, we use two-round lottery selection, and I won't make this excessively technical. We take the largest available database. We commonly use Australia Post, who keep a record of everywhere they've delivered mail. We have tried the electoral rolls; they're not especially accurate. You'd send out around 50,000 invitations across the State, and around 10 per cent of people will say, "Yes, I can give you the six weekends that are needed to explore this topic." After that we do a second-round random selection.

Stratified random selection is a way of doing a random draw that broadly follows the census profile for the State—so fifty-fifty by gender, follow 10-year age brackets and then, commonly, we ask people if they own or rent where they live, because it's a very good surrogate indicator so that we get blue collar, white collar and no collar, different backgrounds et cetera. With that, you end up with a microcosm of the State. That's how we approach the random lottery selection.

The Hon. CHRIS RATH: So you've got a broad representation of different demographics, ages, professional backgrounds and things like that.

IAIN WALKER: Yes.

The Hon. CHRIS RATH: Just for my own curiosity, have you ever looked into the Swiss model—the citizens-initiated referenda? They have this democratic system over there that seems like democracy on steroids. I was wondering if you had any thoughts or views about that.

IAIN WALKER: Yes, we look at any option for how we can restore greater trust in public decisions. If it's of interest, we've actually published a note on what's different about Switzerland that you may look at. To directly answer your question, we think citizens-initiated referenda are a poor idea because of that public opinion/public judgement gap. It's much better to give 50 people an immersion in the topic rather than 100,000 people a five-second response.

I would suggest that if you and I were to have a fabulous Bruce Lehrmann-esque night out at one point and end up in front of the courts, we wouldn't try to poll 100,000 people on our guilt or innocence. We take a random section of 12, expose them to diverse and contested evidence and ask them to find common ground. That's the structure. We're trying to replace opinion with judgement. The specific answer of why Switzerland has such high levels of trust is a technical one. They spend the highest proportion of tax dollars at a small population level. If a canton is 200,000 people, about 88 per cent of your taxes get spent and people can directly see it. We think it is unrelated to the direct democracy elements.

The Hon. CHRIS RATH: One issue that often comes up, and it's probably not so much about the 2023 State election but a broader point probably more to do with councils, is whenever it comes to new developments—so new housing, density et cetera—there's always a demand for more community consultation. People want to be included in terms of what it looks like and where it goes. Do you think that could be part of what you're suggesting as well? Because sometimes when it comes to, for instance, objections to a planning development that could go to a council, you might only get three objections. It doesn't seem particularly representative of the broader community, with such a low turnout. Is that something that could be looked at as well?

IAIN WALKER: Yes, there is an application. You've hit the operative point, which is that there's a vast difference between self-selected contributions and a representative sample being offered a contribution. As a simple analogy, if you say, "I'm building a tower—comment", you hear from the people next to it. If you take a cross-section of the community and say, "How do we add 5,000 dwellings over the next 10 years?" they will solve the problem by weighing the trade-offs. I can give you a longer answer, but I don't want to stray too far off topic for today.

The Hon. CHRIS RATH: Maybe we will come back to it later, if we've got time.

Mr TIM JAMES: I note that you made this remark in your submission:

New South Wales has arguably the country's most stringent regime – one that would be among the world's most well-regulated and respected.

I'm trying to reconcile that with where you go later, in which you basically say that it needs to be turned on its head and it's seemingly broken. I'm not quoting you there. Help me to understand: Is the present system so flawed, from your point of view, that it needs to be rewritten in such a wholesale manner? Because you seem to be saying that it is respected and is effective regulation and would be well regarded around the world. I'm just trying to reconcile your two positions there.

IAIN WALKER: Thank you for the question, because it's very fundamental. Our reason for taking that position is what is the measure of a good campaign finance regime? Technically, yes, New South Wales is far more robust than many other jurisdictions. But by the separate measure of public trust, I think the number is considerably lower. It's a case of which is the more important metric? Arguably, public trust and confidence is. You could have a more flawed regime, and if 90 per cent of the people go, "We have a totally fair approach to this in New South Wales," then arguably that is a better system. Hopefully you're following my point here.

Mr TIM JAMES: Yes.

IAIN WALKER: By a public trust measure, your mechanism of finding it is actually impairing it. You may end up with the same regime through a jury scenario. We had this once where citizens reviewed, in this case, an entire council budget and actually came back and said, "It's entirely fair enough and we trust it." The simple act of letting 40 to 50 people pull it apart for three to four months actually adds to public trust.

Mr TIM JAMES: You seem to be centred on the question of public trust and how much that is fuelled by, or driven by, matters of electoral laws, which are obviously our focus for today. I think it's arguable and hard to establish. If you've got some studies or evidence or that which would point to that—I think public trust in this institution, in us as members, is fuelled by many, many factors, many of which would be well beyond matters of electoral law.

IAIN WALKER: Yes. You're right. There are many, many factors. We appear today because donations can be a hot button topic, and it's one step among a number that you can take.

Mrs SALLY QUINNELL: The question that came to my head straightaway on reading your submission was—quite a few submissions have spoken today about the difficulty of the community understanding the process of elections and things like that. How would you explain in that very first random letter to get to all the different types of nuance of what's required from people, but also translations and getting through to the varied groups that would be randomly chosen, whether that's people with intellectual or physical difficulties or people of a multicultural background whose English might be sporadic, even if it's just their seventh or eighth language? How could that be possibly dealt with with an initial letter so that we manage to get that true, random representation?

IAIN WALKER: I have a four-part answer to your question, and the four parts interact with one another. Firstly, it's the pressure on the remit. When we ask a question, it needs to be immediately resonant to people's lives. The first trigger is to make that connection to say, "This matters to you." An example may be when we did a budget balancing project for City of Melbourne. They had been asking people, "How can the city continue to excel in financial sustainability while being the world's most liveable city?" No-one cared. We asked people, "How can we live within our means?" The question is immediately resonant. So part one is how you frame the question.

The second part goes to depth. People engage when they feel they're being listened to, so pre-agreeing authority. "Your work will be formally responded to by the committee in substance. You'll get an answer in 60 days and an audience for an hour." It creates an incentive for people to take a closer look. The third part is it is an incredibly complex topic. Our projects run on deep information kits. There's this phenomenon called rational ignorance. We all have superannuation accounts. No-one follows a superannuation inquiry because you're one of 17 million voters. Are you going to bother? When you're one of 40 or 50 and you know you'll be heard, the incentives to read and learn go through the roof.

The fourth part related to minority groups. Firstly, we've run about 32 demonstration projects now. We found they're accessible particularly for people with disabilities because it's fixed schedule and because there are pre-written materials, so deaf, blind and mobility challenged people do well. We haven't found skews in the ethnic background of people. To the specific element where there are minority voices, which can simply get missed in a random lottery, information provision falls in three pillars, a point provided by the commissioning government entity.

Then you have an active stakeholder group, where you might say, "Who are the voices I definitely need to hear from?" They get given the chance to contribute information. As you would've seen in the document, our principle is diversity of sources. Here is a position from the electoral matters committee or the Parliament. Here is a position, feasibly, from many of the other groups who might have appeared today, but you might complement that and say, "There are specific groups of quite small groupings that are hard to pick up. We want you to make your case to this jury of citizens." To torture the courtroom analogy, you're calling them as expert witnesses to make a case to the jury.

Mrs SALLY QUINNELL: What you've just described is exactly what we're doing here. We've asked for submissions from stakeholders. We've asked for everyone else in the community to contribute if they wish. Except for the fact that we're all here, understanding that jury duty only works because jurors get paid, what remuneration would there need to be to have people actually turn up and it be worth their while to give up—say it's a Saturday—Saturday soccer, family commitments, community commitments or work?

IAIN WALKER: We average \$120 to \$140 for a daily juror payment, so \$600 to \$800 for a project across 40 people. It's a \$32,000 part of the project cost. The broader response is criminal juries skew low. People who try to get out of it do get out of it—small business owners and so on and so forth. Our initial projects skewed high. There were too many university-educated people. That's why we asked people if they own or rent where they live. It's a fantastic surrogate indicator for income and education.

Your starting point is yes, committees are deliberative in nature. We just want to scale that. It would be taking the submissions that have already come in. It would be taking the work you've already done and getting 50 people to actually read it. Commonly in committee appearances in different parliaments, members will note that the galleries stay pretty empty. All I'm trying to create is an incentive for regular people to actually get into the same depth of the issue and the challenge as you have.

Mr STEPHEN BALI: I'm going to take you on a different tangent, especially being the new Democracy Foundation et cetera, and talk about democracy. About 12 months ago there were changes in the rules about club directors being able to participate in the electoral process. We outlawed clubs, quite rightly, donating money to

political parties et cetera. The Government—well, all sides of the political fence were looking at the new rules in relation to gambling et cetera. We put the clubs in the same category as developers.

I can understand why we don't want to take money from developers and clubs et cetera, but clubs are also community based. A lot of them come from either an ethnic background or a sporting background and may have some poker machines. A lot of them could be in RSL clubs. There are some gigantic ones; there are a lot of small ones. The crux of my question, with that elaborate introduction is: Do you feel that excluding club directors from the political process is impinging on their democracy? Have our laws probably gone too far in excluding club directors from being able to get involved in the political process, if that makes sense?

IAIN WALKER: It makes sense. The question is a little outside of my sphere of expertise. The best answer I can give you is that the process of excluding can become a whack-a-mole game of who is the next—like, where do you draw the line? Where do you stop and in what form? So I think therein lies the challenge. What you're really touching on is how reforms like that get enacted—and we don't have a pro/con view. We're about process. Whatever the actual regime is at the end, we don't take a view on.

But I would suggest to you that the reason that was done was because of some kind of community discontent, "This doesn't look good. This doesn't feel good for our democracy," and hence the point I'm arriving at, at the risk of being a one-trick pony: Imagine if citizens looked at that across 40 hours in three months and they start to weigh it up. If a decision was perhaps made with regard to optics, this is where we get into the public opinion view and judgement view can be vastly different. I wouldn't forecast what that is in an area regarding exclusions around donations.

Mr STEPHEN BALI: But as far as club directors, who are part of the community—and we're talking about citizens' juries et cetera—technically, you would be excluding them from the citizens' jury just because they are a club director.

IAIN WALKER: In our case for our lottery selection, because we are picking bigger groups—40 and 50—they don't know one another. So the potential for a negative impact from someone with an active interest getting drawn, firstly, is statistically very low. But we have a concrete example that may entertain you; you can live through the stress of my day. We did something for Premier Weatherill in South Australia. We sent out 20,000 invitations; we got 2,500 RSVPs. We did a second-round random selection and then we picked the head of communications for the Opposition leader. Sometimes the first two lotto balls out will be one and two. It stood. For those who want to take a look, you can google "Daniel Gannon citizens jury" and see the media that related.

Two things happened. Firstly, when you put one person with an acute interest in a pool of 43, people are smart enough to work through that and figure it out: You have a point of view. They can adjust; they apply critical thinking to work through that. On our invitations, to get specifically to it, we only choose to exclude people in paid political employment. In the event we were to pick—if you were to like this model and say, "Let's look at a jury for political donations," our methodology is we would submit you some advice, but we wouldn't start from excluding many of the banned categories. They're part of the community. Let their voice in the room and trust the remainder of the group to address it how they see fit.

Mrs SALLY QUINNELL: Does that include incarcerated people?

IAIN WALKER: I've actually never had that question before.

Mr STEPHEN BALI: That takes it one step further.

IAIN WALKER: We run an in-person methodology, so I don't know how to get them out.

Mr STEPHEN BALI: That's a good point.

Mr NATHAN HAGARTY: You also said you don't use the electoral roll. Is there an issue there with picking people who might be permanent residents or, effectively, non-citizens who can't vote and them having a say? A fundamental principle of our democracy is that only citizens can vote.

IAIN WALKER: We've never done a topic specifically on campaign funding where that's an acute issue. The designs are bespoke, so we could include that as a criteria—that you are an enrolled voter in New South Wales. We're a research foundation, so we've tried to A/B test lots of different methodologies. When we've used the electoral roll in three different places, we got return-to-senders of 25 to 30 per cent, which was like, "That's horrifying." To give you a complete answer to your question, you can buy named address databases and unnamed. The unnamed one performs better.

You know yourself if you get a letter and it says, "To Mr Smith," and you're like, "I'm not Mr Smith," out it goes. If you land something and it's, "This is from the committee. We're doing an inquiry," people will take a look and it can say simply, "To the resident there." Yes, in budget setting processes, we have not drawn a line

between people enrolled to vote and citizens and the community, because people are contributing. We are agnostic on that, unless there is a specific project reason to draw a narrower criteria.

The CHAIR: One of the issues that we've been asked to explore is truth in political advertising. I was wondering if you could speak to that and how your process might be involved in that topic.

IAIN WALKER: Certainly. Again, the starting point would be—it's a subjective decision and, as politely as possible, there's an inherent poacher-and-gamekeeper dilemma that the public see. So the fundamental way a jury would address that is people would look at them and—it's the "people like me" test. It's, "Look, there's a carpenter, a childcare worker, a taxi driver and a dentist in the room"—which goes to the member's question earlier. I would suggest to you that if you came up with a regime and, operating separately, 43 citizens we pick at random and hypothetically they were identical, because it came from a jury of citizens, our position is it would earn greater public trust. Therefore, if you can do the two together where you're integrated, you can get a more trusted decision. The topic would work.

The CHAIR: How specifically do you think it might apply to issues associated with truth in political advertising?

IAIN WALKER: We would literally pose a question like that. These projects operate on five principles. The first part of the advice is, "Point me to the hardest part of the question." In your question to me, you did: How do we manage the need for truth in political advertising? We ask an open question. It doesn't lead and pre-suppose a response. In this instance, the committee—and potentially the Electoral Commission or any other body that you nominate—would say, "Here's a baseline of information to know what has been attempted before, potentially why it has failed and where things have tripped up on High Court constitutional grounds. Here's what's done in other jurisdictions."

The fundamental of this is that 40 or so people, if we put 200 pages in front of them, have a huge incentive to read, not just react. I don't want to design a project on the fly, but in approximately a three-month project, pitch a meeting once on a Saturday every three weeks—we would ask people to explore that topic. The only prompt they get from us is a template that says "Recommendation, reasoning, evidence" and they would return with an eight- to 10-page self-written report that shows you where they have found common ground. The last part is critical: This is not an individual-poll activity; this is, as a group, what can more than 80 per cent of you agree to and stand behind.

Mrs SALLY QUINNELL: What duty of care—and who would have that duty of care—is present for the jury members or the assembly members regarding any repercussions that come from decisions that they suggest or predict? I'm just reading the example in Ireland. I could envisage that there would be some very strong opinions on what had come out of that, and it was initially very—it faced criticism. I suppose where I come from is: What safety provisions are there for committee members to then stand by the ruling that their committee came through and protecting them? Elected officials go into it with their eyes open; you know what's coming into that. I'm just concerned that people might be put in undue situations.

IAIN WALKER: Thank you for the question. We've done some very controversial topics. Firstly, we handle the recruitment, so everything comes through us. And, in a lovely way, we don't disclose their names, addresses, backgrounds or anything else. It's a public trust element: You meet them on the first day when everyone else does. Part of the related reason, which goes to your question, is the recruitment spreadsheets are thus beyond FOI. We don't disclose any other details about them. When people arrive for the meeting, yes, telling the story is part of it; the media is part of it.

We have a two-stage trigger for how this is handled. Firstly, people can opt out of any form of photography entirely, and physically it's low tech: We put red dots on the name badges and simply tell the media to shoot away from them. As a rule of thumb, 80 to 90 per cent of people are totally happy, and there will always be 10 per cent of people who simply don't want to be involved. As the process unfolds, yes, it's something we have to scale. It's nice to do 40 people, but it's about seven million other people outside. We can show you an example of how these have landed in the press.

Fundamentally, we ask people, "Do you want to appear?" We try to do them in groups of three and four, so we group and cluster them. The combination of not revealing addresses, of protecting people from photography and the last trigger tends to be—groups with a strong active interest tend to attack other groups with a strong active interest, and media outlets tend to attack groups they don't like. Lay people outside the system, because it's by definition temporary, have never really drawn that kind of attack. We did nuclear waste storage as a topic and I got 150 things delivered to my home, but we never saw an attack, or anything sent or corralled to a juror.

The CHAIR: Thank you for appearing.

IAIN WALKER: Thank you for the opportunity.

The CHAIR: You'll be provided with a copy of the transcript of your evidence for any corrections you wish to make. I don't think you took anything on notice today, but members may have supplementary questions and they will be forwarded to you from the Committee secretariat.

IAIN WALKER: On the off chance, because the one question that didn't come up related to legality and the High Court related to donations, we have done a piece of advice. I'm not sure if you would like to consider that. I will leave it there as a reference.

The CHAIR: Thank you.

(The witness withdrew.)

Mr PETER DOUKAS, OAM, Chair, Ethnic Communities' Council of NSW, sworn and examined

The CHAIR: I welcome our next witness. Thank you for appearing before the Committee today to give evidence. Please note that Committee staff will be taking photos and videos during the hearing. The photos and videos may be used on the Legislative Assembly social media pages. Please let the Committee staff know if you object to having photos and videos taken. Would you like to make a short opening statement?

PETER DOUKAS: Briefly, Chair, thank you. The Ethnic Communities' Council has been around for 50 years and is the peak body representing multicultural communities in New South Wales. We've welcomed the opportunity to make this submission to the Committee regarding the administration of the 2023 New South Wales State election as it pivots directly from the project that we had initiated that was subsequently picked up by the Australian Electoral Commission, known as Vote Talk, to engage with some of our larger and key constituencies with regard to Australian democracy and the process of voting in this country. I am grateful to the Committee for the opportunity to present our findings and the work that we've done.

The CHAIR: I'll now ask if any Committee members have questions. Mr Rath?

The Hon. CHRIS RATH: Maybe if you were able to expand on Vote Talk: What is the project, where is it at and how much funding is required?

PETER DOUKAS: The easy answer is that we never have enough funding. In our engagement with our community members, we found that there was a lack of understanding of Australian democracy and our democratic institutions—what the Americans solved by having civics classes in their schools. It translated into different kinds of political engagement that sometimes stemmed from a lack of understanding and often needed direct attention because there was sometimes a transactional approach to political engagement or political interaction—not necessarily party political but engagement with the electoral process. We developed a program to address that by having community conversations, or consultation through conversations, in cafes or in social settings or in community events through our bilingual educators—so, basically, the lowest common denominator and the easiest possible way to engage: to just talk on a non-partisan basis about the way our political system and our electoral system works.

That evolved into a much larger project than we had initially thought. We were engaged by the Electoral Commission to work on a smaller scale in the Federal election in 2022 and on a larger scale in our State election last year. It has continued to grow. If I can go into a specific example, during the debate around the Indigenous Voice to Parliament that occurred the ECC took a very careful approach in being a community advocate but not necessarily advocating for a position one way or another. We had made our position, we'd publicised it and we had our own partnerships. But our primary function was to be, as we'd called it ourselves, a community guide through this project. I think it was reflected well in our collaboration with the AEC in not necessarily taking a shift from our non-partisan approach to government and to politics.

The Hon. CHRIS RATH: What sort of level of engagement, in terms of some rough figures, did you have at the 2023 election? Where do you want to be heading? I assume it's to expand it, if possible, in the future.

PETER DOUKAS: I'll have to take it on notice in terms of the raw numbers. We were active within the six largest language groups that operate both within the community and in our member base. I think the next step for this project would be a targeting of the second level of large languages—so, instead of the six biggest, the next 10 language groups—and also to start operating in dialects and in sub-language groups. What we're finding is that new and emerging communities have a very high level of basic English and a higher take-up of English than the older communities had at the relevant times. But the ability to function technically is often the difficult thing, so

that's where we'd like to invest our time were this project to continue with the support either from government or from the AEC.

Mr TIM JAMES: Thanks, Mr Doukas. We appreciate the work that you do and the leadership that you've shown. You made a mention earlier of the US and civics classes and the role of such resources over there. Obviously with a particular focus on those of ethnic communities, to what extent do you think our democracy is engaging our citizens, particularly our young citizens, including through school curricula or other programs, a la the US, or, indeed, any other jurisdiction? Recognising the importance of our democracy, how do you see it in a broader sense?

PETER DOUKAS: It depends what you mean by "our democracy". I think there's a bit more work to do in that space. Again, I'm by no means an expert in education, but what we've seen from a community level and from a membership level is that new communities that come to Australia engage in politics sooner than they engage in government or engage in understanding our political system. I think that poses a risk and we've identified that. That was the incubator for our project, because we are a non-political organisation and we come at this from a completely different perspective than a traditional advocate.

I think that there is more to do in terms of education of our democratic institutions and education with respect to our system broadly. Also because a lot of those people that have English as a second language in Australia are not young people that have got education system access. So they're challenges that I think can be approached either through engagement like this—so at a ground-roots community level—or through some kind of government project. I think we've been successful, simply because people have voluntarily participated out of interest, and I think it's resonated with our constituents.

Mr TIM JAMES: I read with interest your insight and/or recommendation pertaining to young people being inspired and requesting further information on how they could access their local members of Parliament. I think there's a general rule that MPs these days are probably more accessible than they've ever been, online and in the community. In every sense I think we probably are. I guess it comes back to that question of how much are we equipping, empowering and educating young people to know how to turn and where to turn to access their MP, for what reason and when. I guess that comes back to what it is that we're teaching in schools, our culture and a range of other factors. But I think that's incredibly important and I certainly thank you for putting a spotlight onto it.

PETER DOUKAS: Pleasure.

Mr NATHAN HAGARTY: Firstly, thank you for the important work that you and your organisation do. I come from a very multicultural part of the State. Some of the submissions have spoken about limiting the amount of material that is put on booths with the communities that you work with and doing what they do down in the ACT, which is extending the six metres. I'd like to get your thoughts on that because, in my experience, especially amongst CALD communities, that material and the stuff you hand out actually plays an important role in informing them as voters. I'd like to get your take on that.

PETER DOUKAS: We try to avoid giving advice to the AEC—for clarity, we weren't asked specifically—about the electoral function of booths. I can speak anecdotally about it, but it wasn't part of our specific project. It is confusing for people from a multicultural background. The fact is that it has been manipulated by members of communities to further political aims in different ways, because if they control language or if they control the way that messaging is disseminated, it has a material impact when you're dealing with compulsory voting, so I think it is important. But the way that I perceive it would be managed by the Electoral Commission would be a policing question, effectively like a monitoring and enforcement question at elections. I don't really have comments in terms of how you practically do it from a booth perspective because booths around the country are different and I've participated in different elections.

Mr NATHAN HAGARTY: I guess the question was more around let's say we did have a 100-metre exclusion zone and we weren't allowed to put corflutes and posters up on booths, do you think that that would have a detrimental impact on valid votes? Anecdotally, from my experience—I come from a multicultural community—a lot of voters turn up and make their decision by speaking to people at the booth, taking each of the papers and having a chat. I think that's an important cultural part of the way we do democracy here in this State. If exclusions like that were put in place, I want to get your take on what impact that would have on—

PETER DOUKAS: Is your question to extend an exclusion zone that currently exists within the premises of a booth way outside of the precinct of the booth?

Mr NATHAN HAGARTY: Yes. In the ACT they do it to 100 metres, so effectively you can't hand out your how-to-vote and you limit or you ban how many posters can be put up on the fence. If something like that

happened, do you think that would result in more informal voting and lower voter turnout, especially amongst multicultural communities?

PETER DOUKAS: No, I don't think there would be lower voter turnout. I think voter turnout is a completely different project and a completely different conversation in Australia. I think, though, there would be more informal voting simply because of a lack of understanding. I think the content of what's handed out needs to be policed. There were concerns raised in our project about people that were confused about what different parties stood for because of the way that messaging was translated. If we turn to a practical stance, if you applied a 100-metre exclusion to your local primary school, you're no longer at your local primary school, particularly in the inner city. The extension of the exclusion zone that exists now, while being a valid conversation, you have to accept that the realities of an Australian election are that if you apply too large an exclusion zone then it would add to confusion unnecessarily.

Mr STEPHEN BALI: Thank you, Mr Doukas, for your presentation.

PETER DOUKAS: No worries.

Mr STEPHEN BALI: I've got a three-pronged question. I know you went through the larger groups and then the second, as you were talking about. I've always been concerned about that, because when you've got large groups then there are a lot of people that are talking because they meet at their clubs et cetera. I feel sorry for all the smaller groups. Blacktown city has 188 different nationalities. I'm worried about number 140 through to 180, where there's no money and no resources spent on languages and you don't have that many people. How do we pick them up?

This one will put you on the spot. The ECC, great, and you're doing the civics course. Through Community Building Partnership grants and other grants, I've funded SydWest to do a civics course. I think they're coming in. They went down to Parliament. You can only have a certain number of people. I think civics courses are really important, but where should we be? If we're going to fund these civics courses, is it to the ECC? How do we pick the smaller groups, because they're the ones that are connected to the people? You're almost like Unions NSW; you're the peak body. We need to get it to the people, so we should be doing more of a civics course at the grass roots. How do we pick those groups or should the ECC be picking it?

Thirdly, leaving it to the election is probably far too late. I would think pre-election, the first three years of our government—or whatever the cycle—is when the civics courses need to be run. Picking up on Mr James's point before on our school system and stuff, most people have no idea what a councillor or a State MP or a Federal MP does. I just think probably the Electoral Commission needs to conduct more civics courses out there, and that's picking and working with you guys, therefore, to get the right translations. I think civics courses are absolutely wonderful, and it needs to be done.

The three issues are: How do we get the smaller ethnic groups where there's not many in that community, who desperately need the information, as opposed to Hindi and Greek and all the major languages? They can look after themselves, to a certain extent, as much as we need to support them. The smaller groups is the first question. The second question is: Is it ECC that we should be funding to then work out how you do these civics courses, or should we go to local peak community groups or smaller ethnic groups? Thirdly, civics courses: Should we run it for the first three years and then in the election cycle? I'm just always worried about the neutrality—whoever is delivering the course will have some leanings.

PETER DOUKAS: Great questions. Let me start with your first one. The smaller groups problem—and it is a problem—is unique in the multicultural space, because if we look at Hindi, there are 100 groups within the Hindi language space and all of them are bigger than the second- or third-sized language groups. Where do you prioritise? It is a challenge, and it is only answered in raw resources. I will merge my answers for one and two, because it goes to the same thing. This is a delicate subject matter. This is a delicate issue, and it requires a mature organisational approach and a delicate organisational approach, because it's easy to descend into politics because it's fun, especially in the multicultural space.

Steering multicultural politics, as I'm sure the Committee would be aware, is an interesting science. I, as the chair of the organisation with a board of very diverse people—many people may have appeared before Parliament; many are known to many of you. The challenge is to keep the discipline of a non-political project within the context of a very political question. Organisations like the ECCs—and I don't just give our ECC a rap, but there are ethnic communities councils around the country—have a unique function as a non-political, nonpartisan organisation that is immersed in the political system.

Frankly, the constituent members that we have struggle with that discipline because they're more directly exposed to local areas, local politics. In the case of your smaller language groups, those language groups are more susceptible to direct influences when they get their person in Parliament or their particular individual that they

look towards in Parliament. It is the organisational discipline to maintain such a delicate mission as a non-political one that gives the ECC, I think, an edge and more like an ACTU—it's more like a trade union kind of body than your specific organisations.

As we've seen in recent times, international problems translate to local political problems. There is an advantage to trying to be as boring as possible as an organisation, because we deliberately don't advocate. We deliberately don't get into the political advocacy that leads to us losing our core mission, which is the multiculturalism in Australia, the role of multicultural communities in Australia and advocating for Australia to become a more harmonious and open society that integrates all people from all faiths and all religions and all nations. To answer your second question, the core mission of our organisation gives us an edge and keeps us relevant. I think that's why the AEC has come back to us. They came to us independently of—I mean, we didn't advertise it to them. I think it's a partnership that has worked because—and, again, I don't necessarily want to advertise it—I think there's a recognition of the discipline that we've come to this project with.

On your third question, this issue about how to deliver civics or civics-style education in Australia—outside the school system, it's very tough. Outside the mandatory education system that we have, it's very tough. I think that there's a genuine interest within communities about what it means, about the way that our system works. That's not a cynical interest, I think. It's not something that people are just doing for the sake of further promoting themselves or their organisations or their specific interests. I think there's an interest in how our system works. The challenge is delivering that within a nonpartisan framework and building a respect for the system, instead of a respect for one aspect of the system or one political side or the other.

The way that we've done it in the ECC, as an example, is we get really political people to join our board and then we ask them to take a step back if they're politically active at the time that they're on our board. It has worked relatively well, touch wood. The ECC has managed to stay out of too many scandals over the last 20 years that I've been involved, on and off—as an idea and as a principle that there is integrity in that and there is legitimacy from that. I think that has allowed us to ingrain ourselves in these specific communities.

We did target communities based on a number of factors. We didn't target the six biggest communities—for example, Hindi is missing from our language group, and at the time that we were selecting languages it was available; it was within these six largest languages. We didn't have the independent resources at the time to target that specific language, and that's why we chose the languages that we were able to address because of the availability of nonpartisan people on our books and the board's ability to maintain its commitment to deliver a message correctly in a nonpartisan way. I think the challenge continues, and the challenge will continue to grow as international events affect our community harmony domestically. This is a more and more important question that your Committee will need to answer.

Mr STEPHEN BALI: Very briefly, who delivered those civics courses? Your organisation, the ECC, would have developed a course, but how did you deliver it?

PETER DOUKAS: We have bilingual educators—so bilingual facilitators, who are employees.

Mr STEPHEN BALI: But you supervised the whole process?

PETER DOUKAS: They're employed to attend that—I think a few of them go at a time. We would book a venue at a community centre, and our educators would attend and deliver them in language to the participants.

The CHAIR: You've alluded to this issue already, but one of the things the Committee has been asked to look at is truth in advertising. It would seem to me that translations and community languages is a major issue. If there was such a regime in place it would have to be dealt with. Can you comment on what you would see as some of the issues dealing with any sort of regime, particularly the issue about determining—in terms of translations—whether or not what was being presented was accurate? Who would be doing that? Who should be doing that checking?

PETER DOUKAS: It's a very difficult question, and it's a question that has plagued me. I mentioned earlier it was particularly difficult for us during the Voice campaign because we were getting complaints from different groups about this exact thing. Truth in advertising is a problem in English, and then when you add multicultural media to it, you then have the multilayers of multicultural media. I think we have an incredibly strong and diverse multicultural media apparatus in Australia that's both government-based and non-government-based. That then, in turn, is influenced by international media in language. We in the ECC have been a very strong advocate for Australian voices in those home languages, as opposed to foreign voices in home languages, which is a completely different question.

I believe it is an area—again, I'm speaking outside of my project but just anecdotally—that needs a lot more attention and investment because of the intergenerational influence that language has, not just necessarily language. I can use the Greek example because I'm bilingual and my grandparents accessed or would read the Greek papers every week. I choose to get my Greek news, for example, in English from websites that are Australian-based. But that then still is multicultural media, in a way, and that is happening in all of the old communities that, for example, the Greek community is. The pattern that we're seeing is that it is exactly the same in the new and emerging communities. The process of integration occurs in a parallel way with the evolution of its multicultural media into English-based or bilingual or internet-based media. Policing that, and policing messaging in that, particularly where it's manipulated for a political purpose, is very difficult.

We've advocated specifically to those multicultural media outlets that more needs to be done about ensuring truthfulness in messaging, but it's difficult. It's difficult both from a practical level and from a philosophical level because, practically, who controls the translation? How do you maintain a translation, especially given the existence of regional languages and mistranslation simply that exists in language groups to begin with. I think it's a question that's going to affect us for quite some time. The ECC is already looking at investing in not necessarily bilingual educators—not bilingual educators—but simply multicultural educators, so not necessarily delivering our messages in language only but in language and in English to community leadership. It is a challenge and it will be with us for quite some time.

The CHAIR: Thank you. Are there any further questions? I think you've left us lots to ponder. Thank you very much for attending today. You will be provided with a copy of the transcript of your evidence for any corrections. I don't think you took any questions on notice, but there may be supplementary questions from Committee members and that will be forwarded to you as well. Thank you very much for appearing today.

(The witness withdrew.)

Ms LYDIA SHELLY, President, NSW Council for Civil Liberties, sworn and examined

Mr TIMOTHY ROBERTS, Secretary, NSW Council for Civil Liberties, sworn and examined

The CHAIR: I welcome our next witnesses. Thank you for appearing before the Committee today to give evidence. Please note that Committee staff will be taking photos and videos during the hearing. The photos and videos may be used on the Legislative Assembly social media pages. Can you please let Committee staff know if you object to having photos or videos taken. Before we start, do you have any questions about the hearing process?

LYDIA SHELLY: No.

TIMOTHY ROBERTS: No, Chair.

The CHAIR: Would either or both of you wish to make a short opening statement?

LYDIA SHELLY: I'd like to make a short opening statement. Firstly, thank you very much for the opportunity to appear before the Committee today. The NSW Council for Civil Liberties is one of Australia's leading human rights and civil liberties organisations, founded in 1963. We are a non-political, non-religious and non-sectarian organisation that champions the rights of all to express their views and beliefs without suppression. The council has a keen interest in ensuring that Australia maintains a healthy democracy. We want our communities to engage in robust and vibrant public debate. Information should be readily accessible and able to be relied upon as truthful. We believe that all citizens should be able to equally engage in our democracy.

The issues that we have raised in our submissions about truth in political advertising timely donations disclosure; political donations from property developers, including through shelf companies and charities; disenfranchisement of people in prison; and access to voting for people living with a disability outline our concerns with respect to the current state of play relating to the electoral process in New South Wales. We don't have a comprehensive human rights protection in New South Wales at the legislative level which could govern the way we hold State elections. The best way to achieve a human rights-based approach for the electoral process is to introduce a human rights Act to protect human rights in New South Wales generally and then it will follow that elections, along with everything else, will be implemented in accordance with that appropriate framework.

With respect to the truth in political advertising, the council is part of the lead group for the national Our Democracy campaign and is a sponsor at the Federal level of Dr Monique Ryan's clean up politics bill. We take this role very seriously. Truth in political advertising laws have already been enacted in South Australia and the

ACT and the council supports the enactment of such laws in New South Wales. It would seem a natural progression for New South Wales—Australia's most populous State—to follow suit.

With respect to the disenfranchisement of people in prison, we note that no imprisoned person should be excluded from participating in our democracy and the Electoral Act's restriction disproportionately affects Aboriginal and Torres Strait Islander people. The issue of over-incarceration of First Nations people in Australia is well documented and a continuing blight on this country and on our democracy. The final report of the Royal Commission into Aboriginal Deaths in Custody found that the rate at which First Nations people are taken into custody is overwhelmingly different to non-Indigenous people. At the time of the royal commission's final report in 1991, First Nations people were eight times more likely to be imprisoned than non-First Nations people.

The final report of the 2021 New South Wales Select Committee on the High Level of First Nations in Custody and Oversight and Review of Deaths in Custody was tabled in the New South Wales Parliament 30 years after the royal commission's final report was published, yet we're no closer to addressing the gross overrepresentation of First Nations people in the criminal justice system. Chair, if there's one recommendation that our council can make, we ask you to please consider rectifying this deplorable situation and remove the restrictions on prisoners' voting rights in the Electoral Act. We should be really cautious about having laws that restrict a person's capacity or ability to vote and to meaningfully participate in our democratic process.

The Hon. CHRIS RATH: On the right to vote for people in prison, how does it work at the moment? It's a 12-month threshold. Is that right? If you're serving a sentence of less than 12 months, you can vote but if it's above that, you can't. You're saying that should be expanded to all prisoners?

LYDIA SHELLY: That's correct. We strongly believe that serving a term in prison shouldn't oust your right to be able to meaningfully participate in a democratic process and to have a voice and a say—a meaningful say.

The Hon. CHRIS RATH: The Electoral Commission at the moment brings a mobile polling station to a prison, for instance, and then some people vote and others don't, depending on how long their sentence is. That's how it works at the moment, is it?

LYDIA SHELLY: That's my understanding, yes.

The Hon. CHRIS RATH: It's interesting because I don't know that I'd ever really thought too much about it. For the benefit of the Committee and all those thousands of people tuning in, we learn something new every day.

Mrs SALLY QUINNELL: Can I ask a follow-up question on that? When it becomes less than 12 months to go on their sentence, do they kind of slide into being able to vote again or is it once out, always out?

LYDIA SHELLY: Sorry, can you just rephrase that question?

Mrs SALLY QUINNELL: Yes, sorry. If someone is given a 20-year sentence, in the last 12 months of that 20-year sentence are they able to vote for that last 12 months or they're out for good?

LYDIA SHELLY: No, my understanding—and Mr Roberts can clarify this if I get it wrong, but my understanding is that once they're out, they're out.

Mr STEPHEN BALI: I have a further follow-up. The controversy of this is that you're basically saying—and I'm just trying to work out what the general public would feel—that if you're in there for murder, for paedophilia, you're there for five, 10 years, do we want those people to vote to change the laws so they have a say on the political process to impact on criminal law eventually? I could see why, at the moment, less than 12 months is probably a lot more menial-type crimes that you've done—not you, that the person's done, sorry.

TIMOTHY ROBERTS: Scathing allegations.

Mr STEPHEN BALI: If you get a sentence of less than 12 months, you can still run for politics, I believe, or serve in Parliament, except for 12 months or so. But beyond that, I'm just trying to grapple with what you're suggesting, that if someone's in for a heinous crime, we're going to give them the right to vote as well.

LYDIA SHELLY: I don't think being convicted of a crime and you're sentenced to a period of 12 months should disqualify you from ultimately being able to participate in our democratic process. If that means that we need to show leadership and to educate the public with respect to why being able to have the right to vote is so important—because, remember, the vast majority of people that are incarcerated will, at some point, re-enter society. Being able to have a say, being able to meaningfully participate in our democracy, I'd go so far as to say is really important with respect to rehabilitation. But if it means that, coming out of your question, we need to have more public education about what our democratic rights are and how we shouldn't, for example, be

supportive of laws or any policies that seek to essentially create a two-tiered system in our country—that is, you can vote but you over here can't—that's a very slippery slope and I don't think that's something that we should be supportive of.

Mr STEPHEN BALI: Just one more question, if you don't mind. Taking that logic a little bit further, I suppose, right now we prohibit people from participating from donating in the political process, whether you're a developer or whether you're a club director et cetera. We're even now putting on pressure that as a club director—you might be a community club leader—it's very difficult to run for politics within the political party. But what you're saying is, dare I say—I'm not putting words into your mouth but are you suggesting that we ought to loosen who can actually run? Why should we ban a person who's a club director from running for politics?

LYDIA SHELLY: No, my response was purely in relation to, should we restrict a person's capacity to meaningfully participate in their right to vote?

Mr STEPHEN BALI: Yes, sorry, I'm just taking it further as far as who can run as well. Why are we restricting a person's civil liberties to run for office?

LYDIA SHELLY: It certainly raises a very interesting point and I'm happy to take that on notice after I've considered it.

TIMOTHY ROBERTS: Can I supplement Ms Shelly's answer as well? I think it's an interesting question that you raised initially—the first question. I guess, in some ways, every law that's passed in New South Wales will affect a particular portion of the population or the electorate in one way or another. If the Assembly was so minded because it was full of people who had been elected from the electorate by prison populations in this hypothetical extended scenario, we would suggest that the discourse around that law would fall on the whole electorate, not just those involved who are incarcerated at the time.

What I'm saying is while the Assembly has a responsibility to make laws about crimes, as a whole population we vote in the Assembly to make those laws. So just because it particularly affects criminals, doesn't necessarily mean that the electorate can't adequately make an assessment about that as a whole, not just those who are in prison. I guess further to that, it's then particularly problematic, given those laws affect people in prisons and criminals, that we just remove their ability to vote about those laws and participate in the legislative process that way.

Mr NATHAN HAGARTY: I'm just interested in the bit here you've got around the charitable loophole. If you could just speak to that loophole and also how extensive you think this loophole is at present, how widely it has been used.

TIMOTHY ROBERTS: It's always, I think, a fundamental problem with loopholes that it's hard to pin down how far they are being used as they are a loophole. We've mentioned two articles in our reference there from *The Guardian*. I think Geoffrey Robertson was participating in the initial article on 23 February. I guess the concern we raise is that it has been identified as a possibility. Can we speak to the extent of its use? No, but given that it has been raised, we think this Committee should turn its mind to closing that loophole.

The reference I think we give there to McCloy and the idea about clientelism is pretty much the substance of that particular view, namely that in a situation where New South Wales was minded to ban donations of those sizes or make those restrictions on the donations, for then organisations—and some are identified in the article and I won't repeat them, but for potentially those organisations to find other ways to benefit governments that are in power, or otherwise, or particular parties is obviously a problem. It's a loophole and creates a quid pro quo situation where the community project might get built because the particular party or government wanted it to get built and that particular organisation helped them build it, and then the regulative flow-out or benefits that might happen for that organisation afterwards is a problem.

LYDIA SHELLY: I just add that having those loopholes there—whilst not being able to quantify how often they're used, the fact that they are there I think would undermine public confidence in the system and that's a scary thought. We should be doing everything we can to strengthen public confidence in our parliaments and in our civil institutions.

Mr STEPHEN BALI: I'm a bit worried because I'm in charge of a hospital charity and I don't care where the money comes from. It doesn't mean they have influence over me in any sense. But you're saying just because, let's argue, a developer or a club—there are lots of club grants out there—fund a humidity crib that the State can't afford and put into a particular hospital, there's something wrong with that?

TIMOTHY ROBERTS: It's a balance. It is a balance and we reflect—

Mr STEPHEN BALI: I get that it's a balance but there has to be some basic—sorry, I shouldn't cut across you but I'm just thinking just because we're part of the community as well. So on the one hand Civil Liberties is out there saying you want to give everyone the opportunity to participate and yet because I'm an MP involved in a charity, just by association that someone gives money to a charity, which I don't get paid to be part of, is therefore—sorry to make it personal about myself, but just reading this and looking at it, it's one of the questions I wanted to pose to you guys. How does this work?

TIMOTHY ROBERTS: I guess to take that hypothetical situation to an unidentified member of Parliament, if that member of Parliament was on a charity and an organisation knew that that member of Parliament was on a charity and donated money to that charity for the purposes of getting some favourable outcome in the legislative process, then I would say that is a problem. The community would have a problem with that. I understand that there's a question of scale, and you're right, individual corporations have a right to some degree to donate to charities. If there is an identification of a benefit that that organisation might get because of the politician's participation in that charity, or for the sake of the nature of the organisations themselves who are donating to that particular charity, then that is a problem.

The CHAIR: Can I ask, while Mr Bali is pondering a potential response—

Mr STEPHEN BALI: I'll just keep pondering.

The CHAIR: Can I ask you just a couple of questions, if I may, about truth in political advertising? I still don't know what that totally means. Can I ask and quote from page 7 of your submission:

Wherever possible truth should be determined by qualified bodies independent of both the executive government and industry.

So I was wondering if you could suggest, given your work with the Federal legislation particularly, who'd be best-placed to regulate truth in political advertising.

TIMOTHY ROBERTS: That's a question worthy of Pontius Pilate, I think.

The CHAIR: The truth—the whole truth, please.

TIMOTHY ROBERTS: I think if we were to pull an organisation out of the air, without maybe the due consideration needs, the NSW Electoral Commission is potentially an organisation that would have some independent oversight of the advertising involved in the political process.

The Hon. ROBERT BORSAK: Mr Roberts, they've said, and their submission stated, that they cannot and will not do that.

TIMOTHY ROBERTS: It's a good thing that there's an assembly of willing legislators that might make them.

The Hon. ROBERT BORSAK: No, not willing at all—because whose truth are you talking about? Truth these days is a moving feast, isn't it? I mean, it is not as if you go to the *Macquarie Dictionary* and say, "Ah, that's the truth." That's not the case any more.

TIMOTHY ROBERTS: We acknowledge that in our submission. But what we do know is that misinformation has been and will be used in political processes. In the situation where lies are made in a public discourse that have the potential to mislead people, that is a problem. It's a balance that you are tasked with, but it's one we would suggest has been drawn woefully inadequately at the moment, and at the very least needs to pick up situations where we know deliberate lies have been told in public discourse in advertising and political processes.

The CHAIR: Can I ask a serious question? Professor Twomey has pointed out that the courts usually, when they've considered this, consider political advertising in relation to the actual day-to-day process of an election campaign. "You can go here; you can't go there", and whatever, as opposed to when most of us think about political advertising, we're thinking about policy disputes. What do you mean by political advertising when you're advocating truth in political advertising?

TIMOTHY ROBERTS: I don't think we're particularly restrictive in our meaning. I take the practical point that has been made that it may just be that windows could be given into when political advertising might be restricted or perhaps regulated. What I would suggest is of concern there is that the misinformation would just move to beyond the 30-day period before the election that is being held, if that was had. When we say political advertising, we mean political advertising broadly.

The CHAIR: If you wish to take any of these questions on notice, please do so, because they're incredibly complex—which is why we've been asked to look at them. But Professor Twomey also states:

Any limit on political advertising is therefore vulnerable to challenge as a possible breach of the constitutionally implied freedom of political advertising.

Do you have a view on that?

LYDIA SHELLY: I would need to take that on notice.

The CHAIR: I appreciate that, because it's a complicated issue. She also highlights issues with determining what penalties to apply and to whom. Please feel free again to take that on notice, if you wish. We value your comments.

LYDIA SHELLY: I would take that on notice as well.

TIMOTHY ROBERTS: Yes, happily.

The Hon. BOB NANVA: I have a question on truth in advertising. I think it's a noble proposition; I just have a concern about its workability. Professor Twomey goes into a number of practical problems with the constitutionality issue with it, which I know you've taken on notice. The point she has made is that to pass the constitutional threshold, the threshold for political advertising to fail or to be misleading would have to be very high legally. The anxiety I have about that proposition is more often than not a dispute that is taken then is going to fail on the basis of not meeting that legal threshold, and what that will serve to do is just amplify the issue and mislead even more. You will naturally have political parties saying, "We've taken this to the independent umpire, and they've said it's right." That will only confuse the electorate even more. I have this fear, as a former party official, that it is a very well-meaning proposition, but by virtue of the fact that it will very rarely meet the legal threshold, we're just going to exacerbate the problem that we're trying to deal with. Would that be a concern to you as well?

LYDIA SHELLY: I think we'd be sharing that concern, but noting that when we talk about any issue, policy issue or law, there's always, obviously, the context in the community which that sits in. I think when we look at the issue about truth in advertising, and hearing the other submissions that have been made today, we would share the overarching principle that there needs to be more education in the community about what democratic processes look like—what their rights and obligations are as citizens in a country in order to participate meaningfully as well. I think that would also go so far as to plug some of the gaps or concerns when we're talking about how the electoral process runs out into a community, including CALD communities.

The Hon. BOB NANVA: I suppose if we were to differentiate between process and logistic questions and advertising—"Just vote 1; you only vote 1," as opposed to disputes about privatisation or Mediscare or death taxes where there is just a dispute around policy and assertion—I think one is probably a very simple proposition and can be better regulated, and that is process and logistics. Would you agree that the other one is probably a little more complicated and prone to, I suppose, backfiring, notwithstanding the best intentions?

TIMOTHY ROBERTS: Again, we've taken some of the core elements of that question on notice in terms of the constitutional legalities. I guess all I would want to emphasise is that there is an appetite in the electorate for truth in advertising laws. There are some surveys that we mentioned in our submission in terms of I think quite a significant portion of the population that wants something to be done. We'd also probably just mention our analogies again that we made to competition and consumer law in the fact that there is a strict test of things being misleading—although, as you were alluding to, that might be an inappropriate analogy.

That is at least something as well—that although the situation you're referring to, in which someone is taken to a court and then can turn around and say, "I'm victorious and we are right", there's also the flip side that if we have even a high test, when people fail that test, that's devastating to their processes as well and there's a reassurance to the community that we have at least some barrier to protect against those risks. I guess the rest follows on to what my colleague said about education: that while that is right, there's always going to be puffery and twists and turns in terms of the way people are trying to articulate their victories or losses in a court. Hopefully we are in a position to have had a well-educated electorate as to what the true debate was about and whether or not the issue was fairly ventilated in the tribunal, whatever that may be.

The CHAIR: We go through the issue of—and this is one that we have to ponder, as well as everyone else. You only have to put a number one in New South Wales for optional preferential voting, as opposed to "climate change doesn't exist and is unreal" and you get elected—do we then head to the Court of Disputed Returns? I mean, there's myriad issues and any comments you have would be really appreciated.

Ms JANELLE SAFFIN: I want to ask a question about people living with disability and then, if there's a minute, I will come back to truth in advertising. I note in your submission that you talk about access to voting for people, and particularly those people where the secret ballot can't apply, and that the Electoral Commission

intends to do it in 2027. But you talk about a broader consultation engagement with people with disability. How would you see that happening?

LYDIA SHELLY: I think in terms of consultation, particularly with those people that are from the disability sector, as well as people living with disabilities, it is absolutely crucial. If we're going to be implementing policies that would effectively allow them to contribute and to use their voice meaningfully and to have a right to vote that actually means something, it's incredibly important to go back with feedback and to take that on board. Whether that's through holding a further consultation process in New South Wales Parliament, as well as engaging with other stakeholders—that should be encouraged.

Ms JANELLE SAFFIN: I agree that it's very important to do it well and make sure that everyone is included. On the truth in advertising, I know there's appetite for a lot of things that I hear in the community, particularly through media, but what problem are you suggesting we resolve by saying, "We want truth in advertising"? I'm interested to hear what it is. We always hear the mantra "truth in advertising". We're quite experienced. I think we get it, but I'm always wanting to know what problem you are trying to resolve.

TIMOTHY ROBERTS: It's an existential question that I think is being grappled with in the room here as well. I think we would start with the fact that there is no protection and that needs to be fixed. The question then becomes to what level, to what degree, and there seems to be a question about the appetite for that. At the very least, in terms of the problem to be solved, we would start with that there needs to be at least some protection about misinformation in political advertising and we would obviously advocate for that going further.

LYDIA SHELLY: Just to clarify, the mere disagreement doesn't equate to misinformation and being untruthful. If somebody disagrees with a political stance on an issue, it doesn't necessarily equate to being untruthful as well. Any debates or discussions around truth in advertising should be very careful that that's not conflated with being untruthful.

Mrs SALLY QUINNELL: If it was to go ahead, do you see any place for the idea of critical thought in social media and the education of communities as to the way social media algorithms work—creating vacuums, if you will, of information and of opinion? That's part one of my question. The second part of the question is: Are people asking for truth in advertising or are they asking for truth as they see it in advertising? If there is a fact being displayed, we know that there are people within the community that will not believe that fact. No matter how many people say, "This is a fact: The sky is blue," you will have other people say, "No, I saw it yesterday. It's green." I wonder, are we aiming for something that is unattainable here, which is people being completely happy with political advertising?

TIMOTHY ROBERTS: To the first part of your question, in terms of civic education, the answer is potentially around that area. We have mentioned in our submission—I think at 5.5 (b)—the idea that there should be laws that regulate the disclosure of how algorithms work on digital platforms. I think that would go some way to then creating educational opportunities. To the latter point, there's a philosophical question about truth which is obvious, and we've dealt with that to some degree. Using the consumer example again, in advertising there's room for puffery. There's room for brands to say they potentially are better than they are, in the way they do, and we're expected as a community to deal with that and understand that. But what Australia has made sure of is that those organisations can't lie to their consumers. I understand the more existential question there about what is truth, but also I think the much more practical position that can be held is that organisations shouldn't be able to mislead or deceive the electorate. And, if that is proven, then that should be addressed.

Mr STEPHEN BALI: Does it take some time to actually prove that? What would happen to the result of the election, especially in a hung Parliament or one-seat majority? Does that mean that that person who arguably said the untruth loses their seat and they have to recontest that seat? What are the penalties that you see? Finally—and this is probably more of a joke—isn't it sometimes good for the conspiracy theorists for someone to say, "No, you're lying," because that just strengthens their whole conspiracy argument, doesn't it? You don't have to answer the second one.

TIMOTHY ROBERTS: Only to say that that's going to happen regardless, so we might as well try and improve discourse in the other way. That is an important question and obviously it has significant ramifications. In terms of the South Australia and Victoria models, I think the Australia Institute made some submissions to that point as well. In situations where the deception is so great that it does undermine an election and that it's been misheld, then that needs to be redone in those areas where it might be. Whether that's an individual member's election, I can't be too specific about that. But if the deception is such that it has caused a miscarriage of a democracy then yes, it needs to be redone.

LYDIA SHELLY: I'd also like to add that, in a democracy, ideas are meant to be debated. We shouldn't be shying away from having these critical discussions just because we may differ on ultimately how we see a

certain issue in our community. There seems to be an idea that if there's truth—whatever that might be—it means that we'll all be in agreement as to what the consequence of that truth might be. In a democracy we have to be comfortable with the fact that that's not reality and it's not the case, and you see it every single day when you come to work here. In relation to what to expect in terms of a democracy—democracy, as we know, is messy. It's always going to be messy and these laws here that we're talking about aren't going to cure that.

Mr STEPHEN BALI: Well said.

The CHAIR: Our time is up. We really appreciate you both coming before us today. You'll be provided with a copy of the transcript of your evidence for any corrections you wish to make. The Committee staff will also email any questions that you've taken on notice today and any supplementary questions from members of the Committee will also be forwarded to you. Thank you both very much.

(The witnesses withdrew.)

(Short adjournment)

Mr BILL BROWNE, Director, Democracy and Accountability Program, The Australia Institute, before the Committee via videoconference, affirmed and examined

The CHAIR: Mr Browne, welcome. Thank you for appearing before the Committee today to give evidence. Please note that the Committee staff will be taking photos and videos during the hearing. These may be used on the Legislative Assembly's social media page. Please let the Committee staff know if you object to having photos and videos taken. Before we start, do you have any questions about the hearing process?

BILL BROWNE: No, thank you.

The CHAIR: Would you like to make a short opening statement before we begin with questions?

BILL BROWNE: Yes. Thank you for having me here today. Truth in political advertising laws have operated in South Australia since the 1980s and were adopted unanimously by the ACT Legislative Assembly in 2020. The Australia Institute's polling research finds that such laws are overwhelmingly popular among voters of all stripes. Truth in political advertising laws are not a silver bullet, but they do nip misleading campaigns in the bud and have done so even in the fast pace of an election campaign. Moving on to political finance laws in New South Wales, these favour established parties and incumbents in several ways. Election campaign funding is calculated based on prior elections. Administrative funding is based on MPs in Parliament. MLAs enjoy incumbency advantages of over \$2 million per electoral cycle. Donation caps are higher for parties than for candidates and spending caps allow parties to pile into target seats.

The effect is that established parties and incumbent MPs don't need to raise as much money, and experience fewer limits on the money that they do raise at the expense of a level playing field. Donation and spending caps in public funding laws in New South Wales were well intentioned, but their effect has been to reduce democratic competition and insulate parties from consequences of declining membership. I recommend the Committee investigate how to make campaign finance laws in New South Wales fairer. An accidental benefit of these changes could be to encourage parties to re-engage with potential members and volunteers. Finally, I should note that my submission gives as an example of the limitations of political finance disclosures that NSW Labor political expenditures for 2022-23 are not available. When I checked this week, they were available, as were others. I believe this was true at the time I wrote it but, if that was my error, I apologise and I have submitted a corrected submission.

The Hon. BOB NANVA: I want to turn to your submission and the issue around the incumbency advantage that you write of. There remains strong cross-party support for the principle that was articulated by Premier Keneally in 2010 when introducing the Election Funding and Disclosures Amendment Bill, which is the precursor to today's Act—that these reforms are about putting a limit on the political arms race under which those with the most money had the loudest voice and can simply drown out the voices of all others. You would agree that money should not be the sole determinant to candidacy success and, in fact, is not always the main determinant of the success of candidacies.

BILL BROWNE: Yes, I'd agree with both of those statements.

The Hon. BOB NANVA: Would you agree that there is no circumstance where the spectacle of millions of dollars being spent on individual seats by individual candidates, whether self-funded or funded by third parties, is an election system we should welcome in New South Wales?

BILL BROWNE: I think what we want is to have a level playing field where voters are presented with as much choice as possible and where candidates are able to compete with each other in a way that isn't affected

by whether they're coming from an established party or they're an Independent candidate or they're part of a new party. I think part of the problem with focusing on political expenditures per se is that it misses the enormous unwritten benefits that some candidates go into an election with, and some of the spending that we see is an attempt to overcome the existing benefits that MPs have. It's not a like-for-like comparison necessarily.

The Hon. BOB NANVA: Your submission goes into some detail into the incumbency advantages of major parties and incumbents. I'm interested in your balanced thoughts about whether there are competing disadvantages for major political parties and sitting incumbents. I'm sure you would agree that major parties are forced to appeal or respond to electors on a number of different issues, not single issues, and that they have multiple agendas, multiple points of campaigning, and far more ground to cover. That takes more resources than it would for an Independent candidate in a single seat.

BILL BROWNE: It certainly can do. The parties have obligations that go outside of election campaigning. In some of our work with the Victorian laws, we've collected examples of the contributions that political parties make to our democracy. When that includes something like giving a policy voice to members, that is kind of a unique party feature. Major parties do tend to run in all or most seats. The size of the campaigns does vary dramatically and there's some evidence in the submission to that, although much of it is not completely known. But I think it's a very difficult comparison to make, in part because parties do also get network effects and overflow effects. So a campaign in one seat reaps benefits in adjoining seats as well, for example.

The Hon. BOB NANVA: I do agree with—not all of your concerns, but some of your concerns around the incumbency advantage. The Act contemplates that and has a number of measures within it to ameliorate those. Would you agree that Independent candidates are more likely to run in areas where there is significant organic dissatisfaction with an incumbent MP or a major political party?

BILL BROWNE: That could be the case, but I don't think it necessarily has to be. I think, ideally, it'd be possible to run a campaign in any seat. You shouldn't have to wait until dissatisfaction grows to be greater than the State average, for example, before such a campaign becomes viable. People should be able to join the contest of ideas in every electorate.

The Hon. BOB NANVA: What is your view about the mechanisms available within the Act with respect to candidates and third parties being able to make their case for three years and nine months before capped expenditure periods kick in and third parties particularly being able to campaign during the capped expenditure period? With it capped, it currently sits at \$1.5 million and obviously the seat cap sits within that. You would agree that that does moderate some of those incumbency advantages that you speak of?

BILL BROWNE: I'd be interested to see how third parties spending in practice breaks down—to what extent third-party organisations are more likely to support new entrants, minor parties, Independents and so on, as opposed to the major parties. I think, though, if we look at some of the successful campaigns in the past, whether that's from Independents or new parties or so on, they often emerge fairly close to an election. It's really, to my mind, the established parties who have the benefit of being able to build their profile year in and year out and much more likely that an Independent candidate emerges closer to the election.

The Hon. BOB NANVA: Could I perhaps put it another way? Campaign financing and campaign structuring is very different in New South Wales—and very deliberately different in New South Wales—to the Federal approach. Indeed, the Centre for Public Integrity has held up New South Wales as providing the best scheme in Australia on the issue of donations and spending caps. Does it better promote the principles that you have previously written of with respect to fairness, transparency and confidence in the electoral process if groups like, hypothetically, Climate 200 are required to campaign openly in support of candidates or issues using the third-party mechanism that is available to them under the Act in New South Wales? Or does it meet those fairness transparency principles if, as is the case federally, they are able to provide funds, uncapped, directly to candidates where some voters may not have that information awareness of that financial contribution?

BILL BROWNE: I think it's difficult to compare two jurisdictions, both of which need to improve in many ways. Transparency is lacking at the Federal level in particular. We, among others, have identified ways that more donations should be disclosed, for example. But I don't think there is, in principle, a problem with donation aggregators operating, whether that's trade unions or lobby groups or Climate 200, and doing so in the form of giving donations. At the Federal level, we've suggested—

The Hon. BOB NANVA: Do you believe what transpired in the last Federal election, where millions of dollars was spent by individual candidates in individual seats, is a transparent, fair and balanced approach to an electoral system that invites competition from all political participants?

BILL BROWNE: I'd like to see much more transparency about expenditure and more details about donations, both at the State and Federal level. But the advantages for an incumbent MP are in the millions of

dollars, so it doesn't surprise me that some campaigns will reach that size of money as well. If there's a way of overcoming those advantages, while limiting the amount of spending in seats, that strikes me as ideal. I think that's something that both the New South Wales and Federal parliaments should be aiming towards.

Mr STEPHEN BALI: Thank you, Mr Browne, for your paper and stuff. On page 9, you have a fair bit of detail and analysis on what an MLA or an MLC gets paid, and you've been talking about incumbency et cetera. Are you suggesting we should go back to the early 1900s or even the late 1800s, where no-one gets paid? We had to raise money locally to send the politician to Sydney. I don't see how incumbency actually benefits that you're allowed to stay overnight. I live in Blacktown. We finish sometimes at three in the morning, and I've got to drive home, which is an hour away, and then get up two hours later to come back. I don't get allowed an overnight stay unless I sleep on the lounge here in Parliament and scare the cleaners in the morning.

What's the purpose of page 9 to identify a person's salary? We don't expose your salary, what you're getting at the institute, or everybody else. It's part of the job, once you're elected. The communication allowance is—when we're having the debate about controversial bills, we have to communicate with our electorate to find feedback. Yes, I do get some which I don't do—I know some MPs love putting about 50 photos of themselves cutting ribbons and selfies. But most people, I find, in the electorate actually throw it straight into the bin as soon as they see that. I try to go for maybe a news article, and that seems to get better feedback. I don't understand what you're trying to get at with page 9, saying that this is part of the incumbency when it's actually part—once you're elected, the election is over. You're there to do a job for your community, regardless if you're an Independent, a political party or whatever. You're there for the community. That shouldn't be—I can't see how this adds to the incumbency benefit.

BILL BROWNE: I think it can be two things at once. It can be part of the job—and, in some cases, a necessary part of the job—that these advantages exist and that MPs are funded. I mean, it was a great victory for democratic representation to get parliamentary salaries implemented to allow a better variety of people to run for Parliament and to serve. But, nonetheless, the ability to put communications in front of voters in a way that's funded by the taxpayer—by the New South Wales public—is an advantage, and, as you mentioned, it's one that other parliamentarians take full advantage of.

Similarly, taking time off your work to campaign as a new entrant is another cost and another barrier to entry that MPs don't have to face. Travel allowance can depend greatly on the nature of the electorate. There are large electorates, but being able to travel the length and breadth of the electorate as an MP is a significant advantage and the cost involved in matching that mobility for a challenger is not inconsequential. The aim there is to illustrate the kind of advantages that you would want to incorporate into your calculations of spending caps and donation caps where an MP is starting off with a head start over their rival, not to argue that those entitlements shouldn't exist.

Mr STEPHEN BALI: But at the same time shouldn't we look at the challenges, so to speak? As an MP, the disadvantage, as my colleague Mr Nanva was raising earlier, is that you're exposed every day in the media. The political party has its principles and has its platform, yet an Independent can turn up two minutes before the closing of nominations and have very little involvement in the community—and I notice quite often that half the Independents don't even know what State governments do or local councils or they run on mixed campaigns. Arguably, you're suggesting that there needs to be some type of questionnaire, finding out anyone that runs actually knows what their electorate is about. Anyone could put their name up, get elected and probably not service the needs of the electorate. As an MP, you're exposed, and you suddenly—especially in marginal seats. If a party leader does slightly something not too great, suddenly you're swept out of office. So there are changeovers of seats.

The CHAIR: Let's see if Mr Browne has a comment.

BILL BROWNE: Yes, it's true that—

The Hon. ROBERT BORSAK: It's supposed to be a question.

Mr STEPHEN BALI: It is. How do we know what Independents are up to?

The CHAIR: Sorry, I didn't hear that, Mr Browne.

BILL BROWNE: It's true that the fate of party candidates is caught up in the political party more generally. But those parties have long histories. They've got significant assets, both in terms of real capital and political capital. They start with name recognition. In fact, MPs start with personal name recognition as well, thanks in part to the fact that they're covered seriously in the media, both positively and negatively. I don't deny that there are probably Independent candidates who are unsuitable for office, but that doesn't mean that they should

start off with a campaign disadvantage or that the deliberate intervention of the law should be to limit them in a way that party candidates aren't limited. It should be to the public and to their ability to fundraise to affect that.

Mrs SALLY QUINNELL: Thank you for your submission, but I do—there is nothing stopping independent members of the community getting out there and making themselves known to the community. I feel that the idea that it's all down to the money that an incumbent has is disingenuous to the reality of being elected in an area. I came up against an incumbent, as every new member does, by definition—except for, sorry, the member for Leppington, who is the first of his kind.

Mr NATHAN HAGARTY: In many ways.

Mrs SALLY QUINNELL: Every other lower House member who has been victorious in a seat comes up against an incumbent. If it was an insurmountable mountain then it would never, ever change. It would forever be that the incumbent was there forevermore and seats would never alter. We know that's not the case. I suppose I just wanted a comment as to the submission. I realise it's about political finance, but your submission infers—and we saw this was not the case in the Federal election—that the amount of cash that you throw at an election is going to guarantee a result. I would like your comments, please, on that understanding that just because you throw lots and lots of money at a seat, therefore you are guaranteed to win that seat. Please discuss.

BILL BROWNE: Money is certainly not sufficient to decide which way a seat falls. Ultimately, that choice belongs to the voters. But there's no doubt that money and the other advantages of incumbency help, and that political parties can support candidates to dislodge incumbent MPs of other parties or, indeed, Independent MPs and therefore give them something of a leg-up as well. Whether the playing field is level or not is decided by where the advantages lie. It doesn't have to be that it's impossible to overthrow an incumbent for us to recognise that the advantages that that incumbent starts with mean that it's harder than it would be, all else being equal. Whether it's the ability to fundraise, name recognition or the benefits that are provided by the taxpayer to incumbent MPs, that all serves to accumulate.

Mrs SALLY QUINNELL: I have a follow-up question. Do you acknowledge that there are rules around the funding that we are provided within this place to ameliorate some of those advantages?

BILL BROWNE: Yes, and those rules can serve to limit those advantages. Nonetheless, there are things that are not directly electorally related that still increase an MP's electoral advantage. That can include communications that are totally within the rules but that nonetheless increase their name recognition, give them a chance to talk directly to voters and so on.

Ms JANELLE SAFFIN: Mr Browne, I've been listening to that whole debate. It's a complicated one. We've heard it from some Independent campaigners as well, and I'm not sure how it can be resolved and exactly—if you're trying to equalise everybody, and people have got name recognition and they've got funds to do their work, I'm not sure how it can be addressed. But from that, I note on page 10 of your submission—and it was the second one that came through, the corrected one—you said there's no rule about political staff in New South Wales. I'm not sure what you mean, because our electorate offices are not political staff. They're very much bound by rules about what they can and can't do and what we can do. I'd like that to be corrected, please. Thank you.

BILL BROWNE: I'm certainly happy to review that and correct that if that's in error. The source there was from a discussion about where the limits of digging up dirt on opponents were. I'll go back to that source and see what the detail was there.

Ms JANELLE SAFFIN: Thank you.

Mr NATHAN HAGARTY: It's come from your submission, and there have been other submissions as well, about this perceived advantage that major parties have and parties have. Could it be, perhaps, that, to use probably a poor analogy, people take their votes very seriously—consider it's like purchasing a vehicle, right? You're going to go with a trusted brand. It's a major investment, it's something important. You said yourself that political parties have a long history. Voters inherently will look at major-party candidates because they represent a certain set of values and there is some level of trust in that party. If there are other candidates there that are just as appealing, they'll vote for them as well. I just want to get your thoughts on that, that in fact it's not this arms race with money and influence.

BILL BROWNE: I think one of the advantages that political parties give is the vetting of candidates and the development of consistent policy. The endorsement of a candidate by a party is a reasonably good indicator of that person's policies. In the Victorian submission, where we considered these issues, we made something of a distinction between the kind of advantages that may emerge organically versus those that are imposed by legislation. One thing that our submission tries to do is demonstrate the levers of political finance laws have been set up in a way that perhaps inadvertently disadvantages new entrants and Independents. That can be treated

separately to this issue of whether you should have an incumbency advantage going into it at all. For example, when a new car manufacturer tries to break into a market—and it is difficult—they're not limited in the amount of money that they can spend. Similarly, new sports teams often actually get a leg-up from the organising body precisely to recognise that in a fair fight, new entrants are going to struggle.

Mr NATHAN HAGARTY: You can comment on this if you want, but it's probably more of a comment. I make the point that we have the largest crossbench ever. It has been growing, and that is at both the State and Federal levels. A significant number of that crossbench are Independents. Are you proposing solutions to a problem that doesn't actually exist?

BILL BROWNE: We did go a little to the backgrounds of the crossbench. Most of the crossbenchers either defected from a political party, came from local government, and in one case were the endorsed successor to an existing MP. It's true that there's a large crossbench, but much of that is actually a product of people leaving political parties rather than running as Independents originally, per se. I think there could very well be—I would draw a distinction between making sure that the level playing field is there and what the outcomes may be. We don't need to think that the crossbench should be larger or smaller to recognise that there are advantages in place for incumbents.

The Hon. ROBERT BORSAK: Mr Browne, in your recommendations at point 12 you talk about political finance transparency reforms. It's quite a list of things you've got there. Do you honestly believe that this could actually be achieved, especially in relation to candidates? We got an extensive presentation from Climate 200 today talking about wanting more transparency but also talking about fairer disclosure and distribution of income from the Government, I guess, even though they said they didn't want any. The clear thing there was that they were looking for funding for Independents while trying to disguise their own support of those Independents. How does one go about getting candidates to disclose their revenue, expenditure, loans and assets at least annually? How does that work in practice? I just can't see that, sorry.

BILL BROWNE: I'd be interested in exploring what's most feasible to implement, but if we're already requiring candidates to maintain accounts, to record donations and keep track of what needs to be disclosed there, I'm not sure why that would get more difficult.

The Hon. ROBERT BORSAK: You're saying at least annually. Most of them nominate—

Mr STEPHEN BALI: Two minutes before midnight.

The Hon. ROBERT BORSAK: —just before the election. How does that work?

BILL BROWNE: I wouldn't require them to disclose things before they're nominating, unless it's pertinent to electoral expenditure or campaigning.

The CHAIR: Thank you very much for having appeared today. You'll be provided with a copy of the transcript of your evidence for corrections. Committee staff will also email any questions taken on notice from today and any supplementary questions from the Committee.

(The witness withdrew.)

Ms DEBRA SMITH, Deputy Chair of the Public Law Committee, The Law Society of New South Wales, affirmed and examined

The CHAIR: I welcome our next witness, Ms Debra Smith. Thank you for appearing before the Committee today to give evidence. Please note that Committee staff will be taking photos and videos during the hearing. The photos and videos may be used on the Legislative Assembly's social media page. Please let Committee staff know if you object to having photos or videos taken. Before we start, do you have any questions about the hearing process?

DEBRA SMITH: No questions.

The CHAIR: Would you like to make a short opening statement before we begin the questions?

DEBRA SMITH: Yes, please. Chair and members, the New South Wales Law Society thanks you for the opportunity to appear today. Our submission relates specifically to whether truth in political advertising laws would enhance the integrity and transparency of the electoral system. We say that it will. Much has already been said about the increasing pervasiveness, sophistication and effectiveness of misinformation and disinformation activities around the world which threaten social cohesion, undermine faith in the electoral processes, and risk distortion of election outcomes. As other countries grapple with how to deal with this problem, it is worth

considering that our parliaments arguably have an increased duty to protect voters, given that voting is compulsory here.

The Australian Parliament's Joint Standing Committee on Electoral Matters inquiry into the conduct of the 2022 Federal election recommended legislating for truth in political advertising at the Federal level. We're awaiting the outcome of that, and it may be a long way off. Our preference would be to achieve uniform laws that would enhance the ability to increase understanding in the electorate of how those laws work and where they apply, and not having to have different levels of cover for different levels of government. We do acknowledge the significant challenges in striking the right balance between protection against inaccurate and misleading information that harms our democracy, and protection of free speech that enhances it.

We also acknowledge the potential risks of failure—including the risk of giving false comfort to the voting public that, once new laws are in place, they can rely on the information they receive. A striking example of the effect of reliance on the authenticity of information were the Yes and No pamphlets about the Voice to Parliament that were distributed on official paper to every letterbox across the country. Many voters who believed they could rely on the information as fact undoubtedly were misled, or at best some would have been confused.

The administration and enforcement functions would need to be properly funded and sufficiently independent. Care has to be taken to ensure that the Electoral Commission is not unduly burdened or distracted from its core functions, or exposed to the risk of any perception that it's not impartial. We believe these challenges are not insurmountable and that the issues must be addressed. The South Australian legislation, as others have suggested, is a useful starting point. It has survived challenges and has been an effective deterrent. However, more recently, complexities and challenges seem to have increased, as have complaints.

Zali Steggall's stop the lies bill 2021, which lapsed at the last Federal election, expands on the South Australian approach to fill some of the gaps and addresses some of the shortcomings, for example, by providing definitions and using the already defined term in the Commonwealth Electoral Act "electoral matter" rather than "advertisement", covering "matter communicated for the dominant purpose of influencing the way electors vote" and also providing a broad definition for "publish", meaning "communicate by any means, including by print, radio, television, internet or telephone".

We would encourage the New South Wales Government to build on the work that's been done and, most importantly, for meaningful consultation to take place on the drafting of legislation to manage the risks and, as far as possible, to futureproof the provisions and maximise the effectiveness of what could be a world-leading response to a well-established and increasing problem. Thank you.

The CHAIR: Thank you very much. Questions?

Mrs SALLY QUINNELL: I'd like to ask a question. I'm a definition nut, so excuse me if I go into a definition nerd place, but are we talking about the truth of how to vote or the mechanism of voting, or are we talking about truth in advertising about policy position? It feels like one of those would be quite straightforward and one of those would be quite nuanced and complex.

DEBRA SMITH: Yes.

Mrs SALLY QUINNELL: That's my question.

DEBRA SMITH: I think the preferred approach would be to focus on fact and not on promises. I think the point's been well made in some of the other submissions that opinions shouldn't be covered and promises as to future actions that may not eventuate should not be covered. What we're trying to address is manifest untruth and being misleading and deceptive as to a person's evaluation of their voting options.

Mr STEPHEN BALI: There have been organisations set up through universities et cetera, to do fact checking when there have been programs and political programs et cetera.

DEBRA SMITH: Yes.

Mr STEPHEN BALI: Even they've been found to fail the fact checking. They were actually in error. A lot of times it comes back to opinion. I get it that sometimes there are some really clear untruths out there. Sorry to mention an exact example, but Donald Trump saying that Barack Obama wasn't born in the US. Even today, 25 to 30 per cent of the people in America would say he wasn't born in the US, yet you can't run for president unless you're born in the US. It doesn't matter how much of a fact it is, if someone says something and it's wrong. Fact-checking in itself is wrong so how do we police it? A more direct question: How would you, from a legal perspective, suggest we ringfence exactly what we're looking at as far as truth is concerned and in what area is it? Is it a promise? What are we fact-checking here?

DEBRA SMITH: I think the example you gave is verifiable. The claim couldn't be substantiated.

Mr STEPHEN BALI: What's an example in the last 10 years in politics that you've found that was out there that defies the facts?

DEBRA SMITH: I'd probably prefer not to give examples specifically but—

Mr STEPHEN BALI: But we need to create a law around it to protect us.

DEBRA SMITH: We all have seen examples. Particularly if you're active on social media, you would see quite a lot of examples of manifestly untrue statements purporting to be fact that are designed to influence voter intention. One of the interesting aspects of the Zali Steggall's proposed legislation was that she was aiming at passing off as well. She had a separate provision in her draft legislation to deal with a party using the colours and the motifs of another candidate to advertise a message that was inaccurate and misleading. It has to be worth legislating against that kind of conduct.

The CHAIR: Taking the issue of colours and processes and things, the Committee has deliberated on this in an earlier iteration when we had discussions. Going back to Ms Quinnell's issue, dealing with issues about the electoral process—colours, saying that you only have to put a number one or you can put a number two if you wish—is often difficult, but also usually pretty clear-cut referring back to regulations. Saying, "Vote for me and it will stop climate change," or "Climate change doesn't exist and this proves it," is part of the political debate as opposed to whether something is true or not.

DEBRA SMITH: It's a blurred line. We absolutely acknowledge that that is not easy to legislate for. The Australian Consumer Law is equally challenged—perhaps not equally but also challenged—with where does the line between misleading and deceptive conduct kick in? I think the previous witness mentioned that mere puff isn't going to be covered. We can legislate to clarify where the lines are and we can give some discretion as to the likely effects of these misrepresentations as to whether or not they should be acted upon.

The CHAIR: Who is best placed then to regulate truth?

DEBRA SMITH: A regulator would be needed and, as we've pointed out, it'd be very important not to compromise the role of the Electoral Commissioner in performing their statutory functions so it would have to be an arms-length regulator who is directly funded and not dependent on a wider budget.

The CHAIR: Would that be justiciable?

DEBRA SMITH: Those issues need to be worked through a lot more thoroughly.

The CHAIR: I am saying that the Electoral Commission and the courts—I'm just quoting from Anne Twomey's submission—don't want anything to do with deciding what's true.

DEBRA SMITH: No, because it's extra work and it will risk politicising their role in adjudicating the functioning of the election. The point is well made that it does need to be a separate, independent function but it is obviously related to the elections and probably resides in the Electoral Act. There could be options that may not necessarily be set in the Act as long as it was clear that the function of the regulator was independent.

The CHAIR: So you wouldn't have a Minister for Truth?

DEBRA SMITH: You could have. That would be up to the government of the day.

Mr STEPHEN BALI: Or Minister for Untruths.

The CHAIR: I'm not opposed to it. I'm not arguing; I'm just throwing—

DEBRA SMITH: One suggestion that's been—

The CHAIR: I'm playing devil's advocate here, trying to get an understanding of who—once you move beyond electoral processes, no-one has yet been able to say who would be determining these issues.

DEBRA SMITH: Nobody's putting their hand up but there have been some suggestions in some of the other submissions, and in some of the writings on the subject, that it could be a separate division of the Electoral Commission that is not answerable to the Electoral Commissioner. Perhaps an example might be in the way that the Federal Information Commissioner has responsibility for both privacy, open government and FOI but the funding should not be dependent on other arms of the Electoral Commission's functions. It should be separately funded to ensure that it always maintains its funding.

The CHAIR: Again, I'm getting ahead of myself, but do you think it should be justiciable?

DEBRA SMITH: All of the proposals have suggested that, yes. Again, it's important to get some legislation out there for proper drafting consideration and consultation, and a meaningful consultation period

where the strawmen can be dealt with because, as we've said, the risks are considerable, but we think they're not insurmountable.

The Hon. CHRIS RATH: How would it fit in with existing defamation law, for instance? Obviously potentially one of the reasons we may not have as many problems as the US, for instance, is that we have quite strict defamation laws that they don't have. I don't know if that's something you'd like to comment on? Obviously you can defame an individual but you can't really defame a political party. Is that the missing piece of the puzzle at the moment, as you see it, in truth in political advertising?

DEBRA SMITH: I would see them as being complementary. Likewise, the Federal misinformation and disinformation bill that's mentioned in your terms of reference is complementary; it's dealing with social media platforms. Defamation is dealing with a specific area of law and this one has a different function.

The Hon. CHRIS RATH: If you're a corporation, you would be subject to deceptive and misleading conduct with the ACCC, for instance, and then at the other end with individuals, as I said, there's defamation but it's political parties, or the political process, that's probably not really covered by either. Could you almost put the political parties under the ACCC's deceptive and misleading conduct provisions or would that be too complicated, regulating political parties as corporations? It's a similar but different entity.

DEBRA SMITH: I don't think that's a solution, partly because it's got to cover everyone, not just corporations and not just political parties. Any statement that risks compromising the integrity of an election may not be defamatory and it may not be made by a company or a political party.

The Hon. BOB NANVA: Talkback radio hosts?

DEBRA SMITH: Media would be a challenge I think, and that will be something that I would expect would come out in consultations. I would expect significant pushback from journalists on this kind of legislation that applies to anybody making a representation. But I think if it's manifestly untrue, then it's damaging. The extent to which it's damaging, I think there would be a need for some sort of a threshold—threat to democracy, threat to the outcome of an election—before it would be justiciable.

The Hon. BOB NANVA: If matters were justiciable, would you be concerned that, in the context of an election campaign, an interim order would effectively be tantamount to a final order?

DEBRA SMITH: I'm sorry, I didn't hear.

The Hon. BOB NANVA: If something were justiciable, would you be concerned that, particularly in the context of an election campaign—quick turnaround, matter of weeks, sometimes days—an interim order that might be granted would effectively be tantamount to a final order and potentially disadvantage one political campaign or another?

DEBRA SMITH: I would hope that legislation like this would have a major deterrent effect such that very few matters would proceed to litigation. But those that did, I think if the fallback is that the person retracts what they have said, that could end it without the need to proceed to a final judgement. I think that the scenario that you've described is probably a low risk. But it possibly is one of the risks, and the timing itself. Particularly when you're in an election campaign in the really close days before, trying to get decisions on that kind of conduct turned around so quickly is difficult. I think there needs to be a certain amount of discretion on the regulator to take action in urgent cases.

The Hon. BOB NANVA: In this debate, there is obviously a very clear distinction between misinformation or disinformation to try and undermine the electoral process, which goes to that issue of corflutes that might be in another political party's colour or the Electoral Commission's colour, a style that might say, "You must vote 1," when that's patently untrue. I don't think there's a great deal of controversy about that.

DEBRA SMITH: No.

The Hon. BOB NANVA: I think the real issue that members are grappling with is where there is a contest of ideas between candidates or political parties. Some real examples, and to not put you in an awkward spot I'll cite one from the conservative side of politics and one from ours. You might have a scenario where a political leader says, "Interest rates will always be lower under a Coalition government," and you might have the well-cited Mediscare campaign on the Labor side. In your view, would those fit the manifestly untrue threshold in a truth-in-advertising model like this?

DEBRA SMITH: One thing I think we can't achieve is perfection with this kind of legislation. But what you've described is a prediction as to something in the future which is less likely to be caught I think. Also the example of promises as to what parties will do if they win government and then that not coming to fruition, I think those things can't be covered, really, can they?

The Hon. BOB NANVA: If in either of those scenarios a political participant were to go to this independent regulator, in the case of Mediscare or interest rates, and the regulator would obviously say, "Given the legal threshold, we can't possibly say that that's manifestly untrue. That's an opinion or an assertion."

DEBRA SMITH: It's not a statement that can be verified.

The Hon. BOB NANVA: It's not a statement that can be verified. The fear I have—and I have a superficial attraction to the proposition but I think the most well-placed intentions can be misappropriated by political parties. In that scenario, what I would foresee is each of the political parties or candidates then saying, "The independent regulator has verified our claim because they haven't knocked it out as being manifestly untrue."

DEBRA SMITH: Sorry, I'm having trouble hearing you.

The Hon. BOB NANVA: You would have political parties amplifying those statements on the basis that an independent regulator has not found—

DEBRA SMITH: A problem with it.

The Hon. BOB NANVA: —them to be manifestly untrue—

DEBRA SMITH: Yes, I understand.

The Hon. BOB NANVA: —which would make the situation we're trying to improve even worse.

DEBRA SMITH: Worse—give them a platform possibly. Yes, that is a risk.

The Hon. CHRIS RATH: Just picking up on Bob's point, it's often just exaggeration. We've seen it all before. One MP might say something and then they'll say, "The entire Labor Party supports it," or, "The entire Liberal Party supports it," based on one MP speaking out on an issue. Or they'll pose it as a question, "What will they privatise next?" You can't regulate against exaggeration, I don't think.

DEBRA SMITH: No, that's right.

The Hon. CHRIS RATH: Negative campaigning is just part of politics.

DEBRA SMITH: Yes.

The Hon. CHRIS RATH: If you were to do it, you'd have to have a potentially, to Bob's point, quite high threshold so that you're also not getting bogged down in a whole lot of nuisance claims going to the regulator and clogging them up with simple cases of exaggeration.

DEBRA SMITH: Zali Steggall's draft legislation talks about that it has to be material to be a breach of the law, so there is that kind of de minimis concept there.

Mr STEPHEN BALI: So, what's the benefit?

DEBRA SMITH: Other suggestions are—and I think it might be the ACT law that talks about being against the public interest. So some sort of threshold test as to whether it's worth taking on. If you look at misleading and deceptive conduct and what the ACCC does, they deal with complaints by the multitude and at some point they decide to take them on. But there are many, many complaints that are not pursued, and I would expect the same thing to happen with this kind of legislation.

The Hon. BOB NANVA: But there are higher stakes, aren't there, for who forms government as opposed to who buys a product or doesn't buy a product?

DEBRA SMITH: That's true too, yes.

Mrs SALLY QUINNELL: I am concerned and would like your comments on this. If most people who are concerned about truth in advertising are thinking about the exaggeration and the blowing out of statements, then are we at risk of codifying the suspicion of there not being truth in advertising when we're not getting to the threshold of fixing that which is not verifiable? Is there a concern that we are—

DEBRA SMITH: Giving false confidence.

Mrs SALLY QUINNELL: Correct, yes.

DEBRA SMITH: Yes, that is a risk.

Mr NATHAN HAGARTY: I've actually got a practical example of this. On the 2016 local government election day in Liverpool, the Liberal Party put up corflutes and handed out material saying that the Labor Party wanted to install ice-injecting rooms in Liverpool—clearly false. The fact that it was done on the day meant that it was very difficult to do anything about that when we got on the phone to the Electoral Commission. Like Bob,

I see the superficial benefit of having truth in advertising. But I think about that example. It had an effect on me; I was a candidate at that election. Thinking it through, how would that work and how would the authority that is going to look after this determine whether it had a material impact on the election? If it did, would it then go to the Court of Disputed Returns? They are just the consequences of thinking through a practical example like that.

DEBRA SMITH: There are two points that I would make about that. One is that I would hope that such legislation would have a significant deterrent effect such that those sorts of things would happen a lot less. I take your point that they are very damaging and there is not time to fix them, but there could be a fine as a consequence of prosecution of that as an offence.

Mr NATHAN HAGARTY: But, potentially, would candidates then see that as a cost of doing business and think, "I'm happy to be whacked with a \$10,000 fine if it means I get elected as mayor or an MP."

DEBRA SMITH: That's why we say the fine needs to be more significant than, perhaps, the South Australian model. We don't think it should be a criminal offence. We think that might push it a little too closely into unconstitutional. But there could be corrective measures to be taken. I recognise that it's too late after the event. If you've lost the election on that, we don't think that it would be appropriate to call into question the election result as a result of this legislation. We think that's a step too far.

Mrs SALLY QUINNELL: Can I ask a follow-up question, Chair?

The CHAIR: Very quickly.

Mrs SALLY QUINNELL: Is there a danger that instead of that sign saying "Labor will", it will become "Labor may" and then it doesn't reach the threshold?

DEBRA SMITH: I think there is still a benefit because then the communication is with a question mark on it rather than a statement of fact that people may rely on. It's suggesting that they might need to make their own inquiries. I think that the regulator needs to be given some discretion to make some suggestions as to how to turn things around to not fall within the prohibited conduct.

The CHAIR: Thank you for your very valuable evidence today. It's given us lots to think about. You'll be provided with a copy of the transcript of your evidence for corrections. I don't recall that you took any questions on notice.

DEBRA SMITH: I'm happy to if anyone has one.

The CHAIR: If you did, the Committee staff will be in touch with you, and also with any supplementary questions from the Committee that members may wish to ask.

(The witness withdrew.)

The Committee adjourned at 16:20.