REPORT OF PROCEEDINGS BEFORE

JOINT STANDING COMMITTEE ON ELECTORAL **MATTERS**

INQUIRY INTO PUBLIC FUNDING OF ELECTION CAMPAIGNS

At Sydney on Tuesday, 2 February 2010

The Committee met at 10 a.m.

PRESENT

Mr R. A. Furolo (Chair)

Legislative Council The Hon. D. T. Harwin

Legislative Assen

Ms D. Beamer

Mr R. D. Coombs Ms L. Rhiannon The Hon. M. S. Veitch

Legislative Assembly

CHAIR: This is the Committee's third day of hearings for this inquiry into funding of election campaigns. As part of the inquiry the Committee is examining a wide range of issues relating to the reform of electoral and political party funding at both State and local government levels.

Today the Committee is taking evidence from organisations and parties including the Independent Commission Against Corruption, the Audit Office of New South Wales and representatives of the Christian Democratic Party.

On behalf of the Committee I would like to welcome all the witnesses who are appearing today.

PETER CHARLES ACHTERSTRAAT, Auditor-General, Audit Office of NSW, Level 15, 1 Margaret Street, Sydney 2000, and

ANTHONY THOMAS WHITFIELD, Deputy Auditor-General, Audit Office of NSW, Level 15, 1 Margaret street, Sydney 2000, sworn and examined:

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

Mr ACHTERSTRAAT: Yes, it is.

CHAIR: Mr Achterstraat, again thank you and welcome for coming today. Just in relation to your submission, I was wondering whether you would like to make an opening statement before we commence asking questions?

Mr ACHTERSTRAAT: Yes, thank you, Chair. Thank you very much, Chair and the Committee, for the opportunity to say a few words and a make a submission. I will be very brief. I will give a background about the role of the Auditor-General.

The primary role of the Auditor-General is to undertake audits of the financial statements of the various government entities. We do financial audits of over 400 various accounts. We also do a small number of performance audit reviews.

As part of the financial audit process we audit the New South Wales Electoral Commission and the Electoral Funding Authority of New South Wales. In relation to those financial audits we, of course, look at receipts and payments, payments such as salary and wage expenses, et cetera, but also we look at expenditure and payments out of the central fund, the contingency fund and in relation to the education fund. We test that those payments are fair and accurate. We make sure that there has been proper authorisation and calculation. We do an audit of those every year.

There is a fundamental principle of corporate governance that there be a separation between management and audit. The management of an organisation should not get involved in auditing the organisation and the auditors of an organisation should not get involved in managing an organisation. This fundamental principle of corporate governance is enshrined in the professional standards, particularly by virtue of the Accounting, Professional and Ethics Standards Board's Standard APES 110, which refers to the notion of self review. It makes it quite clear that if you have been giving advice or involved in management you have to be very circumspect about the audit of the same entity. In relation to that, I am of the view that the Audit Office is the only body that can undertake audits of New South Wales government entities. So we need to be very careful about getting involved in any management decisions, such as setting the parameters for payments or setting the size of payments, et cetera.

In relation to government advertising, which is another part of the terms of reference, governments have a right and an obligation to educate the constituents, the community, of their rights and obligations and government advertising plays a fundamental role in this. However, the effect can be lost if the government advertising is perceived by the community as being for party political purposes. So there have to be clear guidelines and procedures to eliminate that risk of government advertising being seen as being party political.

I have undertaken recently a performance audit in relation to government advertising and I have made a number of recommendations which I believe will improve the robustness of government advertising. Those recommendations include a more detailed cost benefit analysis before major government advertising is commissioned. It also involves a clarification of the role of Ministers and staff members of Ministers vis-a-vis the department to clarify whose role it is to do what. I am also recommending that an independent person be appointed to the peer review panel. As well as having the same role as the other members of the peer review panel, that independent person particularly looks at the issues of whether the proposed advertising could be perceived as being party political and also the extent or the size of the advertising, whether it is warranted for the particular purpose.

Having said that, I would be quite pleased to take any questions.

CHAIR: Thank you, very much, Mr Achterstraat. Mr Whitfield, do you have anything you wish to add to that?

Mr WHITFIELD: No, nothing further to add to that thank you.

CHAIR: The Committee has received your submission. We thank you very much for the time in putting it together. I am sure there are a couple of questions amongst the Committee. I understand that Mr Veitch has a question for you and then we will move around the members.

The Hon. MICK VEITCH: Mr Achterstraat, you may or may not be aware, I was actually one of the members of the select committee that placed a dissenting report, a dissenting statement, and it was around your role, the recommendation that your role be modelled on the Ontario model from Canada. Our statement clearly states our reasons for why we were dissenting. I would just like to ask you what your thoughts are on the Ontario Auditor General's role of reviewing and approving government advertising and, if you disagree with that model, then what would be the model you would suggest the Committee would recommend?

Mr ACHTERSTRAAT: I guess there are two broad models in place in various jurisdictions around the world. One involves an assurance or an attestation by the Auditor-General and the other is more a committee process.

If I look at the first one, the attestation model, there are in fact two variants of that. There is the Ontario model and the ANAO model in Canberra. The Ontario model empowers the Auditor General to review government advertising before it is placed. One of the criteria is to determine whether it could be perceived as party political. The Auditor General, in my understanding, in Ontario has the right to veto particular government advertising, to say whether it should go ahead or it should not go ahead.

Another variant of the attestation model is the model in the Commonwealth where the Commonwealth Auditor-General also reviews the processes involved in departments preparing government advertising. The Commonwealth Auditor-General does a review which is limited assurance. It is not a full audit; it is a limited assurance. Departments need to get that review done by the Auditor-General for certain larger advertisements before they can proceed, but the Commonwealth Auditor-General, to my understanding, does not veto the advertisements. If the Commonwealth Auditor-General says it meets all the criteria, it can go ahead. If the Commonwealth Auditor-General says it does not meet all the criteria, then my understanding is that the Minister can still proceed with it. They are the two variants in relation to the attestation model.

In relation to the committee model, there are again two variants of that. The first one has a committee which reviews the efficacy of the advertisement, to see whether there is a business case, to see whether there is a cost benefit analysis, to see whether the size is appropriate. In that model the Auditor-General of the jurisdiction is on that committee. That is not my preferred approach.

In relation to the committee model, there is another model which is my preferred approach, which is that there is a committee similar to the peer review committee that we have now in New South Wales. That committee is made up of experts who can determine whether advertisements are appropriate, et cetera, but in this second variant I would suggest there be an independent member on that committee who is not the current Auditor-General, not necessarily an expert in advertising, a person not associated with Parliament or Government of the day, an independent person whose role it would be, with the other members of the committee, to determine whether the advertisements could be perceived as party political and also to ensure themselves that the correct amount of research has been done to justify the advertisement and the form of the advertisement.

The Hon. MICK VEITCH: Thank you for that. Obviously, in auditor's positions, the corporate governance process, you cannot be involved throughout the process, you actually have to audit the process, is that correct?

Mr ACHTERSTRAAT: Correct.

The Hon. MICK VEITCH: So you are then strongly of the view that that committee process with a degree of independent appointment would allow you to continue that role?

Mr ACHTERSTRAAT: Correct, and I believe that that committee process with an independent person on it would go a long way to taking the ambiguity and the frustration out of the current system. Under the current system the majority of advertisements go through with no problems, the routine advertisements, but there will always be a group of advertisements which I believe no amount of guidelines, no matter how strict, are going to be able to determine every situation to determine whether something could be perceived as party political. There needs to be a judgment. I think that the committee process, the peer review process with an independent person

would go a long way to fulfilling that role. I would still be able to then come in later and do the audit.

The Hon. MICK VEITCH: Can you tell me what is your view on how that independent person should be appointed or selected?

Mr ACHTERSTRAAT: That would be a matter for Parliament. Clearly, I believe it should be completely independent. It may well be a member of the community or it may well be the new Information Commissioner or somebody like that, but certainly not myself or a delegate of myself or anyone associated with government or the Parliament.

The Hon. MICK VEITCH: Do you have a view about the size of the committee? In my view when I used to be a CEO a committee of three was a good one. If someone did not turn up and there was an apology we seemed to get a lot done.

Mr ACHTERSTRAAT: I think that they say less is more and leave it at that.

CHAIR: Mr Achterstraat, in terms of the peer review panel, for my information, would you explain who is currently on that peer review panel?

Mr ACHTERSTRAAT: I am not in a position to give a precise answer. I could take that on notice. The department of STA would know the answer. My understanding is that there are experts in relation to the formation of advertisements, et cetera, and I think there are also members of the department of STA on there as well who can give expert opinions on it. The peer review process has improved the processes considerably since it has been there, but I am suggesting it could go further by having this independent person on it.

CHAIR: Are there further questions in relation to government advertising for the Auditor-General?

The Hon. DON HARWIN: Mr Achterstraat, I will just go through a few things about the Ontario situation. First, could I just ask you have you actually met the Auditor-General of Ontario or discussed the operation of his system with him by telephone or email or any other means?

Mr ACHTERSTRAAT: No, I do not recall having done that.

The Hon. DON HARWIN: Are you aware of the relevant code of ethics that applies in Canada in relation to accountants?

Mr ACHTERSTRAAT: I am sorry, I am not, Mr Harwin, but I would imagine that it would be reasonably similar to the ones in Australia.

The Hon. DON HARWIN: Mr Achterstraat, I would just like to explore with you the issue of the two models which you described as being effectively in the same family, the Australian Federal model, the new model introduced by the Rudd Government in June 2008, and the Ontario model. I wonder if you could just flesh out what you see are the real differences between those?

Mr ACHTERSTRAAT: My understanding is that the real difference is that in the Ontario model the Auditor General has the "go no" role, to say whether it should proceed or not, whereas I understand in the Commonwealth model the Auditor-General is merely required to do a review to determine whether the guidelines have been met, and it may well be that the Minister of the day can still proceed.

The Hon. DON HARWIN: So the key difference, as you see it, is the veto power?

Mr ACHTERSTRAAT: That is my understanding.

The Hon. DON HARWIN: Effectively what the Australian Federal model involves is, as I understand it, that government agencies supply the scope of their proposal when it goes above the threshold, to the Auditor-General and the Auditor-General effectively does a pre-review.

Mr ACHTERSTRAAT: Yes, that is my understanding.

The Hon. DON HARWIN: It is effectively a pre-review without giving a yes or no. Have you actually had a

look at the instances of how often the Ontario Auditor General actually issues a veto?

Mr ACHTERSTRAAT: I have reviewed the documentation from the Ontario model and I understand that there is a lot of discussion undertaken between the Auditor General's office and the relevant departments. My understanding is that in cases of borderline or grey areas, that the department or the government agency can go away and refine the advertisement and then come back and seek approval. I understand that that has happened on a number of occasions but I am not in a position to say the number of times it has occurred.

The Hon. DON HARWIN: So it would not surprise you to learn that in Ontario the veto power is virtually never used?

Mr ACHTERSTRAAT: I am not in a position to comment, but that could well be, because if there is discussion in the meantime, that might avoid the need for the veto power.

The Hon. DON HARWIN: Effectively, in Ontario what they have is a system of voluntary pre-review not dissimilar to what applies under the Federal arrangements here, with the knowledge of the final possibility of an Auditor-General's veto acting as an incentive for the agencies to in fact fall into line with the guidelines because they are concerned with the possibility of a veto being issued and the reflection on, I suppose, the work that that would involve. Really, effectively, there is not much difference between what applies in Canberra and what applies in that voluntary pre-review stage in Ontario, is there?

Mr ACHTERSTRAAT: I am not sure in practice if there is much difference, but in the model there is a considerable difference, if the model is used, if there is the veto power. In practice, if what you say is correct, there may not be the difference, but it is the model that could possibly occur. I think that is important too.

The Hon. DON HARWIN: So your specific objection is to the actual existence of a veto power?

Mr ACHTERSTRAAT: No, it is broader than that. My concern is the fact that I want to be in a position to audit government advertising at the end of the day, I want to do a full audit, and I believe that once I start getting involved in any way in relation to management decisions, whether I have a veto power or whatever, it could become possible that I might be pre-empted from doing an audit later on. I think there are a large number of people who can give advice in relation to whether the government advertising could be seen as party political, but there is only one person who can do an audit.

The Hon. DON HARWIN: Indeed. So effectively your objections would also apply to the Commonwealth guidelines as well?

Mr ACHTERSTRAAT: I am not in a position to comment on that. All I am in a position to say is that I am of the view that my role in management should be limited so that I can do an audit later on.

The Hon. DON HARWIN: Have you discussed the operation of the new guidelines with the Commonwealth Auditor-General and how they are working at present?

Mr ACHTERSTRAAT: Yes, I have discussed them with the Commonwealth Auditor-General and I have read his reports on that.

The Hon. DON HARWIN: Have they in any way influenced the position you now have?

Mr ACHTERSTRAAT: I take a lot of things into account, but I am still of the view that I need to be absolutely clear that I can do an audit without having been involved earlier on.

The Hon. DON HARWIN: I am interested also that you say in your submission that you are not happy with the idea of having any role in a delegation of powers to someone else.

Mr ACHTERSTRAAT: That is correct.

The Hon. DON HARWIN: Could you outline what your objections are there, given that effectively you could delegate your whole role to someone else?

Mr ACHTERSTRAAT: My concern there is that a delegate of mine would be standing in my shoes and it

would be very difficult for me then to audit any decisions made by that delegate.

The Hon. DON HARWIN: The Government Advertising Act 2004 of Ontario provides for the Auditor-General to be able to fully delegate his responsibilities to someone who he appoints a government advertising commissioner, correct?

Mr ACHTERSTRAAT: Correct. I do not believe that delegation authority has been exercised yet, but I do believe it is there.

The Hon. DON HARWIN: So effectively you would object to the right to be able to appoint an independent person like a government advertising commissioner?

Mr ACHTERSTRAAT: I do not see that as my role. I think it is a role of management to determine who that person should be.

The Hon. DON HARWIN: So we come to the independent member of the peer review team. Have you got no suggestions at all who you think might be an appropriate independent person somewhere in the bureaucracy who could appoint a government advertising commissioner?

Mr ACHTERSTRAAT: I have got some firm views on who it should not be. It should not be the current Auditor-General. It should not be a member of the Government or staffers. As I said earlier, it would be up to the Parliament, or someone else, to decide who that should be. It may well be the Information Commissioner. I have not given that a lot of thought, but someone of that ilk, who is seen as completely independent, or it may in fact be a fine, upstanding member of the community.

I am not suggesting the person needs to be an expert in advertising, because that expertise is already on the peer review panel. It needs to be a person who can tap into community sentiments, basically the reasonable person. When the courts have looked at issues like this, and there have been some court cases where people have challenged expenditure on government advertising, I think one of the criteria is that a reasonable person should not see the government advertising as being party political. So hopefully a reasonable person could be appointed.

The Hon. DON HARWIN: Your very reticence almost makes you the perfect person to do it. I have one last question, Mr Achterstraat. The Auditor-General is, of course, a Federal Electoral Redistribution Commissioner?

Mr ACHTERSTRAAT: Correct.

The Hon. DON HARWIN: Which is, of course, a very highly political process.

Mr ACHTERSTRAAT: I am not sure if I agree with that.

The Hon. DON HARWIN: Do you think being involved in those sorts of judgments would influence your independence?

Mr ACHTERSTRAAT: No.

CHAIR: The Legislative Council Select Committee made a number of recommendations in which the Auditor-General was named, which include setting a reasonable level for membership and affiliation of the intra party transfer of funds, the proceeds of merchandise to fund the cost of ongoing administration and core bank loans for parties, groups and candidates to fund their election costs. They also recommended that you determine the level of spending caps for candidates, political parties and third parties, using caps in overseas jurisdictions for guidance. In your submission you state that it would be inappropriate for your office to be involved in setting limits as it may impair your independence and preclude you from conducting audits. Could you elaborate on your comments in that regard?

Mr ACHTERSTRAAT: As I indicated earlier, there is a clear difference between management and auditing. I am of the firm view that the Auditor-General should not be involved in setting the limits, that is clearly a management decision, almost a policy decision, and the Auditor-General should not be involved in setting policy. I know Mr Harwin is going to ask me who should be involved. I will pre-empt that by saying maybe a remuneration tribunal or something like that should be more involved with setting those limits and things like

that.

Again, I see setting limits as being part of management. Once the Auditor-General starts getting involved in making those sorts of decisions, people later on down the track say he has got no right to do an audit on that.

The Hon. JENNY GARDINER: Just going back to the government advertising, have you yet had the opportunity to get any feedback from the Government about your suggestion about an independent expert?

Mr ACHTERSTRAAT: Yes. The reply from the Department of Premier and Cabinet was reasonably supportive of my recommendations. In fact, one of the recommendations, that all advertising above \$50,000 be covered by the peer review, has been accepted. I have received correspondence from the Department of Premier and Cabinet saying that they are considering the issues. There had been a suggestion they would reply to me with a substantive answer by 31 January. They had written to me just before then to say because of the holiday period, there have been a couple of other issues, and they are going to get back to me fairly shortly.

In the department's official reply they indicated direct support for a number of the recommendations. The one in relation to the independent person it is my understanding there was implicit agreement to. I do not think they specifically said we agree with recommendation 2(b).

The Hon. JENNY GARDINER: It might be helpful, Mr Chairman, if the Auditor-General would be kind enough to let the Committee know if there is a specific answer before we have to report.

Mr ACHTERSTRAAT: I am very pleased to do that.

The Hon. DON HARWIN: I would just like to foreshadow that in the deliberative later I will be moving that we invite the Commonwealth Auditor-General to give evidence.

CHAIR: Mr Achterstraat, I think that the evidence you provide in the submission included has been very helpful to the Committee in how we are to deal with the issues, particularly the recommendations of the previous select committee. On behalf of the Committee I would like to thank you very much for coming here this morning and Mr Whitfield and for your submission as well.

Mr ACHTERSTRAAT: Thank you very much for the opportunity.

CHAIR: There may be further questions arising from the discussion today. If we do have further questions, you will have no problem if we forward them to you?

Mr ACHTERSTRAAT: No, not at all.

(The witnesses withdrew)

ROBERT WILLIAM WALDERSEE, Executive Director of Corruption Prevention, Education and Research Division, Independent Commission Against Corruption, 21/133 Castlereagh Street, Sydney, sworn and examined:

CHAIR: Mr Waldersee, we have received a submission from the Independent Commission Against Corruption, which we thank you for. Is it your wish that the submission be included as part of your sworn evidence today?

Dr WALDERSEE: It is.

CHAIR: We give all witnesses the opportunity to make an opening statement before we begin with questions. Do you wish to make a statement?

Dr WALDERSEE: A brief one. As the representative of the Independent Commission Against Corruption, I really must constrain questions I answer to the issue of corruption. I understand Commissioner Barry, for example, has laid out four principles of which one is corruption. So the terms of reference really have to be about corruption for myself to comment. Secondly, just to point out that the thrust of the submission is that transparency is ultimately the most important, whatever this Committee ultimately recommends, and that our submission should be read as a package, not as a series of independent items. So caps on expenditure, donations, legislative complexity, third party controls, government advertising, the ability to enforce compliance, et cetera, must all be thought of as a package, because ultimately if there is going to be corrupt behaviour people will look at all the elements before they decide what they might do. So one item alone may actually create an incentive to go one way, but in the context of other issues it may create a different set of incentives.

CHAIR: Thank you very much, Dr Waldersee, and again thank you for the submission of the ICAC. The commission states that it supports the caps on political donations and the introduction of public funding. In your view what would be the most effective way to deal with allegations of corruption arising out of the public funding?

Dr WALDERSEE: What do you mean by allegations? There are allegations by journalists and complaints to us, allegations that have evidence behind them, speculation. You deal with them differently.

CHAIR: For example, allegations from a political opponent in an electoral context made to you alleging corruption arising from the electoral funding system, they said that they had exceeded expenditure limits or had claimed falsely public funding?

Dr WALDERSEE: I can see three alternative outcomes, depending on the details. One is that ultimately I would assume there will be some oversight by you for compliance or the Electoral Commission. I think the Auditor-General just implied that he would be willing to do that but not set the caps. So if it was simply an allegation that somebody had spent too much, it really would not fall within our jurisdiction. If it was an allegation they had taken donations or worked through a back door or spent too much because there was a deal being done and there was something that we could specifically look at, then we would do that.

Commissioner Barry though had a third scenario, which is difficult for the ICAC to do anything about, which he called non-specific influence. I think in the case of non-specific influence, that is where the transparency really comes into it. That is when the voter can decide ultimately whether they like or do not like what they see.

CHAIR: In evidence from some of the constitutional experts we had yesterday there was talk about setting the public funding levels, that a party membership could be one factor that could be counted or included as determining the level of public funding. Could you tell me if the ICAC wanted to put on the record its opinion about that matter?

Dr WALDERSEE: It is already stated in the submission and I do not have a lot to add to that, other than party membership can be manipulated, just as branch membership can be manipulated. If the funding then is tied to the number of people who belong to a party, then there is an incentive inherent in the system to have more members in your party, however you achieve it. You might have a family membership package that will then suddenly get four or five members. So it can be manipulated, and if it is being manipulated for the purposes of obtaining government money, then that would probably fall within our jurisdiction as corrupt. Our position is that we do not think that is a wise—

CHAIR: The intention, I think, that the constitutional experts were trying to convey was that the funding against party membership should demonstrate that political parties are engaging with the community and their membership level is a measure of their support in the community. As a way of encouraging engagement with the electorate, do you think that the potential corruption risks outweigh the benefits of that objective?

Dr WALDERSEE: I really probably would rather not comment on that, because we have a single responsibility, which is corruption which is bad. It is not to look at whether a bit of corruption is good if there is a greater good. We do not really work on that.

CHAIR: If then corruption is worthwhile—

Dr WALDERSEE: Yes, that is ultimately a decision I think this Committee would have to make. If I say there is a risk of corruption, they say there are other benefits, then ultimately putting those pieces together would be the Committee's responsibility.

Mr COOMBS: I would like to refer back to the group that was in here yesterday too. We had four distinguished persons in relation to constitutional law. There was a fair degree of consensus surprisingly. One of the things that they were at odds a little on was in relation to punitive measures. The discussion went for about two hours and quite late in the session one of the participants said we have not discussed what measures would go in place if a person was found to be acting in a criminal way. There seemed to be a lack of consensus on which jurisdiction it would go to, and I should have reminded them that, of course, ICAC has the power to investigate and recommend, it has not got the power to lay charges. On most occasions, I think, where you find there has been corrupt behaviour or behaviour that does not comply with the law, you refer it to the DPP.

Have you got a view on this matter as to which jurisdiction criminal behaviour or the like might be referred or criminal intent?

Dr WALDERSEE: This is why I wonder whether it is purely ICAC. There are other reasons not to disclose, I think, than corruption per se. There could be straight criminal reasons and therefore somewhat outside of our jurisdiction. You are right in noting that our powers revolve around the ability to obtain information and publicly expose it. We have almost no powers whatsoever in terms of actual prosecution. We make recommendations only to the DPP.

By the jurisdiction you mean we should stick with the Crime Commission, the Electoral Commission, police, that is what you mean by that?

Mr COOMBS: Yes, the District Court.

Dr WALDERSEE: The District Court. Our view is it would probably have to sit either with the police, but the problem is they tend to be a bit busy and it is a little bit outside their mainstream activity. In other jurisdictions the compliance usually runs through an electoral commission of some sort, both Canada and the US. Without being definitive in any way, I would have thought it would essentially sit there, but that is not a constitutional law expert's view. That just would appear to be the logical place.

The Hon. JENNY GARDINER: Dr Waldersee, similar to the matter of membership not be linked to public funding, you have also submitted that it not be linked to donations. In other words, I presume you are talking about matching funds which jurisdictions elsewhere have permitted?

Dr WALDERSEE: Yes.

The Hon. JENNY GARDINER: I guess your reasons are similar, that there is an incentive therefore to go and get more private funding.

Dr WALDERSEE: Yes.

The Hon. JENNY GARDINER: Therefore, leaving open the danger of corruption.

Dr WALDERSEE: Most jurisdictions that you refer to where there is a matching fund arrangement, it is capped, but whichever way you look at it, if it was say dollar for dollar, a dollar's worth of incentive with a matching fund is now two dollars' worth of incentive. So what you are willing to do potentially to get that dollar

is now much worse. It is essentially thinking about what incentive does that create to do something inappropriate to gain the money, and if it was matched dollar for dollar, it doubles the incentive to do something inappropriate. That was the thinking behind that submission.

The Hon. DIANE BEAMER: What basis would you see it should be given on, how many votes were garnered?

Dr WALDERSEE: That is the current system essentially.

The Hon. DIANE BEAMER: Do you see that as the best way to go forward?

Dr WALDERSEE: I do not think I would like to say it is the best way, because I do not know all the potential ways, I do not think. The other factor, as I said in my opening statement, is that any single item, whether it is the way the funds are allocated, the way the oversight is carried out, it has to be thought of as a complete package, because ultimately from a corruption point of view people will look at the incentives and disincentives and opportunities across the whole system. So if funding was allocated at a very low level, for example, based on a number of votes but there was no cap on expenditure, then there is a very strong incentive to do something to get the extra money. Conversely, if you cap expenditure very low and have a very generous funding, a lot of the incentive is taken away. I would not want to say it is the best way. It is going to depend on the package within which it sits.

Ultimately, the final part of our submission was that the corruption preventions, whatever options this Committee ultimately puts together, look at it as a full set of factors and where does it create incentives and opportunities, but to comment on any single item I think is potentially misleading.

The Hon. DIANE BEAMER: You spend a lot of your submission talking about we need to have an audit done and statements. You actually use an annual statement. We now do that every six months. Do you think an annual statement is preferable to six monthly?

Dr WALDERSEE: That part of the submission refers to what had already come out of an earlier report of this Committee, that there would be fundamental capping at a very low level. If that did not happen, then probably annually is not adequate. For example, if it was limited to a \$1000 donation and if, as your earlier paper said, there would be safeguards against the American cap system where a corporation would violate that \$1000 limit by getting a thousand of its employees to give a \$1000 each, my understanding was the system was going to stop that by everyone declaring where that \$1000 had come from or whether there had been another source behind it. If all those things were in place, and being appropriately checked, then the addition of one more \$1000 from an individual from a corruption perspective is not - it is highly unlikely somebody is going to do something fundamentally wrong for a \$1000. That is why we put that.

If it is not the case that these recommendations from the earlier paper are able to be put in place, annual may not be the appropriate one. It was based on this Committee's previous recommendations.

The Hon. MICK VEITCH: Dr Waldersee, I have got a few questions that flow on from Diane Beamer's around auditing. In your submission you recommend audits be done by an independent statutory authority. Can you explain to us why you recommend that as opposed to, say, a suitably qualified auditor?

Dr WALDERSEE: Essentially, the confidence of the public is one of them. The suitably qualified auditor, again, we look at the sad side of humanity, which is our job, and we have seen some qualified auditors who are not really up to it. They still have their qualifications. If it was a statutory authority, then we have some reasonable confidence that there will be appropriate oversights and appropriate standards over and above what might be available in the private sector. If you want to work around it, there are auditors out there who will help you work around it.

The Hon. MICK VEITCH: Does the commission have a view about who should be the independent statutory authority?

Dr WALDERSEE: Throughout the public sector we have a number of audit bodies or people who conduct audits. The Auditor-General does, of course, a State-wide set of audits, but police have auditors internally in certain bodies that sit independently. Most of the major agencies have auditors set up internally. Whether the body exists now or whether somebody such as the Electoral Commission were to be funded to be an

independent statutory auditing body, we do not have a position.

The Hon. MICK VEITCH: In a similar vein, you make some recommendations around third party involvement and particularly that they should identify expenses and the source of funding for that expense in the lead up. Do you see their activities should be audited as well? This is not political candidates themselves; this is a third party involvement in the campaign, because you have to disclose expenditures on marketing?

Dr WALDERSEE: Yes. Otherwise there is really no incentive to be accurate. Again, the issue with third party expenditure gets awfully complex, you will notice, and world experience says it is very difficult as to who is a third party, and if there is a third party can you actually tell them not to do what they are doing. There is a violation, in our case, of some implied free political speech. The US model, of course, has particularly been problematic with the issue of advertising and is it in fact political or not political. The position that the Commissioner has is that in the lead up to an election, if what you are putting through the media is liable to have an impact on the outcome of the election, so it is a campaign relevant issue, then really it should be declared and it should be declared who the people are, where the money came from, and if that declaration is made, then it should be audited.

The reason we are suggesting the transparency approach as opposed to getting into the issue of capping, is that it does not actually need a big compliance team to know whether or not it is happening. The public will see it, and if it does not have the tag saying who it was and where the money came from on the ad, then I think the public will self-regulate as to whether or not they think it should have been declared. So it gets around a lot of that difficulty.

The Hon. MICK VEITCH: With regard to third parties then, should they be also disclosed on line, electronically, so they are publicly available, and does the commission have a view about how long after the election or the event of expenditure the audited statements by third parties should be lodged?

Dr WALDERSEE: At this point we have not got to that level of detail. What we have thought and what we have put forward is that as a principle it needs to be transparent and that transparency, we believe, will provide the ultimate oversight, over and above attempts to legally decide should it or should it not have been called third party, is there some constitutional reason why you can or cannot do it. That all gets very complex, and experience around the world is that once you start regulating it you create what the OECD in a recent report this year called "thickets of regulation". Once you have "thickets of regulation" compliance starts to drop because people cannot or will not comply with what is required, and once your compliance drops, then your transparency drops. It becomes this problematic cycle.

So what we thought was the best way to ensure transparency of the issue and not compliance is if that tag is on there and it is clear who it is, then it should self-regulate.

The Hon. MICK VEITCH: So maybe third parties should report in the same manner as the actual political candidate or political entity?

Dr WALDERSEE: Potentially. Again, you have got to balance that against these "thickets of regulation" that cause people to not comply.

CHAIR: Dr Waldersee, getting back to the issue of fraudulent claims for public funding, if a body such as the Electoral Commissioner had responsibility for investigating such claims, would you think, for example, that the Electoral Commissioner would require coercive powers, such as ICAC's, in order for them to be effective?

Dr WALDERSEE: I cannot really comment. It is very hypothetical as to what the Electoral Commissioner would run into. A vast amount of what is needed to work out what has happened can be done through ASIC searches and someone to work out these lead to who. Ultimately, to look at bank transfers and so on you do need some powers.

Ms RHIANNON: You have given great emphasis to the issue of transparency. Would you see that transparency would be enhanced by public disclosure of donations prior to an election, considering there is obviously great interest at that particular point in time?

Dr WALDERSEE: I do not think I could say no. It would be enhanced by definition. A point I would like to make clear that was in the submission is that there are ways of disclosing that make it almost impossible to see

what is going on. The two common ways around the world are the legal minimum and the other one is the complete snow job, where everything is disclosed and nobody can work out where the information was in there.

The other way that we see that is quite common, not in disclosures specifically but in hiding, of course is where there is a company that is related to a trust, et cetera, that leads way back, and so the disclosure of who did it, it starts to become very hard to work out who really did it. Disclosure we separate in our submission separate from transparency. Transparency is very much where the public understand what has happened, who gave what and what did they get in return.

The simple act of disclosure does not necessarily give you that. So one of our recommendations or suggestions is that there be some funding to take disclosure information and turn it into knowledge that the public can understand, because without that you do not have transparency. In Australia we have Democracy For Sale and some investigative journalists who do it. In the US there is Democracy Watch and the rest. It is very philanthropic and there is a large number of people who do not trust government and they set up these bodies. It does give, therefore, a much more powerful transparency.

The simple answer is yes, it would of course, but we are going further and saying if you want the transparency to work, you have to actually go a bit further and make it useful information.

CHAIR: One of the suggestions which was canvassed by the constitutional experts yesterday and in a number of submissions is that donations obviously be capped, but also that donations be restricted to eligible voters and that corporations, entities, trusts, unions and other parties are not able to make donations. You would have to be an elector, on the electoral roll, in order to be able to make a donation. Does that not go some way to addressing the issues of transparency as well as disclosure and minimising of corruption?

Dr WALDERSEE: The devil will be in the details. I was just thinking of the mess that was Wollongong council at one point. Frank Vellar supposedly had bribes solicited by the councillors. Is he Frank Vellar the corporation or Frank Vellar the individual? I am not clear that that distinction is going to necessarily do much from a corruption perspective. It may have benefits from other perspectives.

CHAIR: Transparency for example?

Dr WALDERSEE: It may. It will depend on the crafting of the details, I think, as to whether or not it works, or worse, it creates a hiding hole where the wife of the CEO is given the money to give as an individual and she has kept her maiden name and no one has any idea that there was actually a link between them. So it could make it worse. It is going to depend on the details.

CHAIR: Arising from this process and contrary to perhaps the reports in *The Herald* today, we hope to have a pretty comprehensive set of strategies, reforms for electoral funding. We were wondering whether the ICAC would be prepared to cast its eye over a draft model?

Dr WALDERSEE: Yes.

CHAIR: And identify any potential loopholes that arise?

Dr WALDERSEE: That is very much what we do. We never give a tick of approval, because no system is bullet proof. So we are not going to say if you do that it will work, because there is always someone out there who will find some way around it, but we will definitely provide feedback if we see some glaring weaknesses or perverse incentives, et cetera, within what you give us.

Ms LEE RHIANNON: Dr Waldersee, thank you for explaining transparency and disclosure. That was extremely useful. Could we summarise it by saying that you are seeing that disclosure flows into transparency if it is timely? I am talking specifically about donations here and issues to do with public funding. If it is timely, and also if it is clear where that donation actually comes from? I am referring there to the comments that you made that often when a company or an entity gives the money, you are not actually sure who it is. Would that make disclosure a more useful tool to facilitate transparency, if it was done in a more timely fashion relative to an election and there was more detail about who the donor was?

Dr WALDERSEE: It may not be the detail. The question is is it useful, can a voter understand, because ultimately the oversight of the system sits with the voter. Can a voter understand from what it is getting from the

media and groups such as Democracy for Sale, any other group, or what is on the web site, can they make a judgement as to whether or not this is working or not working?

Drowning in details, as we used to call it in academia, is a real danger. You end up with so much that you do not really quite know and you would have to have special software to track who is related to who before you can ever make an evaluation. In that case disclosure really does not move the system forward towards transparency, but yes, timeliness and digestible knowledge, so not information but some sort of knowledge that some people can take away.

Ms LEE RHIANNON: Even if you knew the donor was a developer or if they are involved in the insurance industry or the pharmaceutical industry, at the moment you look at a donor and have no idea who they are, so maybe to that level?

Dr WALDERSEE: That is what I mean. That is the move from disclosure towards a transparency that people can actually oversight the system.

Ms LEE RHIANNON: So we could actually have a category where they would tick what type of business they had or what they actually did, there might be a certain number of categories and they would tick one, something like that for instance?

Dr WALDERSEE: I probably should not comment on a small aspect of one element of transparency, because I suppose our thrust is the more the better.

The Hon. DIANE BEAMER: I think you make that point very well, describing how much information we would get if we put a whole lot of things about local council in there. Around the table here, we felt you are not going to look at the process of local government because it is just—

Dr WALDERSEE: It is too complex.

The Hon. DIANE BEAMER: If you have 5000 candidates, typically you will create 30,000 pieces of data to sift through to work out who has got what from who and when.

Ms LEE RHIANNON: In recent years a number of complaints alleging corruption linked with political donations have been lodged with ICAC. I am obviously not asking in any way for any details about any of that, but considering there has been this trend, what difficulties has ICAC encountered in undertaking such investigations? I picked up that question following on from some of the questions of my colleagues with regard to would it require coercive powers if there were any complaints about public funding. I just wanted to move this on to political donations, considering we could well continue to have a system where political donations is how political parties continue to operate here and I imagine we have a lot to learn.

Dr WALDERSEE: To some extent when it arrives at ICAC the allegation is of a "done deal", did you realise this donation came in and this decision was made. If there were corruption in the relationship that lead to those two things happening, it is all over. Nobody can undo the past. If there was a deal done in a coffee shop somewhere, it is done. We cannot tap the coffee shop; we cannot follow the people; they are not going to do it again. There is no lead, unless these people were stupid enough to have done it by email and left a trail and then have transferred money directly from each other's accounts, which, frankly, people are not that stupid any more. They know what ICAC can do. What do you do with it essentially?

That is why, I suppose, we have pushed this issue from a prevention perspective of transparency, because I would say the reason that the issue of public funding of elections has bubbled up so fast and hard, under the previous Premier particularly saying there should be public funding, has been because various public interest groups and the media have put links together and the transparency has created pressure.

To me that is not a failure of the system. That is the system working. But to give us more powers for something that has happened historically and left no trace, there is nothing you can do.

Ms LEE RHIANNON: Just leaving the issue of coercive powers, is there anything else that can be done?

Dr WALDERSEE: In terms of prevention or prosecution? The two are very different. A lot can be done, I think, in terms of prevention. I am not sure there is much you can do to find out something that happened in the

past that no one else witnessed. In terms of prevention, I think you saw, if you read the media - this is not ICAC inside information - that once there was publicity about developer donations and people were being named, and then the ministerial discretion to exercise the planning powers was changed relating to whether or not the donation had been made, there seemed to be a rapid withdrawal in the willingness of people to make donations. We hope they have just gone away, but they may well have gone somewhere else. That is, I suppose, one of those perverse incentives you have to be careful of as you look at this whole thing. Are they truly just going to go away and say I would have loved to put up that big building but I cannot make a donation anymore, so it's over.

The Hon. DON HARWIN: Or they may be getting someone else to make the donation.

Dr WALDERSEE: Yes.

The Hon. DON HARWIN: That is also what you were referring to this morning, is it, the devil being in the detail?

Dr WALDERSEE: Yes.

The Hon. DON HARWIN: Are we running the risk, in fact, that what we will be getting is less transparency in bringing in caps and banning donations from particular spheres?

Dr WALDERSEE: That is implicit in our submission, that transparency is the ultimate oversight. No matter whether you cap, control, regulate, ultimately without transparency you do not really have a powerful system, but if you create this complex, thick legislation where it is not quite sure what people are doing or you force people into backdoor operations, you could in fact lose transparency.

Whatever the committee decides ultimately, we would be submitting there has to be a balance where you do not lose that transparency in the hope that compliance is going to be there. It has got to be workable and transparent and not create an incentive for people to do things that we will not find or see and the public will not find or see.

CHAIR: In terms of donations, I take your point that if you cap donations you potentially create other sources that will make donations, not through disclosed areas, but if we then also cap expenditure, the demand for donations is—

The Hon. Don HARWIN: Certainly, that is the point that the Leader of the Opposition made in his submission to the select committee.

Dr WALDERSEE: My only comment on that is that telling people they cannot have money or use money is not exactly the same as reducing demand. It is just saying you cannot have it. If the demand is I need X amount of dollars to win an election and I am told I can only spend this much, then there is still a demand there. The question is are you creating perverse incentive to try and meet that demand through backdoor channels or have you created a system where there are diminishing returns from pursuing that backdoor channel. Again, the devil is going to be in the detail as to you whether you are creating an incentive or disincentive.

The Hon. JENNY GARDINER: In general terms the commission has said that it strongly supports the proposal that a comprehensive public funding model be introduced and that all but small donations by individuals be banned. I presume that ICAC would prefer for a model to be introduced into the remaining year of the life of this Parliament, so that a new model would be effective before the 2011 election. Is that right?

Dr WALDERSEE: Probably not. We have been this way for a long time. We have current systems that do have some effectiveness, as we have seen from what has happened in the press, some changes in ministerial discretion, exercise of ministerial discretion. To get it wrong could actually make it worse. I think we would be probably consistent with Commissioner Barry in that it is important to get it right.

The Hon. JENNY GARDINER: But we have got a year to get it right.

Dr WALDERSEE: If it can be done in that time, then we would support it.

The Hon. MICK VEITCH: I just want to follow up a question that Mr Coombs asked of one of the witnesses yesterday. I am not sure that you would be able to answer this, but there is an issue about vexatious complaints

made to you the ICAC, particularly in the lead up to an election, both State and local government. I suggest probably local government would generate a lot more activity than State.

The models that we are looking at putting in place here or recommending, I can see and I concur with Mr Coombs' sentiments, that there would be the opportunity for an increase in vexatious statements or claims around people's misuse of the system or whatever. Does the commission have any suggested ways of - I mean it cannot stop this, but at least to ensure that genuine complaints are lodged, that they are just not ones to sully someone's reputation or name?

Dr WALDERSEE: We do not try and stop anyone making a complaint to us, because it could have information in it, but on the other hand we do get a lot of complaints that are vexatious, a little bit crazy, et cetera, and we have systems for filtering through that, but we never make public who has complained about what, unless we have evidence that it is likely it go to a hearing. So people are not going to be publicly damaged through vexatious complaints. If they become a serial complainant, we will also give them a letter suggesting that they put all future complaints in writing and we would rather they did not phone us. That is how we deal with people who become serial complainants.

CHAIR: On behalf of the Committee I would like to thank you for the submission from the ICAC as well as your attendance and your evidence this morning. As indicated, we would like the ICAC to cast its eye over any future model that we develop arising from this process. Also if you have any further comments you would like to make or if members of the Committee have further questions, would you be happy for us to send those to you?

Dr WALDERSEE: Yes.

(The witness withdrew)

(Short adjournment)

PETER EDWARD BESSELING, Suite 6, 27 Grant Street, Port Macquarie, Independent Member of Parliament, before the Committee:

CHAIR: Members of Parliament are not required to be sworn as they have already sworn an oath to their office as a Member of Parliament. I understand that you have prepared a submission that you have brought with you today. Is it your wish that your submission be included as part of your sworn evidence?

Mr BESSELING: Yes, it is, and if it pleases the Chair, I would like to read that submission.

Firstly, welcome everybody this morning. I am pleased to take this opportunity to put forward some suggestions through this submission process to the Joint Standing Committee on Electoral Matters and have those suggestions recorded as a matter of public record.

It should be noted that issues surrounding the regulation of political donations and expenditures are an extremely important matter for the entire voting community and input into this process should come from all political interest groups and should be above partisan politics. It is with this in mind that I would like to express my dismay that there are no members of the Joint Standing Committee on Electoral Matters that represent the views of those outside political parties. All evidence presented before this Committee is considered in light of its members' experience within a political party system and changes to our current system need to take into account the effect upon all political representatives. The input and consideration of a non-aligned committee member would prove to be a valuable asset to the Committee and to any determination or recommendation that may be proposed as a result of the evidence presented before it.

The submission that I make today is based on my own personal beliefs on how best to increase the levels of public disclosure in our electoral system based on the guiding principles of transparency and accountability - principles that are often applied to individuals when dealing with our State's public and private institutions, but are often sacrificed when individuals look for the same courtesy in return, as in the difficulties associated with freedom of information requests. Through a transparent process, individual voters can make their political choices based on the full range of information available to them prior to their vote being cast at the ballot box, and in doing so, make their choice based on how the available candidates or political parties reflect their own personal beliefs and ideals.

Another guiding principle of paramount importance is equity. A system should not discriminate against a group or an individual, confer neither benefit nor disadvantage and should encourage equal participation from all members of our communities. There are currently different reporting processes in place for candidates seeking election, where public reporting procedures vary depending on whether or not a candidate belongs to a political party. This discrepancy between public political disclosures needs to be rectified so that each candidate has the same reporting obligations, so that voters have access to consistent, comparable data on which they can base their political support, and exercise their political freedom to vote accordingly.

With these guiding principles and the Committee's terms of reference in mind, I present the following suggestions for the consideration of the Standing Committee:

1. Introduce a cap on political expenditure.

Political expenditure can be more broadly separated into campaign expenditure and operational expenditure. Campaign expenditure is self-explanatory and includes any moneys that are used for the purposes of campaigning for an upcoming election, which more specifically in the case of the New South Wales electoral system would be all expenditure that occurs within the six months prior to a general election.

Operational expenditure would include all moneys allocated to "non-election" operations of individuals or political parties and would follow the current system of six monthly declarations that are in place for political donations. By-election campaign expenditure declarations would be required for all expenditure between the previous six monthly operational expenditure declaration and the actual by-election. It would have the same reporting obligations as campaign expenditure.

The capped expenditure amount for both operational and campaign expenditures should be set by an extension of this Joint Standing Committee on Electoral Matters that includes a non-political party representative and should occur in consultation with the broader community. I have made no recommendations in my submission

on that. I think that is a matter for everyone else to have a look at.

I note the following issues in relation to political expenditure raised by Dr Anne Twomey in her report titled *The reform of political donations, expenditure and funding* where Dr Twomey states:

Expenditure limits applied to political parties and candidates have a direct effect on their capacity to communicate with the electorate. Accordingly, any such law must be very carefully balanced in order to be held constitutionally valid. The most contentious area is the imposition of expenditure limits on third parties. If no such limits are imposed on third parties, the effectiveness of limits imposed on political parties or candidates will be undermined by third party electoral campaigning. If limits are imposed on third parties, there is a high risk of constitutional invalidity. Practical issues must also be considered, such as the periods for which expenditure limits apply, the types of expenditure to which they apply and the level at which they ought to be set. Expenditure limits may also need to be considered as part of an entire scheme, involving limits on donations and funding.

It has been recognised in the past that a political "arms race" is not in the best interests of our political process and certainly not in the best interests of encouraging new players, whether they be political parties or individuals, to actively participate in politics and to put themselves forward as candidates for election. Whilst acknowledging the issues surrounding any proposed cap on political expenditure, this should not preclude us from investigating some form of spending restriction that encourages and protects broader participation in our democratic processes.

2. Introduce a cap on political donations.

The need for political donation reform has long been argued within the community, where the public perception seems to be that if you reduce the amount of money that is donated to politicians, then you reduce the influence that donors have over them. Again, donations can be separated into campaign and operational donations, with a limit set for each six monthly reporting period.

As with the proposed cap on political expenditure, limits should be set by an extension of this Joint Standing Committee on Electoral Matters that includes a non-political party representative and should occur in consultation with the broader community.

3. Timing and detail of expenditure and donation declarations.

As previously discussed, operational expenditure and donations should be reported every six months and include the details of all individuals and companies that have either donated or accepted money for goods and services. Relevant company detail that allows the public to determine company activities and to identify the company directors should be included in all donation reporting obligations to allow for complete transparency and negate the need for costly company searches.

Both campaign donations and expenditure should be declared one week prior to an election, whether a general election or a by-election, in order for voters to have all financial information available to them prior to that election. No donations or expenditure should occur within the final week of an election unless it has already been declared. The current system is unfair on our constituents who cast their votes and do so without prior knowledge of information that has the potential to change their voting decision.

4. Consistent obligations for all members of Parliament and political candidates.

Currently, the reporting obligations for candidates and members within political parties are different to those who stand as independent candidates. Political party candidates often have no political donations or expenditure to declare following elections, as all monies are channelled through their political parties. This means that unless there is a by-election where the funds can be directly attributed to one campaign, there is no public accountability for how much a party received or spent in any individual electorate on their election campaign. Any non-party candidate must declare exactly how much was received and spent, which is attributed completely to an individual campaign.

The amount of money spent on an individual election campaign is of extreme interest to the general public and often will influence a person's voting intentions. This should occur not only prior to election, as previously discussed, but expenditure should be attributed directly to each individual campaign on an electorate by

electorate basis. This would mean that each candidate, in each electorate across the State, would have the same reporting obligations that would show how much was spent on their campaign for that electorate. This should occur regardless of whether a person is a member of a political party or not.

5. Public funding model.

There should always be an element of public funding of political campaigns to encourage broad participation in our democracy by those wishing to do so. The current model of funding candidates who achieve over four per cent of the primary vote in the Legislative Assembly elections in our State certainly encourages not only active participation but also competition for all candidates to give their best efforts. Private donations should also form part of any funding model as a safeguard for the political freedom of expression that is a foundation of our democracy. Any form of public funding model would be reliant on what other reforms to the existing election funding model were to take place, such as those that I have mentioned previously. It is difficult to put forward a suggested model without looking at the broader reforms in their entirety and would be a matter for further consideration in that respect.

I would like to once again thank the Committee for the opportunity to present some discussion topics for consideration and wish them every success in moving forward with recommendations that will make our political system more equitable, more transparent and more accountable.

Our political system should not be dominated only by those with access to large amounts of cash, lest political influence be vested in a minority and the emphasis on fund raising becomes the driving force behind political machinations at the expense of policy development and broad community representation. I believe there to be broad political support for reform and look forward to continuing to play a part in achieving that goal.

CHAIR: Thank you very much, Mr Besseling, and thank you for the time taken in making a submission and appearing here this morning. I am sure there are a few questions that members have for you, but I would like to ask a couple myself.

I was wondering have you seen the Electoral Commissioner's evidence that was presented on 9 December to this Committee where he outlined four underlying principles that should govern the way in which an electoral funding system should operate?

Mr BESSELING: I have not seen those yet, no.

CHAIR: He identifies four key principles.

The Hon. DIANE BEAMER: Protecting the integrity of representative government, promoting fairness in politics, supporting parties to perform their functions and respect for political freedoms.

CHAIR: As a broad principle or statements of how reforms should take place, are those principles something that you feel comfortable with?

Mr BESSELING: Yes, I would agree with those, but I would also include individuals as opposed to just parties. I think in general, and this is no criticism as such, I do not think it was by design, but simply because political parties play a large role in our democratic process at the moment, there should be broader consideration for individuals wanting to enter into that process, and I think during every election there are always individuals who are going to play a key role in that who should be considered.

CHAIR: One of the suggestions that has appeared in a number of submissions to this inquiry is that donations should be restricted to eligible voters, so that corporations, trusts, businesses, unions would be precluded from making donations to political parties or independent candidates. The intention, I think, is to improve transparency. Is that a system that as an independent you favour or see problems with?

Mr BESSELING: I think part of the broader consideration needs to be how that is policed also. I think there will always be ways of channelling money to individual candidates or political parties by corporations, whether that be through a series of citizens or not, but I can see the point that you raise there, if you are not voting, then why are you trying to seek influence. I think I would have to consider that further, but I would be comfortable either way to tell you the truth.

CHAIR: We had evidence yesterday from the Shooters Party. One of their premises was that restriction on the quantum of donations should not be set too low because it disadvantages small parties. A number of submissions have talked about a cap on donations of \$1000 and that cap applying to individuals. I was wondering if you had a view about that limit and how it would affect independent candidates?

Mr BESSELING: I do think it cannot be set too low. That is because, again, to exercise your political freedom to donate money to whomever you like, that needs to extend within a reasonable limit to the amount of money you can give. However, as my evidence suggested, we do not want to turn this into an arms race. I think what is more important is not so much the amount that is set, whether that is \$1000 or \$2000, certainly you would not want to set it too high, but that it is transparent. At the moment, if people are donating and everyone can see who is donating, then they can draw their own conclusions and cast their vote based on not only whether they believe the individual's or the party's ideals, but also what influence other players may be having in the political process.

CHAIR: In your submission you talked about caps on donations and divided it into categories, being campaign donations and administrative donations. I do not think that we have had a submission to date that talks about dividing up donations from individuals or corporations along those lines. Could you explain how you think that might work and what benefit that would have over donations simply to campaign expenses?

Mr BESSELING: Yes. As we all know, whether it be individuals or political parties, as they move closer to an election they tend to build up a war chest to contest those elections. I put that in mainly because of political parties to be quite truthful, because there are ongoing operational costs in running a political party. With regards to an individual candidate or an independent, it mainly leans towards the campaign expenditure and raising money to campaign. I put that forward with due consideration to the political parties. I think that those donation declarations and expenditure declarations throughout those six monthly periods that are in place at the moment are important. I think people do take notice. Again, it is part of that transparency process.

Where we lead into an election campaign, it is often the case that a lot of money will be raised, the election is held and then the declaration is made. I do not feel that is in the best interests of the broader community because they have no knowledge of what money was raised. Realistically, if they wanted to change their vote, they are going to have to wait another four years in the Legislative Assembly. That declaration should be made prior to the election. That is why I have included that one week prior to the election so that people can have a look at it.

CHAIR: If a system was adopted along the lines you have suggested of donations for campaign expenditure and administration expenses, would you see both streams falling under the one cap or would you see different caps for both?

Mr BESSELING: I think there would probably be different caps for both, given that your campaign expenditure is likely to be much larger than your operational expenditure. Again, that should be taken under consideration. I am not aware of the expenditure of political parties in terms of operational expenditure.

Mr COOMBS: The Chairman just asked a question on this proposal that you have to make all donations public one week prior to an election. I can see the intent here, but I really just do not know how that will occur in a practical manner. I think it is the case that both the major political parties now basically centralise that function. I know from my own experience there is an enormous amount of work that is undertaken by our respective administrations in compiling that information. The State elections are on the fourth Saturday in each March of the fourth year. Realistically, they would have to be starting to get this information together in January.

I see a situation too that could arise where if there were organisations or whatever out there who wanted to basically circumvent some of the laws that we put in place, it might just encourage them to leave it to the last moment to make their contribution and donation. Then you might say how do we circumvent that and you lead back to some of those constitutional problems we have about political communication and all the rest of it.

I think that both yourself and The Greens' representative on the Committee supported that similar sort of view, but practically I do not know how that would work. I just see it as impossible.

Mr BESSELING: Would you like me to comment on that?

Mr COOMBS: Yes.

Mr BESSELING: I am sure there was a question in there somewhere. I am not suggesting for any moment that

these reforms can be implemented quite easily, but I do believe that where there is a will there is a way and I do think it is important that as much information as possible is given to the voter prior to them going to the polls. This committee has been formed on the back of concerns that have been raised in the community with regards to political donations and expenditure. It is obvious that therefore it would play a part in the consideration of a voter when they are going to the polls as to who has received donations and what the money has been spent on and what sort of influence is occurring, whether it is perceived or otherwise. I do think that is an important part and I do think, again, where there is a will there is a way.

The Hon. DIANE BEAMER: The introduction of a cap on political expenditure, I take it the model that you are talking about is an expenditure cap per electorate and then an overarching one for political parties?

Mr BESSELING: Yes.

The Hon. DIANE BEAMER: So it would have to be per electorate. Would this lead then to the fact that you would have to disclose for each electorate not going over a cap?

Mr BESSELING: That is correct.

The Hon. DIANE BEAMER: Then we would have to change the way in which parties are operating now.

Mr BESSELING: Yes, and it leads to my other point, not only equity but transparency. At the moment we have a situation where individual candidates will provide public disclosure of their electoral funding or their expenditure and the donations received, where it is not incumbent upon political parties to do that for the individual electorates. It comes under the broader banner of the political party. I think some consideration needs to be given to that for those overarching ideals of equity and transparency.

The Hon. DIANE BEAMER: Two questions: What should the limit be in your opinion per electorate? Have you thought about it? Secondly, what should be the penalty for breaching that limit?

Mr BESSELING: That second one I think is a very good question. The first one, as I said, I think if there is a way forward, I will be honest, I think it is going to be very difficult to put in broad political reform as we are suggesting before the next election. However, I do think that some consideration needs to be given to what that level is. Again, I do not have enough information from a political party perspective to be able to determine what that level should be. I could pick out an arbitrary number.

CHAIR: What did you spend on your campaign?

Mr BESSELING: About \$80,000 for my campaign, and given that I was not an incumbent, I think that is probably about the mark where most individuals should be able to get their name out and about.

The Hon. DIANE BEAMER: Because you want to be able to get your message across?

Mr BESSELING: You have got to get your message across, there is no doubt. If you underspend, you will have no chance.

The Hon. DIANE BEAMER: There was a suggestion yesterday that we have a cap there, that the money that the State as a whole sets for what the Labor Party spends on its advertising, the Liberal National Party spends on its advertising from its head office, that the cap for independents should be higher?

Mr BESSELING: I think it should be reflective of that cap across the State. I do not think there would be an independent sitting today who has not been outspent by one of the major political parties in a campaign, not just outspent slightly but significantly outspent, four to one often or three to one.

CHAIR: As a suggested model, if an independent is in a lower house seat and there is a cap on political parties contesting lower house seats in an electorate but political parties have an overarching budget—

Mr BESSELING: Yes.

CHAIR: That one ninety third of that expenditure be added to the independent's cap.

Mr BESSELING: Definitely, and again I think that comes under the heading of equity that we are trying to achieve. We are trying to achieve some sort of parity and not advantage one or disadvantage another. I think that is very important. Again, I make the submission not being aware of the political parties' operations and with the general idea that we all need to be working together towards this. It needs to be equitable the other way as well. I am not suggesting for a moment that independents should have an unfair advantage over political parties.

The Hon. DIANE BEAMER: The second part of the question: Do you have any idea of the penalties?

Mr BESSELING: The penalties, that is a difficult one. If someone is elected without having declared their expenditure or donations, again, that poses a problem for the election of that particular individual or that individual's parties. I think a monetary penalty should be high on that without a doubt.

CHAIR: One of the suggestions yesterday was that there should be a sliding scale depending on the level of the breach.

Mr BESSELING: Yes, I would be—

CHAIR: If it is a minor financial breach, whereas if it is a substantial breach and it can be established that there was an intent to mislead, that the penalty should be much higher again and include forfeiture of the result.

Mr BESSELING: And I think not only the intention, but the influence. If it is a substantial breach that heavily influenced the result, that definitely should be something that was considered.

CHAIR: Under a system where public funding forms a larger part of the overall funding of election campaigns, the timing of public funding might be more important in ensuring that parties and independent candidates can meet their expenses in a timely fashion. Do you have a comment in that regard?

Mr BESSELING: I think if you make the public funding available prior to the election, you would have a lot of people who would be wanting to put their hand up as a candidate who may not necessarily be doing it in the best interests of the electorate or for the sole purpose of trying to gain a seat in Parliament. I think there needs to be consideration of individuals who truly want to represent the area and they need to put something forward—

CHAIR: The onus for that should be on the candidates?

Mr BESSELING: There needs to be a balance that is achieved there. With regards to the current system of funding, I think that is there. You need to take the punt yourself, to put yourself forward to try and raise some money, even if it is your own individual money that is being thrown up, and if you get a result you reap the rewards out of that, but I think there needs to certainly be consideration of that.

CHAIR: One of the suggestions arising from discussions we have had over the past day and before and in submissions is that the cap that applies on donations to candidates and for parties should apply on candidates to their own campaign. If, for example, a cap of donations of \$1000 or \$2000 was applied, it would apply to a candidate funding their own election, the premise being that the system should not favour wealthy candidates funding their campaign at the expense of other candidates who do not have the same access to resources. The justification and the implications, how do you see those?

Mr BESSELING: The difficulty there is that would preclude a lot of people from putting themselves forward. Political parties would definitely have an advantage there, simply given that being a political party they have a donation system in place. As an individual, it is difficult to go through a campaign, try and get yourself known throughout the area and at the same time try to raise funds. It is very difficult. So I think that would put a bit of a hand brake on a lot of individuals who may put themselves forward as independent candidates.

The Hon. DIANE BEAMER: How much did you spend on the last election personally?

Mr BESSELING: Personally, it was \$50,000. That was a huge imposition for me and my family, but, again, it was something that we felt was - I wanted the role and I was willing to put my money where my mouth is. Had I been unsuccessful, so be it. However, if that ability to put money forward was curtailed, I do not know how I would have gone about trying to raise the money.

The Hon. MICK VEITCH: Is that \$50,000 in cash or you have not included the in-kind contributions that you

would make from yourself as well?

Mr BESSELING: In-kind contributions as in?

The Hon. MICK VEITCH: I am just wondering whether as an independent—

CHAIR: Use of your home office to run the campaign.

Mr BESSELING: Yes, things like that. That was \$50,000 in cash.

The Hon. MICK VEITCH: Including that as well?

Mr BESSELING: It did not include in-kind, no.

The Hon. MICK VEITCH: If you somehow brought that to account, your virtual contribution could be a lot more than \$50,000.

Mr BESSELING: Yes, I actually had a campaign office as well that I ran out of. So there was not a great deal of in-kind contribution, but going back to that point, if I did not have the ability to put money in myself - you need to understand a lot of decisions whether to run or not, particularly in by-election campaigns, are made close to the actual date of the election. Individuals do not have the ability like political parties to raise funds over a period of time and then say, okay, we are going to contest this by-election, here are some funds for it. If a by-election is called and there is six weeks until the by-election and someone thinks I am going to have a crack at this, I would not mind being the member for Port Macquarie or wherever it is, how do they go about raising funds to compete with a political party? Anyone who has had any experience in putting together a fund raiser realises how difficult it is. At the same time, as an individual, not only do you have to raise the funds, but you have to be out there and about and working on policy and all sorts of other things. It would prove to be a huge impediment to individuals.

The Hon. DIANE BEAMER: What was your public funding?

Mr BESSELING: I do not know. I think it was about \$35,000, something like that.

The Hon. DIANE BEAMER: So that helped somewhat?

Mr BESSELING: Definitely. It was very welcome, believe me.

CHAIR: What were the major sources of funding for your campaign?

Mr BESSELING: There were some donations. I have got them here. I think all up the donations - there was another \$19,500 in donations.

The Hon. DIANE BEAMER: Were they less than a \$1000, \$2000?

Mr BESSELING: The major one, there was one large donation of \$10,000, which I was lucky enough to get, but if I did not have that, I simply would have curtailed my expenditure. Having said that, if expenditure caps are in place and donation caps are in place, it does change the dynamics of it all considerably.

CHAIR: Getting back to the challenge that individuals face, particularly in a by-election situation where there is limited opportunity to raise funds, getting back to the question of whether the timing of public payments to candidates could be managed in a way that does not disadvantage independents, there is talk that where people can demonstrate, perhaps by polling figures, a level of support in the community, that they could actually receive a commensurate amount before the election to help them with costs of the campaign. Do you see that as a—

Mr BESSELING: How do you determine that and who determines that? Who does the polling?

CHAIR: The Electoral Commissioner?

Mr BESSELING: The Commissioner says you are doing okay and how many people do they poll? Does

someone else put their hand up after the money has been delivered and say hang on a second, you did not poll me. That is the difficulty there.

We had 11 candidates in the by-election campaign. I think the public would be quite cynical if they thought that they were paying for 32 candidates in a by-election campaign, not only in terms of the public money that is going towards it, but also when they go to the ballot box and they get a tablecloth again that they have to sort through. I think that is a difficulty that would arise there, how to sort out people who are serious and people who want to make a political statement or just thought it would be fun to have a go.

CHAIR: One of the requirements obviously of public funding is that it can only be reimbursed for actual expenditure. Unlike in the Federal system where you can put a claim in based on your votes, you do not have to demonstrate that you have expended any money.

Obviously in your situation, being able to self-fund the majority of your campaign was critical to the success of your campaign. Do you see a situation where that could unfairly favour wealthy candidates over—

Mr BESSELING: Again, that is where the caps would come into place and have an influence over it.

The Hon. DON HARWIN: The caps on expenditure?

Mr BESSELING: On expenditure, definitely. If that were to be the case, if you set the cap too high, \$200,000, then all of a sudden you have got individuals who would blow everyone out of the water. Most people can gather together a little bit of money if they are interested in going for politics. Mine was just added to my mortgage, like everyone else would do, and I was lucky enough that it came up trumps, but I think the cap would preclude people coming in and spending big bucks. Again, that is trying to get that equity in place.

The Hon. JENNY GARDINER: Mr Besseling, just on the self-funding question, you are saying you have declared \$50,000 self-funding and that was basically an extension of a mortgage or taking out a loan?

Mr BESSELING: It was an extension of a mortgage, yes.

The Hon. JENNY GARDINER: On top of that there was other in-kind contributions which were made to the campaign, is that right?

Mr BESSELING: In-kind, what do you mean by in-kind?

The Hon. JENNY GARDINER: Was there, for example, a bus donated or an office?

Mr BESSELING: Those were all included in my public disclosure.

The Hon. JENNY GARDINER: The bus signage is put in your disclosure but not the bus.

Mr BESSELING: Okay.

Mr COOMBS: I am not too sure that this line of questioning—

Mr BESSELING: If we want to go into individuals, I do not know that that is in the interests of the broader discussion that is going on here.

The Hon. JENNY GARDINER: It is an important question because—

Mr COOMBS: I have got a general disagreement with this line of questioning. It does not fall within the terms of reference quite frankly, the questions that the honourable member is asking.

CHAIR: Mr Besseling has submitted a return. That information is an available record. This inquiry is not to inquire into the return that has been lodged. The terms of reference are our guiding principles.

The Hon. JENNY GARDINER: I am just interested in the in-kind thing because we have had different evidence about it.

Mr BESSELING: This is the first time that it has been raised, and if it is cheap political points, then I do not think that is the nature of this inquiry.

The Hon. JENNY GARDINER: No, I am just getting clarification on what you said earlier. In relation to your earlier remarks, you suggested that donations were divided into two types of donation, operational and campaign. Are you aware that the original Election Funding Act did that, that donors were required to donate under those two headings?

Mr BESSELING: No, I was not.

The Hon. JENNY GARDINER: That did cause some confusion for the donors, because they wanted to support a party or a candidate, but it might end up in the wrong heading. I presume that is why the Act was clarified.

Mr BESSELING: No, I put that forward. I was not aware that that occurred originally, but I stand by the submission for consideration anyway at this forum.

The Hon. JENNY GARDINER: Another discussion that a number of witnesses have raised is whether or not in the model that is developed there should be any consideration of the different types of geographic concern and local media markets, because in non-metropolitan electorates, for example, it is normal for television advertising to be used to promote a candidate, and in fact in your case you allocated about half of your expenditure to TV. Do you think that is also something that we should take into account in coming up with a model?

Mr BESSELING: I think definitely there should be consideration for the differences between metropolitan and rural areas. I would also think that needs to be taken into consideration with regards to fund raising as well, the opportunities. People may suggest it is easier to fund raise in metropolitan areas than it is in rural areas, but I think definitely those differences need to be taken into account in any model that is put forward.

The Hon. MICK VEITCH: Mr Besseling, when you were talking about the one week reporting prior to an election, it was one of Mr Coombs questions, but for candidates to be able to lodge a return one week before, you would really have to have a cut-off date upon which donations could not be accepted prior to an election.

Mr BESSELING: Yes.

The Hon. MICK VEITCH: Do you have a view then as to when that would be?

Mr BESSELING: I think the one week cut-off period would also be a declaration for expenditure as well. To plan for that last week, that would have to be brought forward, but I understand that during campaigns people do get excited by campaigns and decide, maybe at the last moment, look, I like the way this person speaks or I like their ideas, I think I will support them, and they make those decisions fairly late. I think it would have to be as late as practicable in order for that reporting to occur. Again, given that I have not been involved in a political party, I do not know how late that could be in order to service the means by which you would need to report it.

The Hon. MICK VEITCH: If there is campaign funding and administration funding, are you proposing that the reporting would be for both of those?

Mr BESSELING: The campaign funding would only need to be declared six months prior to the campaign. At the moment, we know when the election is going to be held for New South Wales. So six months prior to that would consist of campaign funding, other than that it would be operational funding.

The Hon. MICK VEITCH: In your submission you gave us this afternoon, you touched on third party involvement. What do you see should be the limits or arrangements then around third party involvement? And could I just ask from an independent's point of view, what would be your definition of a third party?

Mr BESSELING: A third party would be unions, for instance, other political groups, who are not necessarily companies. It could even be not for profit organisations who want to lobby for a particular—

The Hon. MICK VEITCH: It might be a disability organisation?

Mr BESSELING: Organisations, yes. It is mainly surrounding the ideals of transparency, to make sure that

everyone knows who they are voting for and why they are voting for them and what influence, whether perceived or real, is being given through a political donation. I think they are the concerns that the broader community has. Hence, the reason why we are sitting here today.

The Hon. MICK VEITCH: Do you think though that the third party limits should be lower than say for someone who is running as a candidate, who has actually put the cold hard cash down, put their name on a ballot paper? Should third party expenditure limits be set less than—

Mr BESSELING: Definitely, I think they should be.

The Hon. MICK VEITCH: A half, a quarter, 90 per cent?

Mr BESSELING: Again, it is difficult to say. Once you get the principles right, once you work out a way forward, I think then you can look at the detail and work out what is not only practical but what fits in with those ideals that you are trying to achieve.

The Hon. MICK VEITCH: Moving on to something else, which is to do with compliance, we heard from the political parties yesterday, and I think the Shooters in particular mentioned that as a small political party they run a lot of volunteer labour in their office and they are finding it quite difficult to get together the disclosures. As an independent, is that a fair comment for you as well?

Mr BESSELING: Very much so. During a political campaign and directly following the political campaign, you are one person. You do have volunteers, but, certainly, as soon as the political campaign is over, the difficulties I had with getting the disclosure together was compounded by the fact that okay, I am now a member of Parliament, I need to organise myself for that, I need to get an office together, I need to employ staff, I need to tidy up everything that has gone on through the election, I need to clean up the office that we had as a campaign office and move into the other office. There is a whole broad range of things that impact upon an individual a heck of a lot more than would do a political party. It is not simply press the go button, where a political party can come into it.

The Hon. DON HARWIN: Yet you are advocating when the rubber is hitting the road, seven days out from an election, allocate time to—

Mr BESSELING: Yes. I understand that, but if that is known prior to you going into that, as an individual you get someone to look after that aspect for you.

CHAIR: You have an agent anyway.

Mr BESSELING: You have an agent, that is right, and if there is a simplistic format which they can follow that can be added to, when a donation comes in it simply gets added to the form, then out that goes.

The Hon. DIANE BEAMER: It would be terribly difficult to do the in-kind. If you have a donation of money, that is relatively easy. If somebody has donated to your office space, you can work that out at \$100, \$500 per week in the last week and say you spent X, but if you have got other things which come in-kind, it might be someone walks up with a photocopy machine, it is quite difficult for you to work out what the value of that is in a week when you are still going to use it.

Mr BESSELING: Yes, I take your point. It is very difficult.

CHAIR: There is a system. I think it is referred to in one of our submissions. I cannot recall which one. It refers to one of the districts in New York that requires real time disclosure of political donations in the lead-up to an election, which is published on a web site. I think it is important for this Committee to get more information about that, how it operates.

The Hon. DIANE BEAMER: In view of this kind of evidence, yes.

The Hon. Don HARWIN: They have real time disclosure in Ontario.

CHAIR: I think there is some value for us in understanding how these real time systems operate, how onerous they are for independents and political parties, so that it can inform us in terms of our recommendations. I take

your point that information, transparency and disclosure after an election is not nearly as valuable as before the election, and I think we should explore opportunities for making it as easy as possible for candidates and parties to inform the electorate how they were funded and by whom.

Mr BESSELING: And I think that in-kind thing is a difficult thing to judge prior to an election or even post an election.

CHAIR: Thank you very much for coming all the way down from Port Macquarie. I think you conducted yourself very well. You have a good understanding of all the issues and we have certainly benefited from your experience as an independent candidate. Thank you very much for your time. If you have anything further to add, you are welcome to make a supplementary submission, and if we have any further questions of you, do you mind if we contact you with those questions?

Mr BESSELING: No, no problem at all.

(The witness retired)

(Luncheon adjournment)

GRAHAM JOHN FREEMANTLE, Acting State Manager, Christian Democratic Party, 9 Exeter Road, Homebush, and

IAN EDWARD SMITH, Party Agent and Acting Treasurer of the Christian Democratic Party, 9 Exeter Road, Homebush, sworn and examined:

CHAIR: Mr Freemantle, the Committee has received a submission from the Christian Democratic Party. Is it your wish that the submission be included as part of your sworn evidence?

Mr FREEMANTLE: Yes, Mr Chair.

CHAIR: Mr Freemantle, would you like to make an opening statement to the Committee before we proceed with some questions?

Mr FREEMANTLE: Yes. I would like to ask the members to turn to page five of our submission and under the Terms of Reference number A, the criteria and threshold which should be applied for eligibility to receive public funding. As everyone knows, under the current legislation candidates who contest an election or a by-election for the Legislative Assembly are eligible for public funding, if the candidate gains at least 4 percent of the vote and that also applies to the Legislative Council.

The main point that the Christian Democratic Party would like to make to the Joint Select Committee is that this limit should be abolished for candidates in both Houses, the Legislative Assembly and the Legislative Council, and it also should apply to both party candidates and independent candidates. We also believe strongly that public funding should only be used to reimburse genuine election expenditure with receipts.

I would like to refer, as I have in my submission, to the New South Wales Electoral Commissioner, his comments, and we found his comments very wise and insightful when he addressed you on 9 December and in his address to you he said that there were four foundational pillars for a model of public funding and the first one was protecting the integrity of representative government. Secondly, promoting fairness in politics. Thirdly, supporting parties to perform their functions and fourthly, respect for political freedoms and I would refer those quotations in my submission to the members of the Committee to study, because I think they are foundational principles that should be applied. In his comments Mr Barry concluded:

We have seen instances where the financial strength of some can drown out the voice of others. The objective of having a genuine chance to make a difference is weakened when the financial might of a few make it impossible for others to be heard. The political finance regime should attempt to address this risk

In his comments on number 3, foundational principle of supporting parties to perform their functions, he made this comment:

Political parties need to be appropriately funded in order for them to fulfil their functions as a party. This does not translate into giving parties what they think they need. It is more fundamental than this. It is to provide parties with adequate funding in order for them to do what parties ought to perform.

The CDP in general agree with the comments of the Commissioner and believe, as I said before, that the current criteria for candidates to gain at least four percent of the total number of first preference votes in both Houses of Parliament should be abolished, because we believe that this would promote more fairness in politics and support political parties to perform their function.

On terms of reference on page seven, terms of reference B, if you turn to page seven of our submission, this is the manner in which public funding should be calculated, we propose a model there and it is a very simple model. First of all, increase each candidate's nomination fee to discourage frivolous nominations. Secondly, pay all candidates public funding based on the number of primary votes that they receive and thirdly, gradually reduce the amount paid as the number of the primary votes increases, and I have given certain examples there.

We have recommended that the candidate nomination fee be increased to \$500 at least. We looked at higher figures \$750, \$1,000 but we thought \$500 was best. We have given some calculations there, depending on how you would reduce the amount of expenditure, but on the model we propose you can see for 40 percent of the vote, for a candidate receiving 20,000 votes in the Legislative Assembly, he would normally get around \$40,000 but under our model it would be reduced to \$33,000 or about \$1.68 per vote.

We would also like to submit too that public funding for a candidate should be limited to no more than 50 percent of the total vote and the reason for that is that where you have a Liberal or Labor seat that they normally win, then the election expenditure is usually reduced, so it does not seem to be fair to pay candidates for getting more than the 50 percent.

Thirdly, on page eight of our submission where it talks about caps, we have put a fairly detailed submission in there about caps on public funding. Our position is very clear. The CDP recommends that there should be a ban on all donations to political parties, that is from developers, commercial and other businesses, but donations of up to \$1,000 per year by individuals should be allowed.

Mr Barry, in his statement to the Committee on 9 December, referred to the New Zealand model and we have also referred to a paper prepared by the University of Otago and that paper outlines the deficiency of the New Zealand model and we believe that that paper should be carefully studied, to look at the proposed model in future.

One issue that they raise in the paper is having laws and regulations to limit expenditure is not going to stop the problems occurring, so to stop the problem at its source is the preferred option and so limiting the amount of public funding is a positive step in that direction.

Fourthly, we would like to comment on public funding for local government elections. This was not emphasised a lot in the Terms of Reference but it is in the opening statement there which says that the Committee should inquire into a public funding model for both State and local government levels.

The CDP have an a very strong belief that local government should not be dominated by the major political parties, as occurs at present, and thus we believe that a public funding model for local government elections should give preference to independent candidates or candidates from the minor parties.

We also support the concept of public funding for local government elections, because this gives equity to the candidates, encourages Independents and gives some consistency between the two different levels of government. We also recommend to the Committee that the model for State Government elections should be considered first, as a first stage, and then look at the model for local government elections after that exercise has been completed.

Finally, I would like to comment, and this is probably one of our most important points, that public funding for party administrative costs - and I spent this morning just quickly looking through the recommendations in the submissions of other parties, and it is a general theme across all the parties, Liberal, Labor, Greens, Shooters, and other people, that the model needs to look at public funding for party administration costs.

I have passed around a speech that Reverend Nile gave in Parliament as Chairman of the Select Committee on Electoral and Political Funding. He gave that speech to Parliament on 24 September 2008. Mr Chairman, we would like to include that in our submission. We failed to put it in our first submission.

If you look at that speech Reverend Nile gave, at the end of paragraph three of the speech there you will see that he said:

In addition to funding for contesting elections some parties representing the Parliament are also eligible for annual payments from the Political Education Fund. The Committee found that rather than being used to improve political literacy, these payments appear to be used to support the costs of party administration. The Committee therefore recommended that funding for administration costs be made available to all parties with members elected to either the Legislative Assembly or the Legislative Council.

I would like also to repeat what I said earlier, a comment made by Mr Barry, and I think that is very appropriate,

where he said to you on 9 December:

Political parties need to be appropriately funded in order for them to fulfil their functions as a party. This does not translate into giving parties what they think they need, it is more fundamental than this. It is to provide parties with adequate funding in order for them to do what parties ought to perform.

I would like to finalise by briefly discussing the significance of public funding of administrative costs for our party. In March 2007 Reverend Nile was re-elected to Parliament with a significant increase in the party vote. In August 2007 CDP received public funding totalling \$271,042. This enabled us to employ a full-time State Director and a full-time Office Manager. However, these funds finished and we had to then reduce paid staff and rely more heavily on volunteers who, you know, come with variable abilities.

Currently the situation is that I am employed part-time as the Acting State Manager but I also perform the duties of the Office Manager. You can see the fundamental effect that it had on our party when the money ran out from the public funding.

In conclusion, we support the recommendation of the Select Committee on Electoral and Political Party Funding that public funding for administration costs be made available to all parties with members elected to either the Legislative Assembly or the Legislative Council.

CHAIR: Mr Smith, did you wish to add anything at all?

Mr SMITH: Just a couple of minor additions to the actual submission, if that is okay. If you refer to page 11 (i), the point there under discussion is whether there should be any regulation of expenditure by third parties on political advertising or communication and our response to that is largely in the context of verification that the advertising is suitable and not libellous et cetera, and we probably have not properly addressed the question in terms of the regulation of the expenditure and from a CDP perspective we believe that there should be a cap on the third party expenditure and that it should actually be part of the disclosure reporting at the end of the election and it should come under some cap, as determined by the Committee.

At page 12 (m), again relating to the whole media issue, we believe that there should be a cap that applies in this area of media advertising and I suppose that will be largely driven by the amount of funding that the Committee deems that parties should be given.

CHAIR: Thank you very much Mr Smith and Mr Freemantle. I have a couple of questions and then I will ask other members who have questions as well.

I was reading your submission as related to third party caps. In the view of the CDP is it appropriate that third parties in the electoral process should be subject to caps which are consistent with the caps on candidates and parties?

Mr SMITH: I would say it should be consistent. I would say it certainly should not exceed it because that would obviously open up avenues for abuse of the system.

CHAIR: In the view of the CDP is it appropriate that similar donation disclosure requirements as political parties and candidates relating to election funding and expenditure should also apply to third parties?

Mr SMITH: I suppose I would see that the Electoral Commission process obviously would have to approve the advertising as being relevant to the election process and as such would have an expectation that those advertisements or articles or whatever come under the reporting of the relevant party.

CHAIR: One of the suggestions has been that third parties that tend to spend certain amounts, a given amount on information during election campaigns should be required to register and that as part of that registration they are also required to disclose the sources of their income and how they have expended their money. Do you think that is reasonable? Secondly, what do you think the threshold should be which would require them to be registered?

Mr SMITH: It is something we have not specifically thought of.

CHAIR: One figure that was suggested was around \$5000 as a threshold for requiring a third party to be

registered for the purposes of communicating information during a campaign. Would that sound like a reasonable figure?

Mr FREEMANTLE: That would fit in with the general response to limit the individual donations to \$1000. Yes, that would fit in with our view.

CHAIR: I am not too sure how many submissions we have received - I do not think it is a very high number - that have made your suggestion of abolishing a threshold for receiving public funding after elections. You suggest that the four per cent threshold that currently exists should be abolished in both houses and that any candidate who receives any votes should be reimbursed for their candidature and their expenses. Do you see any potential down sides to that in terms of vexatious candidates or candidates who just print their name on a ballot paper to create mischief or other sort of—

Mr SMITH: I suppose that is a possibility. Our recommendation that the endorsement fee be increased to \$500 would hopefully reduce some of that vexatious element.

Mr FREEMANTLE: We looked at that figure of \$500 and we looked at the CDP candidates in the State election in 2007 and we had I think about 63 candidates. We looked at the people, who had varying backgrounds, some were pensioners and some were businesses, some were very wealthy, but a lot of our people would have trouble raising the \$500. We considered \$750 and \$1000 but we felt \$750 may be reasonable but \$1000 would be excessively too much for the type of people that as a small party we had to put forward.

CHAIR: What do you see as the advantage in abolishing the threshold? What element of the four principles, for example, that Mr Barry has given do you see removing the threshold for public funding?

Mr FREEMANTLE: We just think fairness. I have looked at some of the other submissions and some thought one per cent, two per cent, three per cent. There are varying submissions, and they all have merit. The CDP traditionally in State elections runs at about between three per cent and eight per cent. So most of our candidates would be above a lower threshold, two per cent, but when we considered it we thought as a principle it was best to abolish the limit so that everyone is available to stay in the process. We felt by raising the nomination fee it would stop the vexatious candidates.

CHAIR: One of the other points that was made verbally in a submission was that in local government elections preference should be given to independent candidates, minor party candidates, over endorsed political candidates. I need to declare that I am a local government representative who is endorsed by the Labor Party. First of all, I am interested in how you think preference could be given to independent candidates or minor parties, and, secondly, why that should be happening?

Mr FREEMANTLE: I had not thought a lot about how to give preference. We have thought of the principle. Because we have branches in a lot of different electorates in Sydney here - at the moment I am working in the council from Liverpool and Auburn electorate council - we see the influence of the party political system on that and we see the balance that happens when independents and minor groups, like resident action groups - Auburn has a unity party - how it brings better governance at the local level.

Over the years I have seen the abuses of some of the political parties in pushing through development applications on party political lines and we are very strongly opposed to that happening. We believe that the local government should be representing the local people.

The Hon. MICK VEITCH: Thank you for your contribution and the submission. There are some things I would like to clarify which I guess draw out of your submission, but also some comments that have been made over the last day and a half by others on which I will just get your view.

When you talk about the cap of \$1000, does that include in-kind contributions as well as cash or are you talking about a cash contribution of \$1000 and in-kind to be treated in some other way?

Mr SMITH: In-kind to be included within that limit, otherwise we would see an avenue for abuse.

The Hon. MICK VEITCH: I think that would be important for particularly smaller parties and independents who would have a reliance on, as you would no doubt know, volunteers for instance.

Mr SMITH: There would need to be a sensible approach to the question of volunteers and obviously volunteers on polling day, et cetera. The overall impact of that, if you put a cap on that or quantified it, would be very risky for small parties.

The Hon. MICK VEITCH: If there were to be public funding under your model per candidate, for the votes you get as a candidate, is that per electorate for the party or is it just genuinely per candidate?

Mr SMITH: When you say per candidate, per candidate for every party?

The Hon. MICK VEITCH: Yes. It is already the case in the lower house for instance.

Mr SMITH: The party specific to that candidate would receive the funding.

CHAIR: So if you ran two candidates in a by-election, for example, from the same party, the public funding would be reflected on both their results for that party?

Mr SMITH: Yes.

Mr FREEMANTLE: The down side there, of course, is a high nomination fee.

The Hon. MICK VEITCH: That is right. Smaller parties and candidates who run as independents bring this all to account and meeting the compliance requirements can become quite onerous, or it has been said can become quite onerous. Who should conduct the audits of the declarations that have been lodged and who should bear the cost?

Mr FREEMANTLE: You are quite correct there. We received \$53,000 in round figures last year or the previous year from the Political Education Fund and it cost us \$1600 for an auditor, which is a quite substantial amount for us. I have seen one proposal where those auditing costs would be particularly earmarked, that there would be public funding for the auditing costs as well, on top of the public education funding.

The Hon. MICK VEITCH: With regard then to third party expenditure and reporting of that, do you think that that should also be audited, that those returns should be audited?

Mr SMITH: I think if you are going to have consistency and if you want the whole, as I understand what we are looking at here is to not only have a perception of non-influence by party giving, but you want the reality of things being squeaky clean. From that perspective I think you would probably need the review or the auditing.

Mr FREEMANTLE: From our perspective the third party is not a big issue with us. I cannot really think of any funding from third parties.

The Hon. MICK VEITCH: A third party could be an interest group that runs a single issue campaign in an election in one electorate for instance. That is a third party, someone who has not actually nominated themselves to be a candidate but still spent money in some way trying to influence the voters.

Mr SMITH: I think those sort of people should still come under scrutiny.

The Hon. MICK VEITCH: It was put to us just before our luncheon break by the independent member for Port Macquarie that the returns for the donations should be lodged one week before polling day in an election so that the voters can make an informed decision about who has donated to where. For a small party that contests a lot of lower house seats as well as upper house seat positions, how would that affect you from an administration point of view?

Mr SMITH: I think it would be quite overwhelming at a point in time when we are fully strapped in terms of available resources.

Mr FREEMANTLE: Also, at a time when everyone is involved in the election process. It is not an easy time to do that, but it is an interesting principle. How you could do it I do not know.

Mr SMITH: Would you expect an audit at that time?

The Hon. MICK VEITCH: That is right. My last question relates to the \$1000 cap. Are you proposing that that would be \$1000 to one candidate from one party or as an individual I could exercise a right to donate my \$1000 to all the political parties, if I so wish, in the calendar year, or is it just \$1000 per person?

Mr FREEMANTLE: \$1000 per person to the particular party. It would not stop them giving \$1000 to another party our view would be.

The Hon. MICK VEITCH: So you are saying they could donate to all the political parties but up to \$1000 in each instance in a calendar year?

Mr FREEMANTLE: Yes, theoretically.

CHAIR: We may have a couple of questions arising from the submissions we have received today. If so, we will put them to you in writing. Would you be able to respond to those questions?

Mr FREEMANTLE: Yes.

Mr SMITH: Yes.

CHAIR: And if you would like to add anything further to your submission, you are welcome to do so. If you could give us the detail in the next week or so, it would be very useful. If there is nothing further in terms of questions, on behalf of the Committee I would like to thank you both for your submission and also coming today to speak to it. We appreciate your time.

(The witnesses withdrew)

(Short adjournment)

GREGORY MICHAEL PIPER, Independent Member of the Legislative Assembly for Lake Macquarie and Mayor of the City of Lake Macquarie, before the Committee:

CHAIR: Members of Parliament are not required to be sworn in as they have already sworn an oath to their office as a member of Parliament. We have received a submission from you. Is it your wish that this submission form part of your sworn evidence today?

Mr PIPER: Yes, it is.

CHAIR: I understand you have got a statement that you would like to read out.

Mr PIPER: Yes, with your permission, Mr Chairman, I might proceed. If I could just thank the panel for the opportunity to support and elaborate on my written submission to the inquiry.

It is clear that the time has come to deal with both the perception and reality of donors to political parties being the beneficiaries of government decisions. Whilst there has been much attention paid to the property development and hotel industries, there is clearly a need to control election funding so that no industry or group can exert influence beyond the democratic weight of its individual members through their rights as enrolled voters.

Nonetheless, I remain concerned at the prospect of a creative bypass of any new system. It is possible to create new rules, but it is impossible to legislate for the integrity to follow their spirit. Any candidate elected should be accountable to constituents, not to industry or interest groups and the system of electoral funding should enforce this to the greatest extent possible.

As I said in my submission, I do not favour full public funding. This is for three reasons:

- A candidate and his/her supporters should retain the democratic right to contribute to the costs of a campaign. In this context, it is vital to democracy that such a show of personal support can only come from individuals, not from corporations or organisations.
- A system of realistically limited donations from within the electorate will link a candidate's level of funding to his/her credibility as a community representative.
- The candidate should have a stake in the process and his/her participation should be predicated on some level of support within the electorate. Any system of public funding should not become an open door for those without the attributes and resources to present themselves as credible candidates.

It would be beneficial to local democracy if donations could only be accepted from people enrolled to vote in the electorate. This would apply equally to elections for local councils, to the State's 93 electorates for the Legislative Assembly and broadly to the State-wide electorate for the Legislative Council. Limiting participation to enrolled voters in an electorate would facilitate the democratic involvement of those directly qualified to participate and conversely exclude the participation of those who are not.

There is currently no limit on expenditure and this can give disproportionate access to voters because of disparate budgets. Personal wealth or access to donated funds has become a de facto requirement for most successful election campaigns. This has obviously favoured candidates whose campaigns have been funded through large corporate donations to parties.

Channelling donations to a candidate through a party currently obscures both the level of funding and the sources of funding to a party candidate. In other environments the process would be called "laundering". There is no credibility in any argument that this process places donors at "arm's length" from the candidate.

I also believe the reporting of contributions to election campaign expenditure needs to be improved. A further major failing in the current system of disclosures is the lack of transparency and timeliness in the collection and publishing of information by the Authority.

Specific flaws in current processes include:

- declarations are not made public until after the election
- income and expenditure are not reported for a common period and reconciled.

Problems involving the source of funding, total expenditure and the adequacy of reporting could be greatly reduced by a cap on expenditure and a cut-off on donations prior to the election. After all, with expenditure capped and partial public funding, large "war-chests" would be unnecessary. Disclosure of expenditure, or anticipated expenditure, in advance of the election would be necessary.

While I have previously proposed a cap of \$60-80,000 as a candidate's cap per election, a realistic limit could perhaps be established by examining the declarations made by candidates in recent elections, averaging them across the State and scaling this to a realistic level. This would yield a figure which could be indexed as required to maintain a common limit for all candidates in all electorates and for groups of Legislative Council candidates for the State-wide franchise. In each case, this would be the cap with which both donations and expenditure must comply. I suggest that private and public funding each be limited to 50 per cent of this cap and where a candidate spends less than the cap, they would be entitled to 50 per cent of their total expenditure. This could greatly reduce the opportunities and incentive for substantial and potentially influential donations.

In my submission I suggested a reporting deadline one week in advance of the election so that there is an opportunity for timely scrutiny by the public. At a time soon after the election there should be a reconciliation of donations and expenditure covering a common period. It is essential that electoral funding is processed and accounted for on a per electorate basis. This is the only way in which voters in any electorate can make a valid consideration of their candidates. The majority of people involved in elections are voters and for each of them it is a competition among candidates in that particular electorate. For a voter to have confidence that the system of electoral funding has not been corrupted, all of the rules and reporting requirements must apply directly to each candidate and not to parties, agents or any other persons.

It is crucial that donations can only be made directly to candidates and that a full disclosure of donors and campaign funders is made at some mandatory time, say one week before the election. The timing and detail of this disclosure will provide enough information to overcome the concerns currently held by so many in the community and provide information to assist voters' decisions. I do not anticipate candidates carrying out all the work associated with the management of funds and reporting. However, I believe that they must bear ultimate responsibility.

At the heart of any consideration of public funding are the questions of: How a candidate qualifies for funding, when this funding would be paid and when the funding should be used.

Existing public funding for candidates in State elections in New South Wales explicitly places the funding after the election, and this inquiry must make a recommendation on whether this is the appropriate time. While there will remain complexities with this, I expect that a workable system could be devised and I support this timing.

I believe that a threshold should be set so that a candidate must gain a specified percentage of the vote to qualify for an electoral payment. This ensures that the candidate has a personal stake and would encourage contenders to have at least some confidence in receiving a reasonable level of support before seeking public funding.

I have touched on many of the issues in this inquiry's list of 15 specific points, although in a broadly philosophical sense, rather than in fine detail. Nonetheless, I have formed my views through considerable personal experience in elections, particularly at the local government level. I see a high degree of complexity in local government elections, due to variables such as:

- size of electorates
- population of electorates
- the prevailing media and communications
- presence or otherwise of ward divisions
- and the method of electing the mayor.

I do not support a public funding model for local government.

While I strongly support caps on expenditure and similar restrictions on donation size and source in council elections, because of this complexity I believe any changes need detailed consideration. This should be with comprehensive consultation with councils and the Local Government and Shires Association and in my view would require a delayed introduction of changes for this level of government.

In closing, can I say that I do have a high level of sympathy for the Electoral Commissioner and the staff who must administer what has become a very complex system. A number of recent changes made as add-ons have, in my view, added complexity for candidates and administrators. Subsequent changes must not only add rigour but must produce a system more easily complied with and more easily administered.

CHAIR: I was very pleased to receive the second of our submissions today from independent members of Parliament and I also note your experience as a member of Local Government. It was interesting that there are a couple of similarities in your submission and the points raised today by the independent Member for Port Macquarie, Mr Besseling. Mr Besseling talked about reporting all donations and disclosure a week before elections.

As an independent candidate, without the resources of a party, do you think that being able to run your campaign and then having to be responsible for reconciling and disclosing your donations prior to elections, is an achievable logistical outcome?

Mr PIPER: In all honesty, Mr Chairman, if I am contesting another election as an independent at either local government or State level I would still be drawing on the resources of other people to assist me. My point in my submission is that I should bear the responsibility for that, rather than through an agent and that is my concern at that point there, but no, I would not, as an independent without party resources, be able to resource all the requirements of contesting an election myself.

CHAIR: Mr Besseling explained to us circumstances of his by-election, whereby there was six weeks from the calling of the election to election date and, as an independent without a party structure, the onerous nature of fund raising and the timeframe meant that he had to pay a significant amount of money out of his own pocket in order to fund his campaign. Some of the issues that we have considered and submissions that we have received have suggested that we should have caps on donations. Most people agree with that, but those restrictions should apply to candidates funding their own campaign. Mr Besseling's view was that would exclude independent members quite strongly and disadvantage them in contesting elections.

Do you have a view as to whether or not donations from candidates to their own campaign should be restricted and, if so why, and if not, why not?

Mr PIPER: I think it is an outrageous proposition and very much in defiance of what I would have considered is one of the most basic precepts of democracy. I think that there have to be some controls on how people solicit for funding externally to themselves. I think if somebody has the courage, not necessarily the financial resources, but the courage to either use their own resources or to even invest against their future income, and they are willing to do that, then they should be allowed to do that. I think there would be a gross invasion on that person's right to make that decision about how they will invest their own funds. However, any investment should be within the concept of a cap on the total allocation to the expenditure.

CHAIR: One of the arguments for supporting restrictions on candidates funding their own elections was that if somebody made a personal gift to a candidate, whether it be a ute, or \$10,000 or whatever, and that candidate then applied that gift, which does not need to be disclosed because it is a personal gift towards their own campaign, it is kind of circumventing the restrictions on donations. Can you see a way around that issue, while not precluding candidates from donating to their own campaign?

Mr PIPER: I would caution against trying to plug every possible hole. As I have said in my presentation today and, as I have said to inquiries before, you cannot legislate or mandate integrity. What you can however do is reduce the goal that the person might be seeking to kick in soliciting or receiving income. I harken back to the "Utegate Affair", which was quite prominent last year in relation to the Federal Government. I think most people would have thought it was quite extraordinary that there was such a focus on a ute. If there had been 10 utes available that might be different, but the ute in question was a fairly modest ute. I think that should have been declared and it should have been done properly, but I think we should keep things in context too and not

over-correct and I think we run the risk of actually doing that.

CHAIR: Tread carefully.

Mr PIPER: Yes, tread carefully would be one way of putting it, but if I can just say that in my time in political life, while there is a lot of questionable activity that I have seen people carry out, most of it is not in corrupt terms. I find most people I have met in public life to be individually decent people. I would not like to see a system that almost presumes the opposite.

CHAIR: I was interested in your suggestion that funding for local government should not be publicly made, or public funding should not be made available for local government elections, and a suggestion that only residents in a city area, a city council, can contribute to a local government candidate. I can understand the rationale behind that.

Given that local government at, I suppose, the most basic level of government is directly responsible for decisions which can affect people's homes and their capacity to make income on development proposals, is there a greater risk that if your pool of donors can only be citizens of your city, that they are the people most likely to be advantaged by the decisions you make as a councillor?

Mr PIPER: I think that is a given. Mr Chairman, I am not suggesting that I have all the wisdom associated with the running of campaigns in local government and what the implications might be. Obviously there are a lot of people with a lot of experience. However, I do believe that it would be difficult to find a justification for outsourced contributions to a candidate in local government elections and, as with State elections and in some ways more so in local government areas, there are other benefits or assistance that candidates need. They are equally as important as financial contributions, for example, workers.

CHAIR: To staff polling booths.

Mr PIPER: To staff polling booths, to stuff letter boxes, whatever it might be, and yet there is no suggestion that that should be somehow regulated or controlled.

Once again, I think we need to be careful. I have not actually proposed in my submission what a cap might be for local government but I actually think in my example in the City of Lake Macquarie, I think our expenditure was quite reasonable in all. However, the City of Lake Macquarie is the fourth most populous in New South Wales and my expenditure might not be able to be easily attributed to some other council area that is either larger, Blacktown for example, or one that is much smaller such as, say, Lane Cove.

CHAIR: In establishing caps for State election expenditure on an electorate by electorate basis, if it was based on a formula of a dollar amount per elector, do you see how converting that to local government elections could be fair and reasonable? If you determined a figure for a State electorate and you apportioned that to a council which is bigger or smaller, by on the same ratio, that would be a reasonable way of establishing a limit for expenditure of local government?

Mr PIPER: Sorry, Mr Chairman, are you talking about varying the amount per voter head?

CHAIR: If we take the figure of 50,000 voters per State seat as a rough estimate and we allocate an amount of \$2 per elector as a reasonable cap on expenditure, giving a figure of \$100,000 per State seat, and you have a council area with 100,000 people, that would mean that the cap would be \$200,000 per candidate, or people contesting the whole of the city. Do you understand the nexus I am trying to draw between those figures and do you think that is reasonable?

Mr PIPER: Mr Chairman, I am not sure that would be the right way of dealing with local government, due to some of the complexities and this is why I indicated earlier that I think that this actually needs some further consideration. I would hate to see an opportunity squandered by introducing a rule change for local government that might need further review later on, so this is why I have suggested that perhaps the inquiry hold back on making a recommendation on that for the time being.

Local government has many more variables than State Government, with respect. State Government, if we are talking about the Legislative Assembly, and we roughly have the same number of electors, that is not the case in local government. Setting aside the LC again, the field for the Legislative Assembly is generally much smaller

that some councils, where we see a massive number of candidates, up over 20 candidates in some wards, let alone in some whole local government areas, so I think there are a number of complications there in that sense and it would be, I think, unwise of me to tell you how that formula for a cap in local government could be prescribed, unless they just look at my campaign, because it was a beauty.

CHAIR: In terms of the recommendations from this Committee and the inquiry, it is expected that we will report on State Government legislation and then subsequently further examine local government, so we will not be rushing into a decision on how this will affect local government.

Mr COOMBS: I thought I heard in you contribution there earlier, an additional one, that you do not support the continuation of a corporation, or a body, or a group, to be able to make contributions to political campaigns. Can we get a better understanding of your rationale behind that idea?

Mr PIPER: Call me an independent. Yes, just harking back to the two most recent changes which have been made to the Act, I am sure that the Premiers at the time were well-meaning but I think that they were somewhat capricious in trying to act, to be seen to act quickly and to act tough. However, that was due to a lot of pressure that was being brought forward by the community and obviously directed through the media, largely relating to the number and the size of donations from corporations and also from other organisations. They may well have been property developers, may well have been the AHA. It may well have been in the debate over time obviously of union subscriptions or union benefits to a party. They would perhaps be similar to the conservatives. I am not sure. I have not examined that.

However, it is clear that if donations had been limited to individuals, whether or not they were the head of BHP or a property developer group or whatever, nobody could find any reasonable objection to a one-off capped donation, but corporate largesse on the scale that it was seen will continue to raise concerns. If we are trying to achieve what the Premiers have sought to do, then I think that we need to address particularly corporate donations, and not just from the property development industry, which I think is a very problematic and narrow band to focus on.

The Hon. DIANE BEAMER: Your fellow independent, Clover Moore, recommends a \$5,000 cap per donation. We have had \$1,000, \$2,000, and you are recommending \$1,000. What is the rationale for your figure of \$1,000?

Mr PIPER: There is no rationale because no such formula exists. However, I think that the community looks for numbers that they think are reasonable. I think that most members of the community have not been involved in contesting an election. They do not quite understand the expense associated with it. They probably do not understand that the major media outlets somehow ensure their advertising rates go up when a writ is issued.

There are a lot of costs associated with it, but \$1000 to most of the people who would have cast a vote in the electorate of Lake Macquarie is a lot of money, and I have regard to the people in the Parliament and in this room today. I do not believe that the vast majority of people who contest elections would be influenced by donations of that size. Personally, I do not believe I would be influenced by any level of donation. However, we are talking also about perceptions, and I think the community has the perception that that is the case.

If we look to the example of elections that I have contested, I must say the bulk of my donations were not \$1000 or above. There were a few up to \$5000 over a period of elections and certainly a number at \$1000. Most of my contributions were less than \$1000, much less, but I do not believe that it would have been that much more difficult for me to gain the support of enough people to raise \$1000.

If I can just hark back to the question about the candidates' contributions. I have never been to an election where I did not make a substantial contribution to my own election funding and there have been times where I thought we really do need additional funds for a particular proposition, we want to do some more, where do we get it? Well, I extended a mortgage and that was a path that I was willing to take. Not everybody would be necessarily willing to do that and I am not suggesting it for everyone, but I think \$1000, if that is not the case, if it was higher than that, as long as the rules are consistent for all and as long as the cap on the total expenditure moderates the need to solicit donations in the larger end of the scale.

The Hon. DIANE BEAMER: It is not that I disagree with any of your figures. I just wanted to get a sense of why people feel that way. Do you think though in terms of what is supportable, with a cap of \$1000 what should be reportable as a donation?

Mr PIPER: Once again, I think that this is one of those figures that we are looking for that there is no clear answer to. Of course, we have been using the figure of \$1000 of recent times. I believe that for most purposes it could actually be lower than that. I do believe that most of us would not have too much difficulty in reporting a lower level, and I think in some jurisdictions there have been some suggestions certainly that it be in the order of \$200. I think a \$1000 figure is not so untoward, but it could be lower. Once again, I can only reflect on my knowledge of the people I have been involved with in politics on both sides and in the middle and I doubt many people that I could think of would have been unduly influenced by a contribution of \$1000.

CHAIR: I think possibly the reason the Committee is taking submissions on this issue is the realisation across all political parties and candidates and members of Parliament that the perception of integrity in our democratic system is quite important. One of the ways in which it has been proposed that we enhance the integrity of the system is the increased level of public funding for candidates and political parties. Do you think the community in your electorate, in your city, has an appetite for accepting the notion that this integrity has a higher cost to the taxpayer?

Mr PIPER: Mr Chairman, I think that there would be some within the community, in my electorate, in the city of Lake Macquarie and in the broader community. However, overall I think that there would be a very strong view that this was about politicians looking after themselves once again. It is a very difficult message to get out to the broader community. I do not think it would be generally popular and I guess that would depend on how the media purveyed the issue and I think I know how that would be, whether they agree with it or not. I think it would be accepted as a limit, and I am not suggesting that I made it 50/50. I think they would accept that, although never be necessarily fully happy with it.

The Hon. MICK VEITCH: Mr Piper, I just want to flesh out a bit more about the \$1000. Does your proposal include in-kind contributions as well as monetary contributions?

Mr PIPER: Mr Veitch, it would include in-kind where it was provided in a professional capacity, for example through media public relations type firms. It would not include, as I believe is now excluded, incidentals and also the basics of polling booth and letterboxing and things like that, but I do believe that where something would have been otherwise available through a commercial service, then yes, anything provided in kind is clearly a donation that has a cash value.

The Hon. MICK VEITCH: So with the \$1000 that you are proposing, that an individual is allowed to make up to a \$1000 in a year, can that be to five different political parties, one political party, can it be to five different candidates? There might be five independent candidates that contest a seat and I want to fund them all. Is it \$1000 to each?

Mr PIPER: I do understand it and it is something that I have not addressed in the submission I will admit.

The Hon. MICK VEITCH: You can take it on notice if you want and get back to us.

Mr PIPER: I do not think I need to take it on notice because I do believe that it is up to an individual. I think that the system of providing funds to multiple candidates would really be at odds with what the community would be expecting would come out of this change. For example, I know it is not likely to happen that somebody would give, in my experience at local and State level in our area, \$1000 for example to the Labor Party and \$1000 to the Liberal candidate. However, I can see scenarios where there are, for example, independents and obviously that is where I come from. There are from time to time quasi independents or independents that have not quite found themselves yet, and I can imagine some games. Can I just say I am quite convinced that there are many people who are now exercising their minds as to what might be the outcomes of this inquiry, what the legislative outcomes might be and how they can be got around. You cannot afford to chase your tail forever and you will be defeated by somebody at some time.

Once again, I think the bottom line is that we have to limit the total expenditure and limit the amounts that individuals can give and receive. If nothing else, it reduces the incentives and the overall likelihood of any abuse of the system.

The Hon. JENNY GARDINER: I think earlier in your verbal submission you mentioned the possibility that the model that we come up with should take into account perhaps different types of electorates, different geographical areas and different media markets. Could you elaborate on that?

Mr PIPER: Particularly that was in relation to local government, some of the complexities. Local government, of course, ranges from some rural councils of a few thousand people up to Blacktown, pushing 400,000 plus maybe. There are huge variations in population, variations in whether or not they use ward systems for election and whether or not you will contest a ward or whether it is across the entire city, whether or not they have a popularly elected mayor and whether or not that mayor is aligned to a group, as was my example in Lake Macquarie. So there are certainly many variables.

One variable that comes to mind is, as you reiterate, the media and the environment that exists around there. Not all areas are equally provided with community media, for example, the free weekly newspapers, or even a wide range of radio opportunities if they wish to use that. Obviously some electorates are very well accommodated for all range of media, with maybe three or four weekly newspapers that are available.

I do not wish to dwell on it, but of course some electorates obviously have massive logistical problems for anything, whether it is getting workers to a letterbox because of the geographic area, the size of it, or whether it is door knocking. I note our friends in the retail industry just recently advised lady politicians to get out and door knock and not go to supermarkets. I think some electorates are very easy to door knock. I think Murray Darling might have a few problems. Certainly in Lake Macquarie we could not do it. We are not all equal. However, each candidate within that electorate is equal. Therefore, as long as the cap you are proposing is realistic, all things are equal between candidates.

The Hon. DIANE BEAMER: When we look at State-wide campaigns, obviously you do not have the political clout of major parties in running TV ads, et cetera. So whilst you have got a cap on your Labor and Liberal and National Party candidate of the same amount, they have got an overarching advantage in the fact that they can use TV. One proposal has been to have those who are not affiliated to a party, independents, have a larger cap, so they could spend more. What do you think of that as an idea? If they could raise more, they could spend it. It is trying to get that level playing field.

Mr PIPER: Can I say there is always some overflow benefit to the party, particularly the incumbent party from that ability to get peripheral advertising, if you like, which is by way of news reports, or whatever. It is almost unavoidable. I certainly agree with that.

My thoughts were not really couched in terms of the Legislative Council. Certainly there are some questions there that would have to be resolved. I do not know that you have any independents. You have minor parties.

The Hon. MICK VEITCH: Independents contest the upper house.

Mr PIPER: They do. I do not have an example that I actually have in mind. Looking at it, I can see that that is something that does have to be further addressed. However, candidates for the Legislative Assembly obviously get some benefit as well. If I can be so bold as to mention the 2007 election where there was, you would agree, a very well run campaign. It was largely focussed on Premier Iemma. There obviously was peripheral benefit to all candidates across the State, to the Legislative Council and to those candidates to the Legislative Assembly. How you deal with that for the independents I do not know, but as long as the playing field is levelled, and under some of the scenarios I have suggested it is much more level. You will never once again be able to deal with every variation.

Some people will always feel that they are somewhat worse off, disadvantaged, and I would probably be able to make those claims myself. In every election there is something that I think is not fair. You get on and do it anyway, but let us use this process as an opportunity to at least iron out some of those variations.

The Hon. MICK VEITCH: Mr Piper, about the one week prior to the election date lodgement of a return, are you advocating that those returns be audited?

Mr PIPER: Mr Veitch, at this stage no, I am not, however I think there should be a process of scrutiny with Elections NSW to do that. I would imagine that some costs might actually not even be able to be reconciled at that stage and therefore in my submission I have indicated, if you like, I am suggesting a declaration on oath or some such, because some may need to be reconciled post-election. I could not predict that everybody would be able to finalise their income and expenditure one week out, but I think everybody would have a fairly good idea of what they were doing. Certainly it would need some level of verification.

The Hon. MICK VEITCH: Can I then just clarify how you propose to treat donations after that cut off date, or are you proposing there would be no donations from a certain point prior to the election date?

Mr PIPER: I think we could have a holiday from it. However, any donations that fall after that particular date would be for the subsequent election. It should not be able to be applied.

CHAIR: Maybe the disclosure that you make the week before the election details your donations and your comprehensive audited disclosure is made after the election so voters get a chance to see who has donated and how much they have donated to the campaign. I think voters are probably more interested in the income side of a campaign rather than the expenditure side of a campaign when it comes to informing them how to vote, so the requirement for an audited statement of income and expenditure before the election is probably less important than to know who has donated.

We have sought some further information about real time lodgement systems that are operational in other jurisdictions, where candidates and party units actually log their donations as they receive them onto a web-based server operated by the Electoral Commission, the EFA, and they are publicly available electorate by electorate, candidate by candidate. We are going to try to get some more information about that as well.

Mr PIPER: I appreciate that advice, Mr Chairman. If I can just add, I do understand that it is much easier to provide details of income, as in donations, one week out. This is why I have tempered that with the view that perhaps an estimate of expenditure, but there certainly is a very direct correlation in people's minds between donations, as in total income and expenditure, and I can point to - I did not bring them because it is not something I dwell on- some returns post-election from different candidates who have found it very difficult to understand how a very substantial campaign has been run on a matter of a few thousand dollars. We know that there are large discrepancies. People do not, with respect, want to know just what the income source was. They want to make sure it is fair dinkum.

CHAIR: If you have any further issues you wish to add or points you wish to make in relation to the inquiry, you are welcome to make a further submission.

(The witness withdrew)

STAFFORD SANDERS, Communications Officer, Action on Smoking and Health Australia, 153 Dowling Street, Woolloomooloo, affirmed and examined:

CHAIR: We have received, Mr Sanders, a submission from ASH. As you have mentioned, it is your wish that the submission be included as part of your submissions?

Mr SANDERS: Yes.

CHAIR: We invite you to make an opening statement before questions.

Mr SANDERS: Thanks to the Committee for the opportunity to address you on behalf of Action on Smoking and Health Australia. We are, as you would be aware, a non-government health promotion organisation committed to reducing deaths, disease and costs caused by tobacco. We have also made a written submission.

Apologies from our Chief Executive, Anne Jones, who is in Bangkok advising on tobacco-free policies there. Anne has taken a long time keen interest in this issue because we, like many other public interest organisations, cannot escape an awareness that our work is affected by this.

One of our major tasks is to provide governments and parliaments in all Australian jurisdictions with information about the best legislative and regulatory measures to reduce tobacco use and exposure. There have been some good outcomes from our input, and by our input I mean the input of all the organisations and individuals we work with, ranging from health professionals to academics, employees, child welfare workers, parents, teachers, church agencies, social equity groups and many more.

As well as being supported by such broad based groups, all the key measures we have proposed have been in line with the very best independent research evidence, including health and economic research and survey evidence of public support.

Despite this, legislative progress in some areas of our work has been erratic and slow, not because of any reluctance on the part of the community, but because of a slowness of governments and parliaments to respond to community wishes on these issues. Based on what we have seen, it is our view that the main reason has been the disproportionate and literally unhealthy influence of some powerful interests who seek to block, delay, weaken or undermine public health reforms.

The best New South Wales example of this I can point to is from 2005 and the framing of the Smoke Free Environment Regulation to determine the key definitions under the newly amended Smoke Free Environment Act, setting out which areas of pubs and clubs would be smoke free.

At that time our coalition representing relevant health NGOs and employees at immediate risk from second-hand smoke in their workplaces, sought involvement in advising on that regulation, to ensure that the intent of the new law would not be undermined by smoky loopholes, but in a very lopsided consultation process we were substantially sidelined from advising on the framing of this health regulation which was essentially put together by one minister, not the health, cancer or OH&S responsible minister, but the gaming minister in consultation with the Australian Hotels Association, long associated with the tobacco industry, long opposed to the smoke free changes, frustrating popular smoke free reform for a decade, a organisation boasting at around this time that it enjoyed weekly access to ministerial offices and in a memorable piece of breathtaking cynicism, that "democracy is not cheap".

The resulting regulation appeared in the AHA's member newsletter as a fait accompli before it went to Cabinet, let alone Parliament. Despite a damning independent report the next year from Allens Consultancy, recommending that it be scrapped, despite opinion surveys showing strong majority support for more comprehensive laws and specific disapproval of the loopholes, that regulation remains in force. The result: thousands of New South Wales patrons and employees in their workplaces remain exposed at known harmful levels to tobacco smoke's poisons and carcinogens. Public and occupational health has been compromised. New South Wales is about to become the jurisdiction with Australia's weakest smoke free workplace laws and the will of the community remains frustrated.

As we know, the AHA has been a big political donor to both government and opposition parties, and many other hospitality and gaming interests are also big donors. Donations from tobacco companies themselves are still

accepted by the Coalition parties. But this is just one example from our experience. There are others that we and many other groups could bring to mind where wishes of influential donors appear to have been elevated above those of ordinary citizens who might face far more severe and immediate health or other impacts. This is a distortion, in our view, of the political process and as far as the community is concerned it is "on the nose".

We support the call for significant reform of electoral funding, including the work of this Committee and especially political donations. Our submission calls for a ban on organisational donations, a limit on personal donations, a cap on electoral spending by parties and candidates, timely disclosure limits, better transparency, tougher enforcement.

As health advocates we are not legal or electoral experts and we recommend further advice be sought from a convened body of academics and independent experts such as some who have made submissions to this inquiry, Professor Joo-Cheong Tham and George Williams, and Graeme Orr and Anne Toomey, for example, with terms of reference to develop a detailed best practice model for New South Wales. We should also continue to engage public input through forums and surveys.

Honourable members, democracy should certainly not be cheap, because it should not be for sale at all. That way lies not democracy but plutocracy, the rule by money. We believe that the people of New South Wales will support you in pursuing substantial reform and in resisting the temptation to buckle at every practical obstacle. It is not too hard. It can be done. It has been done elsewhere and should be done in New South Wales.

CHAIR: Mr Sanders, thank you very much for your submission and your address here this afternoon. We have had a number of submissions from political parties, from our constitutional experts yesterday, from independent members of Parliament today. I think this might be the first of the third parties that has made a submission, so we appreciate especially your contribution.

One of the big issues that this Committee is grappling with is how do we regulate the involvement of third parties in electoral campaigns and one of the premises that has been put and discussed by the academics and other submissions in the Committee is whether the caps on expenditure for third parties should be at a level lower than the candidates contesting elections, political parties and candidates. I would be very pleased for the view of yourself or ASH on that particular issue.

Mr SANDERS: I am not sure whether we would want to try and name a figure or state whether there should be caps on third parties that are lower than those on electoral spending by parties or candidates, but certainly I think due care needs to be given to make sure that you are not getting a sort of laundering situation where money is flowing from one organisation to another organisation to another in order to get around the limits imposed.

I think that one of the things that tend to happen is you get trusts and funds and things set up, or electoral committee funds into which other organisations feed and at that level of the system I do not think we would be in a position to make expert comment about that. I think you would need to look at the people who have studied this and look at the best practices world-wide and take the advice of your independent panel of experts. I think that would be the better thing to do in that situation. I am probably going to make that answer to most of the questions that you ask when you get to the specifics of how much and in what way.

CHAIR: As a third party whose voice has been involved in the community in campaigns, do you believe that the donations that your organisation receives and the expenditure that your organisation makes in relation to public campaigns should be disclosed at the same requirements as political parties contesting elections?

Mr SANDERS: I am not sure whether that would come under the same sort of category. ASH would make no secret at any stage of where its funding comes from and goes to. ASH would be always perfectly happy to make that public knowledge. For us it would not be an issue, but we are a very small organisation. We are a tiny NGO, not on the scale of many other NGOs out there that might employ dozens or hundreds of people.

CHAIR: I guess the premise of that question is that one of the concerns with capping expenditure on elections for political parties is that if third party organisations are not effectively regulated, that they will become a quasi mouth piece for political organisations and special interest groups who are pushing a particular agenda. One of the objectives that we are looking at is making sure that vested interests, corporations, industries and community based organisations such as your own are not circumventing the requirements that the political parties have to face in election campaigns.

Mr SANDERS: I think our organisation would welcome controls of that kind. Those of us that are sincere in our endeavours to provide best evidence to all parties and all governments of whatever persuasion would be very keen on rules and regulations which tightened up on making sure that we were not used by political parties to push their agendas.

CHAIR: De facto lobby groups and other front organisations?

Mr SANDERS: That is right, yes. The model of transparency is the aim and that is what we support in all circumstances.

The Hon. DIANE BEAMER: You say in your submission that you would like prompt and transparent reports at least quarterly and in the month before an election to a publicly maintained web site by an election funding authority. So you are saying all donations should be a month beforehand put into the system?

Mr SANDERS: Yes, the report should be made at least quarterly so that anything that has come in during that time should go in promptly by those deadlines.

The Hon. DIANE BEAMER: So a month beforehand you should be putting in what donations you have received since then. I am just doing this in context. We have just had two people today who have given evidence who think it should be a week beforehand. What happens after that month though, is there a freeze on donations?

Mr SANDERS: We look around and see what other people are writing and try to make our estimate of what we think is reasonable. If it is feasible for it to be done closer to the election, that is fine. We would not be saying it must only be a month, it should not be a week for example.

The Hon. DIANE BEAMER: Particularly, the two independents said when an election is on and people get excited about the idea that they like a candidate, it is becoming more evident that the election is on and they donate in that last month. Particularly those smaller parties and independents, it is a big time for them to actually gain some contribution from their community. It seems to be very onerous if you are going to put a month on and then you have to ban receiving it in that month?

Mr SANDERS: We accept the month. We are trying to balance out the different practicalities as we see them, but we may not be in the most expert position, I quite acknowledge, to set the exact frame of a thing like that.

The Hon. DIANE BEAMER: You say an independent body to monitor all advertising campaigns and ensure public money is spent on a reasonable purpose. There will be disagreements about what reasonable is around the table when it comes to government advertising, but what sort of independent body do you see being set up? That is your recommendation 6.

Mr SANDERS: As I say, we have seen some excellent people making submissions to this Committee who would be in a position to provide very good advice to a body to monitor advertising campaigns. The essence of it is looking at independence, looking at independence from party political associations and looking at people's credentials in terms of appropriate academic qualifications or whatever else. Again, more detail is not something that we are experts about.

The Hon. DIANE BEAMER: Our round table yesterday recommended just a blanket ban for six months, give people a rest from government advertising, and I think it went like this "nobody wants to see anybody dying of cancer from smoking any more".

Mr SANDERS: Yes.

CHAIR: Just taking up the point that Ms Beamer made about prompt and transparent reports at least quarterly and in a month before an election, most political parties may find it easier to meet those reporting requirements because they have the infrastructure and staffing and expertise. Smaller political parties and independents might find it more difficult to meet those quarterly reporting requirements and disclosure requirements, as too would perhaps organisations like your own. If we accept that third party organisations need to disclose the sources of their income and their expenditure, then you have caught yourself in that sense in the requirement that you report quarterly. Do you think your organisation is resourced sufficiently to be able to meet that reporting?

Mr SANDERS: I imagine the money turned over in our organisation would not be too difficult to track down at any point of time.

Mr COOMBS: We are mindful, and you are not the first person to make this point, that a number of groups or their representatives have made the point during the couple of days of hearings that we have had, that they do see problems with corporate donations, trade unions in some areas too, but corporations, trade unions or bodies of that type. Of course, the point that has been made too on the other side of the ledger is that you are banning in one area and you have to provide in the other, and we all recognise or those of us who understand a little bit about politics recognise that democracy comes at a price, campaigns come at a price. If you even went to the stage of banning corporate donations to say a \$1000 cap - that seems to come up time and time again - of course there would be a need for a provision to replace those moneys, probably coming from the public purse.

Mr SANDERS: Yes.

Mr COOMBS: There will be some reluctance to do that because of the public backlash that might exist. We have had also had a proposal here that there should not be any public funding. I am trying to get to the point basically that people will go along with the proposal until such time as they realise they have got to pay for it. I am just interested that if we do embrace the new model and more public funding is made available for candidates and parties to contest elections, what the public reaction will be. Do you have a view in relation to that?

Mr SANDERS: First of all, I would make the point that we have proposed there should be a total ban on political donations from organisations. We do not make any exception to that. If it is us wanting to donate, we do not think ASH should be allowed to donate to a political party. We just say all organisations, trade unions, corporations, everything, and then there should be a cap on individual donations. You are also in a situation where you propose a reform and it turns out that there is a cost side to it and when people realise what the cost is they say another government impost on us and they are taking money out of our pockets and that sort of stuff. Again, you have to look at the best advice that you can get from your independent experts and try to work out what the best situation is in terms of how do you fund electoral costs generally.

There may be resistance from the public at the idea of paying a little bit more out of the public purse for the funding of election campaigns, but I somehow do not think it would match the concern felt by the community for what they see at the moment as the distortion of the democratic process by what is seen as excessive influence by vested interests on the political system. I think what you have got at the moment is a worse public backlash than you would get in that situation. I agree with you it would not be without some headaches.

CHAIR: Mr Sanders, if there are issues that we would like further comment from you on, you have no problem if we write to you?

Mr SANDERS: Not at all, feel free please.

CHAIR: Mr Sanders, thank you again on behalf of the Committee for the submission and your evidence here today. We appreciate your advice very much.

(The witness withdrew)

(Short adjournment)

MARK ROY ROBERT LENNON, Secretary, Unions NSW, 4 Goulburn Street, Sydney 2000, sworn and examined:

CHAIR: We have, of course, received the submission from Unions NSW. Is it your wish that the submission be included as part of your formal evidence?

Mr LENNON: Yes.

CHAIR: Mr Lennon, we welcome you here this afternoon and invite you to make an opening statement before we begin questions.

Mr LENNON: Thanks, Chair, and thanks to the Committee for the opportunity to address you this afternoon. I would rather go to the detail of the submission, which I take as read, but I am obviously happy to answer questions in that regard.

The general thrust of what we are saying in regard to political funding is that transparency is a key and disclosure is a key, about who is out there making public comment and who is supporting various political parties. We tended, I think, generally to say do we limit the level of spending or funding by various organisations, be they donations to political parties or spending by third parties. We believe that is a very vexed question, one that is still open for debate without a doubt, but we certainly come down on the side of openness, transparency and full disclosure.

One of our concerns, and we go through this in our submission, would be that we do not want a system, particularly with regard to the question of third parties' involvement in election processes, where we believe that there should be this concept of the market place of ideas, that third parties should be involved in the political discourse, but the public at large would like to know where particular opinions are coming from. I think that is a key element.

We have, as you know, addressed this question of the role of third parties. We have touched on some of the other issues in the terms of reference. When it comes to this question of third parties, the question of capping expenditure, regulating the type of expenditure, it becomes very much a vexed question. Everyone, I am sure, will allude to the Canadian example, which is the prime example when it comes to political funding generally. It seems to be in all the commentary I have read of late. Even there they seem to have some difficulty with what is spending for political election purposes. We also struggle here in Australia, as alluded to in our submission, with regard to our Federal funding and alleged spending by third parties on election issues and the ambiguity that stands there.

The other thing that we want to touch on, and I am a personal believer in it, is the right of as many people as possible to get out there and get involved in the political conversations of the day. We want to be sure that if we are talking about curbs of any sort on third parties or donations to political parties or the role of third parties in election processes, that we do not limit the right of the ordinary citizen to participate in the parliamentary process. We have an example there that if in a particular electorate, a particular group of people, be they ten, 20 or so, have a particular issue they want to run, they should be able to get involved and say their piece, not limiting the money they can bring to bear to support their issue and get stuck in some nightmare of bureaucratic regulations that they have to meet to be able to participate in the political process. I am a great believer, as I say, in let's throw it open in political debates and let everyone get in there and participate, just ensuring that the electorate at large knows who exactly is expressing an opinion when it comes to a particular campaign, election or political issue.

I would have to say that when it comes to the question of campaign funding systems - and I know this was put forward yesterday - we do need to make sure there is consistency between the national or Federal system and States. For us at Unions NSW I can say that it is a nightmare. Our financial controller almost has to go on stress leave every time there is an election on, trying to work out State and Federal laws when it comes to what has to be reported and what sort of expenditure has to be reported and the timing of that. That leads to great difficulties.

In that regard consistency between State and Federal campaign or electoral funding we would support, having just campaigned very strongly to have separate industrial relations laws in the Federal system, but when it comes to political funding of election campaigns we see consistency as a key.

In the Federal Parliamentary Green Paper they gave us a series of principles and the first one was the question of integrity and I think that we have to have integrity when it comes to funding of our political campaigns and our election campaigns. You can only say that we have a system that is one of integrity if everyone has an opportunity to understand it and participate in it if they so desire, and that is a key element, as I said before. I will leave my remarks at that.

CHAIR: We have had evidence from another third party organisation called Action on Smoking and Health and I would suspect that the views of Unions NSW would be very important helping this Committee form its opinion on this issue.

I think there is a broad agreement that the reason we are here is because the community has expressed a concern that the political parties and the Government have heard, that the process of elections is one which needs to be very transparent and there needs to be integrity in the system.

A number of the suggestions have talked about caps on donations to political parties and candidates, but in order to make that effective there need to be restrictions on the demand for campaign funds by putting caps on how much can be spent. The upshot of that is that this has implications for third party groups, be they union groups, business groups, or environmental groups, and the premise that has been generally accepted by the academic experts that we had here yesterday, is that the voice of third party groups in an electoral campaign should not be stronger or louder or more resourced than the political candidates who are contesting those elections and their parties. Do you understand the rationale for that and do you agree with it?

Mr LENNON: I understand that you have to ensure that the electorate can get a clear message from the political parties about what their policies are in an election and therefore they need the space to do that. If you are putting caps on political parties that they can spend to get their message out there, that limits it. Basically that is that vacuum taken up by some other party. I acknowledge that but I would say that if you look at recent history and I know people will go to the last federal election and the role of unions, but let us look at the history over a 20 or 30 year period, I would suggest there would be few times, and admittedly we have not had caps, but there would be very few times where a third party has managed to crowd out the major political parties in any particular election.

Given the mediums we have now got to get the messages out there, and the breadth of mediums we have, it seems to me there are plenty of opportunities for whoever you are to get your message out there during an election campaign.

One of problems, of course, is on the one hand we would say there are third parties that can outspend us, so we would be happy to haul them in and bring them back to our level. On the other hand, we would say that there are other groups out there and there are limits on everyone and everyone has a cap in terms of third parties out there in various election campaigns, that would be other interest groups, give them space and time, if you look at their level of support in the community at large that they do not actually want. That is not to say they do not have the right to say their piece. That is what I am saying, there should as many people out there saying their piece but you have to make sure that everyone understands who these groups are and what level of influence they have in the community.

CHAIR: One of the concerns which has been expressed about caps and bans on donations and expenditure is that if the third party sphere is not regulated, that the caps and bans will simply be bypassed by political parties using other entities, unregulated, to put their message out, so the effective benefit of capping donations and capping expenditure will be by-passed, so I think that is the principle behind why third parties need to have some regulation, otherwise not only could they potentially drown out the candidates' and political parties' messages, but they could become quasi outlets for the political parties to use. Do you see any way, other than caps on third parties, that that could be addressed?

Mr LENNON: In our submission we talk about the question of regulation of genuine third parties and how necessary that is, and the key word there, of course, is genuine. We go to an example in the footnote in our submission on page four where we talk about some of the examples that is happening with the health care campaign in the US. There is no doubt, as I have said before, if there are third parties having a campaign the public has a right to know exactly who they are and who they represent. The public is smart enough to know, without it being telegraphed to them, that certain third parties probably support certain political parties more strongly than they support others. They can work that out for themselves.

There is a case in the US that we refer to here where all these connections are too far drawn so that people cannot make that conclusion or draw that conclusion.

CHAIR: In relation to third parties, you would accept that the disclosure requirements on the sources of funds, as required by political candidates and parties, should be mirrored for third parties?

Mr LENNON: It depends on the question of the source of the funds. Clearly if it is a trade union out there campaigning I think most people would know where those funds come from and what the source of the funds is. If it was a front organisation called people for good health in western New South Wales, clearly you would want to find who exactly is supporting that group, which would lead to the question of the potential source of funds.

Mr COOMBS: Mr Lennon, can I say that one of the things that will be considered is the issue of trade union donations, or contributions, in the context of third party contributions basically and I think that one of the things that we will be considering is it may be the case that certain caps are put on trade unions and corporations and the like in relation to campaign activity, but it might be left open for those organisations to continue to support a party, to their administration funds or in an administrative way, without those caps being put in place. Have you got a view on how that would be looked upon or accepted basically by the trade union movement?

Mr LENNON: I thank you for your question, Mr Coombs, but if we are talking about the direct links between the union movement and the Labor Party, I think as you know, but let me be clear, Unions NSW itself is not affiliated to the Australian Labor Party and many of my colleagues in the affiliated unions and unions that are affiliated to the Labor Party might have different views, but I think from that perspective the union movement in general would maintain a strong link with the Labor Party and I believe that should continue to be a financial link, because I think if you do have a relationship with any institution your level of commitment is shown often by two things, the resources you bring to bear generally but also the financial resources you bring to bear by being prepared to affiliate with whatever the fee may be.

I am not sure whether you are asking whether we have a cap on our rights as a third party to spend and the basis on which we can still donate to a political party directly.

Mr COOMBS: One of the things that will be considered is that there might be two funds, a campaign fund and an administrative fund, that would be administered by the major political parties and one of the things that will be considered is limits or caps being put on contributions to the campaign fund. You know when there is an election going on basically, or preparation for an election, but it might remain open for unions or others or corporates to continue, if they support that party, to continue to make contributions to the administrative side of the party.

Mr LENNON: Sure. Again, I cannot speak on behalf of the unions directly affiliated to the party because they would have differing views, but if they were to come down that was to be an outcome, as I say, if they want to continue to support the party and that was their option, then they would support that notion. At this stage we have not gone to the question of caps and political donations in any great degree directly to parties and do not propose to do so.

The Hon. DIANE BEAMER: When we look at the things that we are tasked to do and look at caps, whether it be on donations and expenditure on things that we are tasked to do, I think it is fair to say in almost all of submissions we have had, and there are a couple that have not said this, that they think that only individuals should donate to political parties, that no other group should be allowed to donate, so corporations, trade unions, should not be allowed to. You have to be on the electoral roll to make a donation and different amounts have been said as to what would be appropriate to do that.

It has been said though in that, that affiliation is a different matter, that affiliation has different ramifications for the trade union movement and the ALP and you know that it is a very strong nexus and close thing that we do have, but in actual fact the Labor Party would be looking at significantly saying to them that any donations that are made cannot be made to campaign at all, that is it. They have to absolutely be separate and there is nothing that can happen to that and affiliation is being in a general fund for administration.

The only way forward if you want to actually look at it constitutionally, I think, to go forward and say we think it is right that corporations and only individuals do it, there has to be a blanket ban. We cannot just exercise one thing. I think there are some problems with the fact that we have done just that, but nobody has actually taken it

up. Once you did get a group taking it up I would imagine there would be a lot of interest if we said the no, but the unions can still do what they do. That would be immediately taken to the High Court. I think we have some problems.

A lot of people are saying to us on this Committee that we should not accept anything from trade unions and affiliation for administration. Therefore having stopped our voice, and the loud voice that we have in both major parties, a real concern about third parties is that they do swamp whatever messages candidates can get out.

Mr LENNON: Sure. Again, we have not gone as far as saying that there should be limits on who can donate to political parties and to individuals. Amongst our affiliated unions in Unions New South Wales, which is about 64, about twice those that are actually affiliated to the Labor Party, I would say it would be difficult to get a consensus view on that particular issue. There would be a variety of views around that issue.

Again, if we get to a situation where that is a decision, that organisations generally cannot donate to parties and only individuals can, but we still have an option of helping out with the administration side, because of the reason I have alluded to, because of our links I think we would take that opportunity, but we have not suggested that we go down that path at this stage. I am one, and this is a personal view, but I am one who is very concerned about limiting who can and cannot donate to political parties for the reasons I think, as I have said, that you have to have the process as open as possible. You have to disclose who is doing it. People have to know who is there. It has to be open and transparent but at a personal level I make that point that I have concerns about this issue.

The Hon. DIANE BEAMER: I am saying these are the submissions. We have had that also said to us.

Mr LENNON: I understand what you are saying in terms of that particular issue, so that is where I sit. We obviously have argued about the increase in public funding, so there is one issue there. If you say you are increasing public funding what does that mean for private sources of funding? Do you limit that? As I said, we have not gone to that question as such.

The Hon. DON HARWIN: Mr Lennon, you touched on this earlier but I would like to explore it a little bit further. The issue is identifying a way in which to distinguish between genuine third parties and organisations that have been set up to circumvent expenditure limits. Could you flesh out a bit more please, how you think the Committee might make a recommendation about distinguishing between genuine and non-genuine?

Mr LENNON: Well, there is discussion about registers, of course, and third party organisations might register. We have not discussed that in any great detail. That might be one possible option, but I think that any organisation that goes out there as a third party into a political debate has to disclose publicly what its support base is, who it is supported by. How we do that, I think these days, particularly these days with the use of the internet, you can do that a lot more easily than in the past, but it has to be made very clear who supports this organisation and what in fact that support organisation is and who they are.

The Hon. DON HARWIN: If there was a system whereby third parties were able to register and they were given a specific expenditure limit and they had to disclose where they were getting their funds from, and it was a public register, and I do not know if you are aware of the details but what applies in Great Britain where a number of trade unions do register as third parties, would that satisfy some of the concerns of Unions NSW?

Mr LENNON: I think you have gone a bit further than I am going. I do not know if you would call it a register but I think you have to have a place where the information is disclosed about the nature of the organisation and who supports it. For instance, Unions NSW, as we say in our submission, is the peak trade union body in New South Wales, some would say in Australia but we won't go there. We have 64 unions affiliated to us and we represent about 600,000 members of trade unions in New South Wales. That is open and clear and people understand where we are coming from.

Ms LEE RHIANNON: Mr Lennon, thanks very much for speaking to us because there are a lot of issues that we have been grappling with. In response to some of the earlier questions I gained the impression that you thought that probably the current status quo should continue, not moving to a system where some individuals can donate.

Mr LENNON: That is right.

Ms LEE RHIANNON: Then you made the point as a rider on that that it is important to know where the money is coming from. I imagine you are aware that one of the reasons people are grappling with bringing in a possible ban is because with all the best intentions and efforts, you cannot find out where the money is coming from on the one hand, and also there is that perception of influence.

I think it was mainly the perception of influence is where I wanted to take you. The Greens are certainly not saying every donation influences an outcome, but I think there is growing understanding that there is a perception in the community that donations are damaging the democratic fabric, that many people in the community do believe donations from corporations, unions and other organisations have a purpose, making people cynical about the political process and turning them off engaging with it. Do you see that is a problem and, if so, how do you think we should respond?

Mr LENNON: I acknowledge that that is a problem, otherwise we would not be here today. The fact is if you look around the world in democracies in the last ten or fifteen years, or New South Wales since 1981 when we first had public funding, there is concern with that issue. My concern is who makes the call in the end? Do we allow various organisations to make donations to political parties and, as long as the electorate is aware of that, then let the electorate make up their own mind, as they go to the ballot box, what level of influence certain organisations may have on particular political parties or particular political candidates.

In a free functioning democracy all citizens make up their own mind, doing so with as much information available to them as possible. In this period now, where there is so much information available out there through various mediums, then it seems to me that people have that opportunity to avail themselves of as much information as they can about who is supporting which political party, where funding sources are coming from, and therefore make a decision about what influence might be brought to bear on a political party.

Ms LEE RHIANNON: If that is the direction you are taking with the emphasis on the information being available, you would be aware that the information does not become available until long after the election. Would you therefore support a form of continuous disclosure, so prior to an election, in the lead up to the election the voters could be aware of where the donations were coming from?

Mr LENNON: I am arguing that disclosure is the focus, that we should make that as open and as available as possible. Whether that will work. At the moment, as I understand it, it is almost a six monthly update.

Ms LEE RHIANNON: New South Wales but federally—

Mr LENNON: Yes, that is what we have got. So basically most people can avail themselves of where—

Ms LEE RHIANNON: But it is after the fact, after the election.

Mr LENNON: Yes, but I think most people can draw an historical line about where certain support is coming from to particular political parties, even if it may be at a stage after an election.

Ms LEE RHIANNON: Considering you have given such emphasis to the issue of the availability of the information, the unions that you are associated with, do you think they should give a lead and disclose the money that they are giving prior to an election?

Mr LENNON: I would have to talk to the particular unions about that.

Ms LEE RHIANNON: Do you think that would be wise?

Mr LENNON: There is an argument that I could put to them in the appropriate forum.

The Hon. JENNY GARDINER: Mr Lennon, I appreciate you have not gone to the question of specific caps, but would one option be that individuals were able to donate \$1000 per person to a political party? It has been suggested by some that organisations, third parties might have different caps on expenditure, which may be say \$5000 or \$10,000 similarly capped on donations. Is that an option you would be prepared to think about?

Mr LENNON: When it comes to donations to political parties, we have not actually gone there in our submission, but by arguing that there should be an increase of public funding, I think by definition, trying to argue there is a limit in the amount of private donations available, how that works we really have not worked

through. There is a separate issue then aside from that about what role there is by third parties, and we are saying as long as there is disclosure there, that should be open-ended.

The Hon. JENNY GARDINER: Following on from the Chair's earlier question about the idea of swamping political parties, but also a question of no limits on expenditure by third parties, ICAC have submitted that caution be extended in relation to coming up with models that are likely to be conducive to corruption. They point to one model, which was if public funding was well below the amount needed and donations were capped at \$1000 and then third party expenditure was not capped. They said that was a problem that would leave the system open to corruption. What is your response to that?

Mr LENNON: Correct me if I am wrong, but I thought ICAC in their submission also went to the fact that trying to limit political expenditure by third parties is difficult and unworkable, but I might stand corrected.

The Hon. JENNY GARDINER: They pointed to the United States.

Mr LENNON: That is why they argue about disclosure being the key.

The Hon. JENNY GARDINER: Yes.

Mr LENNON: I still say that if you look at our political history, it is very hard to point to too many elections, be they Federal or State, where any third party has swamped a political party. Given that there has not been a cap on expenditure by those political parties, but even if there was, depending on what it was, and I gather there would be a reasonable limit they could spend, it would be very difficult for any third party to get out there and swamp the campaign of the major political parties.

We must also remember that we third parties, when we are out there, we usually campaign on a single issue. In the Federal election of 1990 the chemists were out there campaigning about something. I have never seen so many white coats at every polling booth. What was the result? I would not say they swamped the political parties, but they had a strong presence. I have seen particular lobby groups. I remember an example in the Federal seat of Lowe in 1987 where a third party campaigned against a candidate. He lost as a consequence, but I would argue that was more about the politics generally than the issue that was raised by the third party.

I am concerned when we say third parties are going to swamp the political parties. We are not out there campaigning broadly on the issues, we are out there campaigning on single issues and the electorate can make up their own mind on those single issues.

The Hon. DON HARWIN: Mr Lennon, if a candidate can only spend say \$50,000 addressing all the issues, but taking the Lowe example, the Right to Life Association, can spend \$100,000 on their single issue, is that really fair?

Mr LENNON: You would know better than I on that particular issue. Are you saying a particular seat?

The Hon. DON HARWIN: Just one particular seat and, after all, just like Union NSW, everyone knows where the Right to Life Association is coming from.

CHAIR: You can take the question on notice if you like.

Mr LENNON: No, it is a fair question. I am just trying to formulate the right words. That is an example and you say it is a question of fairness, but that is one example in one election. Do we try and stop third parties having the right to spend money just to fix particular issues that may arise from time to time?

The Hon. DON HARWIN: My question simply was that the cap - it is an example. Perhaps I should not have used that, but it certainly puts I think the picture clearly, which is you have got \$50,000, say, in that example, to address all the issues and to respond to all comers in terms of third parties and possible issues at the time. I am just wondering whether there is a fairness about not capping the third party in those circumstances.

Mr LENNON: The problem too is how many third parties does that then bring into the equation? If you cap it at \$50,000, that means that a particular small group, whoever they may be, then gets involved and can spend up to \$50,000. A larger group that was more representative of people about the particular issue could spend \$100,000, which is more in keeping with the people they represent and the group they represent and the breadth

of the group they represent, is limited to \$50,000. So level the playing field, I suppose, if you follow my example. Ten people can come together and form a lobby group for \$5,000 each. The union movement, with 600,000 members, which has also got an interest in this particular issue in that particular seat, is also limited to \$50,000. There is inequity there. I do not know what the issue is but that is just my point.

The Hon. DIANE BEAMER: Just changing tack, we had a bit of discussion on government advertising and the way in which that increases before elections and then settles back down. Some of our think tanks yesterday advocated that government advertising be banned for six months prior to the election. Others have advocated that it goes to an independent body, whatever that is. Do you have any thoughts about that?

Mr LENNON: I could have gone there and said yes, we would support the notion of what should be government advertising for community purposes opposed to what could be considered political advertising.

The Hon. DIANE BEAMER: So what sort of model do you think we should look at?

Mr LENNON: We have not gone into depth but I think some form of independent oversight of it. Given the level of interest rates and an independent panel, it is good enough to ban government advertising six months out from an election. But I must say again, I come back to the point I was making to Ms Rhiannon, I still have faith in people at large to make up their own mind about certain things, what is political advertising, what is community advertising, to start off with it is clearly community advertising but there is a little political poke at the end. I think there is a view that we do not want money wasted on political advertising. We would rather, from the union perspective, that it was spent on services and things of that nature, but there is also a view that the electorate out there is smart enough to make up their own mind when it comes to a number of these issues.

The Hon. MICK VEITCH: Mr Lennon, in your opening remarks you made a comment about your financial controller or accountant having to go on stress leave come election time. I want to talk a bit more about the compliance regime that we should be recommending.

Mr LENNON: We do not claim that as political expenditure by the way.

The Hon. MICK VEITCH: It is important because from the third party perspective, whatever compliance regime or reporting regime we put in place, it is there for all. So you could be a Joe Blow in Young who puts a half page ad in once as a third party to protest one issue, and therefore his reporting regime would be the same as Unions NSW with their third party campaign State-wide. Do you have a view about when you should report, how often you should report and what would be the degree of compliance and reporting that was required to adequately meet third party reporting?

Mr LENNON: You have got to make it as simple as possible. That was my point in my opening remarks, that Joe Blow, whoever he or she may be, should have that right to put in a half page ad and not have to do huge amounts of compliance to get there. At the moment, if we struggle, I cannot see how people in that domain do, but that is the people you want participating in elections and having their say. Like you say, we do have to have some set of rules about these sorts of things, and once you start, of course, it starts to expand and compliance becomes very difficult.

The Hon. MICK VEITCH: Earlier on we were talking about third parties maybe having to register. Would that register then be available electronically, for instance, so that someone could go in and see who are the third parties that are registered for this election?

Mr LENNON: Absolutely. I think any information about who is involved in election campaigns or third parties that are involved in campaigns, you have got to use the web as the key tool in this modern age.

CHAIR: On the issue of third parties and registration, one of the suggestions was that there be a threshold for registration, so at local elections if Joe F Bloggs wants to put the campaign out on feral cats and spend \$200 on ads, there is no requirement they disclose that, their source of funds or their expenditure, but if their campaign receives \$5000, as the threshold suggested, they are required to be registered and the source of their funds and their expenditure has to be accounted for. Is that a sort of system that you perhaps see some merit in or otherwise?

Mr LENNON: In our submission we have not gone to that level of detail but if there are to be some proposals for registration, and I think coming back to Mr Veitch's example that you do not want to make it too difficult for

the ordinary person and they are going to be dealing with a minor amount of expenditure as in the case you pointed to, then maybe they can do that without having to go through the registration process. As long there are still rules about authorisation and things of that nature so that people have some understanding of where that is coming from. By the way, there was a candidate in the Lindsay by-election in 1986 who did run on the issue of feral cats.

The Hon. DIANE BEAMER: He is still around and still door knocking and letter boxing.

The Hon. MICK VEITCH: In your submission you talked about the tagging of advertisements or material. You are saying authorised by, but from what I read here you are recommending that it should also say who has funded the third party material.

Mr LENNON: Yes. I have made that pretty clear that we should be able to find out who is supporting whom. Again, coming back to the issue, if someone in Wagga has a particular argument about the state of the roads in Wagga and wants to put a half page ad in the paper, I do not know that that is such a political maelstrom that we need to have great disclosure about that person. It can get mixed and difficult if all of a sudden there is a whole campaign about streets in Wagga and these ads are appearing regularly and on TV, then you have an issue and that comes back to the point the Chair was raising, how much is this group spending, and if they are spending significant amounts, all of a sudden rules and regulations come into play about registration, or whatever.

CHAIR: It is possible that we have further questions for you. Would it be all right if something comes to mind that we contact you again and seek your opinion on issues?

Mr LENNON: Sure.

(The witness withdrew)

(The Committee adjourned at 5.08 pm)