

REPORT OF PROCEEDINGS BEFORE

**JOINT STANDING COMMITTEE ON ELECTORAL
MATTERS**

**INQUIRY INTO ADMINISTRATION OF THE 2011 NSW ELECTION
AND RELATED MATTERS**

At Sydney on Friday 29 June 2012

The Committee met at 10.00 a.m.

PRESENT

Mr J Rowell (Chair)

Legislative Council

The Hon. R. Borsack
The Hon. T. Khan
The Hon. Dr P. R. Phelps
The Hon. P. T. Primrose

Legislative Assembly

Mr P. Lynch
Mr D. Maguire

IAN EDWARD SMITH, Treasurer and Party Agent, Christian Democratic Party, and

RAYMOND LEIGHTON FARLY THEW, Acting State Manager, Christian Democratic Party, sworn and examined:

CHAIR: Do you wish to have your submission included as part of your sworn evidence?

Mr SMITH: Yes.

CHAIR: Would you like to make a short opening statement before the commencement of questions?

Mr SMITH: Other than the submission itself, I will leave that as it is, I have a couple of points, one I discovered from going to a local government information seminar last night. I have not had a chance to get the legislation to confirm it but based on the information the electoral funding authority person gave, there would seem to be an anomaly with current legislation in that there is no cap on local government donations but there is a cap involving political parties and candidates endorsed by political parties. Therefore, there would be an advantage in favour of an independent candidate over a political party candidate in the local government election.

The other thing—I do not know whether it is intentional or unintentional—with legislation, the Christian Democratic Party has political branches and most other parties, I assume, do of some nature and our political branches are basically set up on the premise that they support the local endorsed candidate. That candidate may not be endorsed until much closer to an election but with the political branches operating between elections, raising funds, et cetera, with the intention of supporting that candidate when they finally get endorsed. But, because of the nature of the existing legislation a political branch is termed an entity and therefore cannot donate to the campaign account of the candidate that they are basically there to support. From our perspective that would seem to be an anomaly in the legislation and something that should be addressed.

The other thing as well from our perspective, having been operating under the latest legislation and the administrative workload that has imposed upon us, we are not saying that is not something we believe should not be done, but with a small party such as us it has imposed quite a significant increase in our administrative load in doing disclosures and the additional requirements of disclosures and checking donations to see that they fit in with the new criteria, the person being enrolled, et cetera. That has impacted on our ability, with a small administrative staff, to do the other things we would like to do as a political party in getting our message out there.

CHAIR: Thank you. Mr Thew, would you like to make a short opening statement?

Mr THEW: I would confirm what Mr Smith has said concerning the additional administrative burden on a small party with the new legislation. Yes, it is very significant in comparison; and something that needs to be considered.

CHAIR: I will commence with the first question. In your submission to the inquiry into the conduct of the 2011 election you suggest that the Electoral Commission should develop an online inquiry system that enables voters to find their electorate details. Do you have any other suggestions as to how the Electoral Commission could improve its systems in providing information to voters, political parties and individual candidates?

Mr SMITH: More so from that point of view of how the electoral process, the voting process itself, should be administered and moving down the track of electronic voting and doing away with the need for distributing millions of how to votes. There is probably an opportunity there, once electronic voting is introduced—if and when—instead of people being bombarded with how to votes, there is an opportunity with a well-designed system to save a lot of paper and have a much more efficient voting system, checking voters eligibility, stopping dual votes. I do not know what the statistics are but I am sure the Electoral Commission can provide that information of people voting multiple times or voting multiple times under a given name.

Mr DARYL MAGUIRE: Your opening remarks, Mr Smith, about the cost of compliance: Can you give the Committee an estimate of your organisation's percentage of costs in the operation to comply with the administrative burdens under the new legislation?

Mr SMITH: It is probably pretty hard to put a dollar figure on it at this point in time but I would say just from my own experience being the person responsible for the disclosures, and it has basically run for just over a year—

Mr DARYL MAGUIRE: What about a percentage of what you expend, what you raise and what you expend as a percentage?

Mr SMITH: I would only be guessing off the top of my head—

Mr DARYL MAGUIRE: Can you take it on notice?

Mr SMITH: Yes. I would say you are looking at at least 10 per cent. I can give you the exact figures later.

Mr DARYL MAGUIRE: If you take it on notice, I am interested in that.

Mr SMITH: Yes.

Mr PAUL LYNCH: Mr Smith, I notice in your submission recommendation 7 has a proposal to allow police without evidence to barge into electorate offices to discover illegal conduct. Is there any reason why you could not extend that to the upper House, given that you have MLC's operating out of the upper House in this building?

Mr SMITH: I was thinking of electorate offices.

Mr PAUL LYNCH: So you would not extend the power to police coming in to offices in Parliament House?

Mr SMITH: That was not something I had considered. I would leave that up to the Committee to decide if it wants to go down that road.

The Hon. Dr PETER PHELPS: In relation to pre-poll voting, your recommendations were that either it be severely curtailed or let the floodgates open. What is your view of the more appropriate outcome?

Mr SMITH: I believe it should be more tightly controlled. I think you have an election day and people are aware of that.

The Hon. Dr PETER PHELPS: It is just that your evidence goes against what the Electoral Commissioner has been saying. There is an evidentiary proof problem for electorate offices to verify that someone is not going to be there. At the current time their alignment system is self-identification.

Mr SMITH: That is right.

The Hon. Dr PETER PHELPS: Why not just open up the system and say if you want to pre-poll in the week before polling day, go for it, rather than people at the current time having to fake a reason for doing so?

Mr SMITH: I think from the point of view of campaigning and whatever in terms of the information that becomes available in that last week that may impact people's final voting stance if they have voted beforehand. Obviously there is no opportunity to rescind your vote. If we open it up to everyone, in my experience there are plenty of people who walk by and try to dive in and do a vote if they possibly can to get it out of the way. Whether they are voting from an informed perspective or not, that is on their head I suppose. We want everyone to be informed as much as possible. If you can bring them right up to the voting day it would be preferable. Whether that means pre-polling should be curtailed totally, I do not know, and people should be made to do postal votes and contact the Electoral Commission.

The Hon. Dr PETER PHELPS: You also recommend a curtailment of postal votes as well, by removing the role of political parties from that process?

Mr SMITH: If the Electoral Commission advertises itself properly, people will know they will not be available on voting day, there are enough advertisements on television, radio or whatever, saying if you cannot vote on this day contact the Electoral Commission, go through this website, or whatever. There are plenty of avenues these days to submit applications.

The Hon. Dr PETER PHELPS: But you do not think political parties, as a useful service to the community, should be able to send out postal vote applications?

Mr SMITH: They should not send them out on the basis that they harvest the information. If there is any harvesting of information, I think that is my concern. I think it is the Australian Electoral Commission's concern that political parties should not use that opportunity to harvest information about individuals such that they can subsequently influence the outcome of an election.

The Hon. Dr PETER PHELPS: Sorry, how do they influence the outcome of an election by simply sending out postal vote applications and receiving those applications back?

Mr SMITH: They then have that person's details. If they know that person has not voted, I understand there is hearsay evidence to say political parties have chased up those postal voters to get them to submit votes.

The Hon. Dr PETER PHELPS: You say chasing up, but that is just a way to make sure that people do what they are legally obliged to do, to make sure they vote?

Mr SMITH: If that was all that was being done, but to get them to vote in a particular way, how do we know that is not occurring?

The Hon. Dr PETER PHELPS: Every political party wants you to vote in a particular way; that is why political parties can vote?

Mr SMITH: Postal votes can come in after the result of the actual election-day counting and if there is only a small number of votes in the balance—

The Hon. Dr PETER PHELPS: I think you misunderstand the system; they cannot actually cast a vote after election day on a postal vote. They can be received after election day but they cannot be cast at that time. In other words, it is not possible to rot a postal vote by knowing what the election result is because any of them cast after polling day would be invalidated by the Electoral Commission?

Mr SMITH: In terms of knowing that that is the specific case that it was actually cast after the election day could be debated.

CHAIR: Mr Thew, did you want to add to that?

Mr THEW: Yes, I would like to add this comment, if I may, Mr Chair. The bit that is concerning us at present is that political parties are sending out forms or documentation to voters to enable them to do a postal vote. That is okay if it stopped there but the return address is back to the party that has sent them out. One has got to stop and ask: Why does that party want them back rather than telling them to send it straight back to the Electoral Commission?

The Hon. Dr PETER PHELPS: Could I suggest there would be two things to that: the first was to make sure that, knowing that they are postal voters, they have actually lodged the application so that if they forget to do so they can make sure that the people have had the opportunity to cast a formal vote at that election and also if the person wishes to receive voting information, because they will not receive any on the day, that there is an opportunity to receive that information; in other words, individual voters self-select and say, "I would like information about your party".

Mr THEW: If you are sending back your postal vote and you send it back to the political party, it is only really double handling.

The Hon. TREVOR KHAN: It is not a vote that is sent back, it is the application.

Mr THEW: Sorry, I thought it was actually the postal vote.

The Hon. Dr PETER PHELPS: No, it is the application.

Mr THEW: Sorry, my misunderstanding.

The Hon. TREVOR KHAN: I go to recommendation 17, which deals with audit fees. Are you able to indicate how many seats the Christian Democratic Party ran in, in the last State election?

Mr THEW: It was 86 out of 93.

The Hon. TREVOR KHAN: And that was an informed decision by the party to run people in that number of seats?

Mr SMITH: We would have liked to have run in every seat if possible.

The Hon. TREVOR KHAN: And you knew then that the process required an audit to be done on the electoral expenditure that was committed in each of those seats that you ran in?

Mr SMITH: Yes.

The Hon. TREVOR KHAN: And you ran people in those seats for a purpose?

Mr THEW: Yes.

Mr SMITH: Definitely.

The Hon. TREVOR KHAN: Is it fair to say that you ran people in those 80-odd seats because it formed the basis of you increasing your vote in the upper House?

Mr SMITH: No.

The Hon. TREVOR KHAN: So you were running people in the lower House where you would have known you were only going to get a very small vote in a lot of the seats that you ran in?

Mr SMITH: But is that a reason to say—

Mr THEW: Don't run?

Mr SMITH: —don't run?

The Hon. TREVOR KHAN: That is for a political party to make the decision.

Mr SMITH: That is an abrogation of the political system to just hand over to a party that you may not agree with their principles.

The Hon. TREVOR KHAN: Sure, but I take it you are asking the Committee to recommend that there not be an audit process—

Mr SMITH: No.

The Hon. TREVOR KHAN: —of the expenditure of candidates where they do not hit the limit, in essence, or the threshold?

Mr SMITH: Well, I think if there is a consideration, obviously there is a significant expenditure involved.

The Hon. TREVOR KHAN: True.

Mr SMITH: And obviously that impacts on any candidate.

The Hon. TREVOR KHAN: It does.

Mr SMITH: Whether it is an independent or a small party.

The Hon. TREVOR KHAN: Sure.

Mr SMITH: And it is a cost that has to be borne.

The Hon. TREVOR KHAN: Would you be able to take on notice this question: are you able to identify for each of the 80-odd candidates how much was spent in terms of audit fees?

Mr SMITH: It was done as a complete party. It was done via the party account.

The Hon. TREVOR KHAN: Do I take it that audit would have been necessary to undertake, irrespective of there being a percentage of those candidates who fell under the threshold, would that be right?

Mr SMITH: Irrespective? Could you explain?

The Hon. TREVOR KHAN: I take it that recommendation 17 is essentially this: for those candidates who got only a very small vote in particular electorates you feel that there should not be a necessity for an audit to be done on their expenditures, is that right?

Mr SMITH: That is right.

The Hon. TREVOR KHAN: But there were some of your candidates who were over that threshold, is that right?

Mr SMITH: Yes.

The Hon. TREVOR KHAN: Are you able to identify how many were under and how many were over, again I assume on notice?

Mr SMITH: Yes.

The Hon. TREVOR KHAN: Therefore the question I have for you is: you were going to incur the expenditure of the audit, were you not, because you had some candidates over the threshold anyway?

Mr SMITH: But obviously there is extra time involved in those additional candidates so—

Mr THEW: There are extra costs.

The Hon. PETER PRIMROSE: In your earlier evidence my understanding was that you raised your concern relating to individual branches which fundraise for their local candidates no longer being able to make a donation directly to that local candidate, is that correct?

Mr SMITH: That is right.

The Hon. PETER PRIMROSE: What would you like to see happen?

Mr SMITH: I would see that maybe there is an exception put into the legislation to say that in the instance of a political branch obviously being established for the support of a political candidate that their election fundraising activities, not their administration money, can be used to support that candidate.

The Hon. PETER PRIMROSE: And that would be the case for both local and State?

Mr SMITH: Yes.

The Hon. ROBERT BORSAK: I see that recommendation 2 is more targeted to television, newspaper and radio advertising to show people exactly how to complete voting papers. Do you want to elucidate? You might be talking also about educating people on not just how to vote but on what a vote in the Legislative Council means and what a vote in the lower House means?

Mr SMITH: Yes, definitely.

The Hon. ROBERT BORSAK: I gleaned that from your discussion.

Mr SMITH: Obviously the difference between the Federal and State voting systems causes confusion in the voters' minds and from our direct experience the electoral polling booth workers did not understand the system.

The Hon. Dr PETER PHELPS: Can I just clarify that? Are you saying that the people employed by the New South Wales Electoral Commission did not understand?

Mr SMITH: Or they gave the wrong advice.

The Hon. Dr PETER PHELPS: So when you say polling booth workers I am not sure whether you meant the party workers or whether you meant the people employed by the New South Wales Electoral Commission.

Mr SMITH: People employed by the Electoral Commission.

The Hon. ROBERT BORSAK: That is one of your other recommendations; you say that the Electoral Commission should be running a training and certification process for electoral booth workers, those employed by the Electoral Commission?

Mr SMITH: That is right.

The Hon. ROBERT BORSAK: But my question was more in terms of educating the public?

Mr SMITH: I think that is what recommendation 2 is directed at.

The Hon. ROBERT BORSAK: What are you seeking to have them educated in?

Mr SMITH: I think obviously with the Legislative Council voting system, to understand how to complete a ballot paper, and similarly with the lower House; obviously it is different to the Federal system, to avoid that confusion and reduce the informal vote.

The Hon. ROBERT BORSAK: Do you also make a comment on the optional preferential system?

Mr SMITH: No.

Mr THEW: However, I would think for the ordinary member of the public it would be desirable that Federal, State and local ways of voting, in other words the preferential system, be identical for the lot of them because on one ballot paper you have to fill in every square for the lower House; on the other one you can fill in any number you wish and so on, so there is confusion in the public's mind.

CHAIR: Do you have a preference as to which system you prefer?

Mr THEW: My thoughts would be I could fill in any number and it would still be legal; in other words, I do not have to fill in all the boxes. I could fill in the first one or the first one, two, three or one, two, three, four, five and leave the other seven blank, for example.

The Hon. TREVOR KHAN: I somehow do not think the Commonwealth is going to listen to this inquiry.

Mr THEW: It is probably beyond the scope of this inquiry as to what work could be done there but there is certainly confusion in people's minds and when I have heard comments from voters as they come up to a

polling booth, "Oh, who are we voting for this time. I thought we had an election only two months ago", it is quite clear that they do not know the difference between State, Federal and local government elections. It is just another wretched election that they are burdened with the task of attending one Saturday morning.

The Hon. Dr PETER PHELPS: Should we perhaps remove that burden and introduce voluntary voting?

Mr THEW: No, we do not support that.

CHAIR: They want to increase the fines.

The Hon. ROBERT BORSAK: Do you think an increase of \$200 is enough?

Mr SMITH: If there was a better way of encouraging people to vote and think about how they are voting, whether a fine is the appropriate avenue, but I think it needs to be increased from the current amount because it is pretty paltry.

The Hon. Dr PETER PHELPS: What about enrolling, should there be an increased fine for failing to enrol as well?

Mr SMITH: Unfortunately some people do not even know that they are not enrolled until they arrive at the booth because, for whatever reason they have been taken off the roll because maybe they have moved lately so with the current Electoral Commission processing, when they send out a communication and it is returned people can be taken off the roll.

The Hon. Dr PETER PHELPS: I accept that if they have moved house they have presumably changed their licence, their electricity bill, their gas bill, their water bill, their bank statement and they have notified Australia Post of a change of address and yet they have somehow managed not to change their electoral enrolment. If they can do all of that then I am not too sympathetic towards the idea that we should cut them some slack because they could not be bothered changing their enrolment address.

The Hon. TREVOR KHAN: That is his opinion, it is not mine.

The Hon. Dr PETER PHELPS: And it is a very informed opinion.

Mr THEW: Concerning voluntary voting, the sad reality is that people have fought and died throughout history for the privilege of voting. It is a privilege and people should take it seriously.

The Hon. Dr PETER PHELPS: I agree.

Mr THEW: As far as enrolling, if they wish to participate in the political process of this country and determine who governs them, then they should similarly be responsible and make it their business to get themselves enrolled as soon as they are eligible.

The Hon. Dr PETER PHELPS: Can I just take you up on that, it is not their wish, it is the law; they have to do so.

Mr THEW: Yes.

The Hon. Dr PETER PHELPS: And at the current time there is no effective penalty for not doing so.

The Hon. ROBERT BORSAK: In terms of re-registration of the party, I see you have some discussion in there in relation to the difficulty of re-registering the party. Do you want to talk about that in a bit more detail?

Mr SMITH: First, I would like to commend the Electoral Commission for the online facility. It is much better than the Australian Electoral Commission system, but from our experience we have had people join the Christian Democratic Party who obviously would want to be included within our registered list. They had been involved with another party but to get them off the other party's list has been quite cumbersome. I give one instance just this year of a person on our management committee. We advised the Electoral Commission and the

other party as part of last year's registration process that this person was to be included as part of the Christian Democratic Party and taken off the other person's list. I did not need them last year but we advised them and it came around this year and I again wanted to include that person and again they were relied upon by the other party; they still had not been taken off the list.

The Hon. TREVOR KHAN: I am interested in that concept. I do not think, at least in terms of The Nationals, there is the restriction of being a member of only one political party.

Mr SMITH: There is no restriction in that regard, but in terms of the registration process you can only be included with one political party.

The Hon. TREVOR KHAN: Even though you may legitimately be a member of both political parties?

The Hon. Dr PETER PHELPS: It is to stop a tablecloth election. Do you think 750 is too onerous a membership base? Do you think it should be reduced to 500, which is the Federal level?

Mr SMITH: No, that is fine.

Mr DARYL MAGUIRE: Mr Smith, in your submission with regard to pre-poll, you have two recommendations in point 12; that the declaration needs to be tightened to ensure true eligibility to the pre-poll or it needs to be disregarded altogether. If it were to be disregarded what would be the appropriate time to operate a pre-poll, the number of days pre the election?

Mr SMITH: I would think in that case a maximum of seven.

The Hon. TREVOR KHAN: There is currently, I think, restrictions on electronic advertising before the election. It is at State as well, isn't it?

The Hon. Dr PETER PHELPS: Yes, Wednesday midday.

The Hon. TREVOR KHAN: Should there be a consistency in the approach taken if you are going to open up the pre-polling wider with regard to electronic advertising during the period of time the pre-polling is open?

Mr THEW: May I comment? I was going to add that. If it is going to be a week before that you can basically have a polling week instead of a polling day, then the electronic advertising should stop a few days beforehand to give the public a cooling off period. Can you understand what I am trying to say?

The Hon. TREVOR KHAN: Yes. Earlier you raised an argument that all polling should take place on the one day because then all the public—the general drift from Mr Smith—was equally informed on that one day. If that be the case why do we need any restriction on electronic advertising at all? What is the cooling off period for?

Mr SMITH: That is for debate.

The Hon. TREVOR KHAN: I am inviting your debate.

Mr THEW: I would suggest giving the public a break from the bombardment in the media of all the political promotional material that goes on.

The Hon. TREVOR KHAN: It does not prevent the electronic media, particularly, in terms of news and the daily media conferences or hourly media conferences that the leaders of political parties engage in right up to and including the morning of the election, does it?

Mr SMITH: It does not.

Mr DARYL MAGUIRE: Can I finish part two of the question which was your other recommendation and that was that the criteria need to be tightened for eligibility to pre-poll; what would you recommend to tighten it?

Mr SMITH: A person needs to bring along a travel document if they are going on a holiday, something to show they are going on holiday or something to show they are going to be working, some document from their employer to say they have to work on polling day.

Mr DARYL MAGUIRE: There is a myriad of reasons why people pre-poll. In regional and rural areas the commission have constantly reviewed the amount of polling stations that are open on polling day. A lot of the time it necessitates another trip, quite often long distances, for those people who do not have access to electronic polling. Therefore, restricting the amount of time that those people can get to the polling booth may have a negative effect on their ability to vote.

Mr SMITH: That is a valid reason.

Mr DARYL MAGUIRE: I am asking the question, how else would you tighten that up but still allow those people to have access to a polling booth? Those people may not get to town every seven days and rely on community transport to get to polling places that are in small villages that do not have a polling booth?

Mr SMITH: The Electoral Commission has to think those things through in terms of providing the transport or other facilities that may be available—having a communal internet access facility. We have the iVote facility going, why can't they establish that in the local library or school of the village?

The Hon. Dr PETER PHELPS: It was not mentioned in your submission: what is the view of the Christian Democratic Party [CDP] in relation to instituting a requirement that people produce some form of identification document [ID] at polling booths?

The Hon. TREVOR KHAN: Groan.

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

The Hon. Dr PETER PHELPS: If you do not have a view that is fine, say that.

Mr SMITH: If we have electronic voting there is opportunity to enhance or bring something in at that stage to have a form of individual validation.

CHAIR: Do you think that would improve the system or be an unwarranted level of administration on election day?

Mr SMITH: Some people might see it as an invasion of civil liberties; those individuals that are bent that way. Technology is moving quickly and there are facilities out there now to control a lot of information sharing. We need to be moving down that path and taking advantage of those facilities.

Mr THEW: I do not think it is unreasonable that people provide some form of identification. People can do that easily by showing a driver's licence; it has your photo on it and you can be identified that way. For those that do not have a driver's licence some alternative means of identification can be easily produced such as a disabled parking certificate.

The Hon. TREVOR KHAN: They would not have one of those if they do not have a driver's licence.

Mr THEW: They could be a passenger. My mother has one but she does not have a driver's licence. Teenagers have their age card for entry to clubs and hotels to show that they are over the age of 16 or 17.

The Hon. TREVOR KHAN: Hopefully 18.

Mr THEW: There are forms of identification that are readily available and I do not think it is a big issue to show that quickly to the attendant behind the desk at the polling booth.

The Hon. PETER PRIMROSE: What if someone arrived at a polling booth from a sporting club or on their way to a wedding, people often do, and they come in to vote and they do not have an identification document: what would be the response of the polling officer?

Mr SMITH: "Quick, find some."

Mr THEW: I have not got an answer to that one straight away. There are always going to be exceptions.

CHAIR: It was debated at length in a previous hearing, so I do not intend to engage in that debate today. I am conscious of the time.

Mr DARYL MAGUIRE: With regards to the identification document, most Australians have a Medicare card but doesn't the electoral roll quote your date of birth as well? It is a form of identification document known mostly to the individual.

Mr SMITH: Although people can find out other people's dates of birth.

Mr DARYL MAGUIRE: It is a form of identification. If you want to electronically change your telephone or banking details they ask you for identification such as your date of birth and some particulars.

Mr SMITH: These days they are going further in terms of asking last transactions and things like that. They have realised that just asking for the date of birth is not sufficient.

Mr DARYL MAGUIRE: Technically a simpler way to do it, rather than an identification document, which is a license, you could have in the electoral roll your date of birth and a phone number, or something relevant to that voter.

The Hon. PETER PRIMROSE: It is readily available. Most people have their date of birth on Facebook.

Mr DARYL MAGUIRE: I do not. I do not do Facebook either.

CHAIR: Are there any questions we have not raised today that you feel we should be asking the electoral commissioner this afternoon?

Mr SMITH: We have covered the issues I raised initially plus the question of knowledge of the electoral commission staff that are manning the booths.

CHAIR: Thank you for appearing before the Committee today. The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and may be made public; would you be happy to provide a written reply to any further questions?

Mr SMITH: Certainly.

(The witnesses withdrew)

CHRISTOPHER HENRY MALTBY, Registered Officer, The Greens, and

LESA JANE DE LEAU, State Election Campaign Coordinator, The Greens, affirmed and examined:

CHAIR: The Joint Standing Committee on Electoral Matters is hearing evidence in relation to its inquiry into the Administration of the 2011 New South Wales election and its review of the Parliamentary Electorates and Elections Act 1912 and the Election Funding, Expenditure and Disclosures Act 1981. Thank you for appearing before the Committee today to give evidence. Before we proceed do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

Mr MALTBY: No, I do not.

Ms DE LEAU: No.

CHAIR: Do you wish to have your submission included as part of your sworn evidence?

Mr MALTBY: Yes.

Ms DE LEAU: Yes.

CHAIR: would you like to make a short opening statement before the commencement of questions?

Mr MALTBY: Yes, that would be good thanks. To clarify, we were intending not to address the issues in the review of the two electoral Acts because we understand there is a separate inquiry for that. I got the understanding from your opening remarks that you intend this to be a combined hearing, is that the case?

CHAIR: Yes.

Mr MALTBY: We have not come prepared for that.

CHAIR: The Committee is happy to take further submissions.

Mr MALTBY: We have a submission on that, it is just I did not bring points to raise on that. We were intending to mostly speak about the election matters. We are reasonably well briefed on those topics, so it should not be a problem. I have just a couple of things about our submission concerning the 2011 election. Obviously it is apposite after the result in Queensland to observe that proportional voting is still on our agenda and should be. you see a situation there where a governing party received just short of 50 per cent, which is a strong result in the primary vote, but nevertheless have 80 something per cent of the seats and an Opposition which received somewhat more than the Opposition in New South Wales received at its election and is now on 10 per cent of the seats and barely able to carry out the functions of an Opposition. It is time that we started to seriously consider reform of the electoral system in New South Wales.

The Hon. TREVOR KHAN: To the head clerk.

Mr MALTBY: We have suggested that. It is unacceptable that you have a situation where you can get a skewed result in terms of electoral representation as compared to your support amongst the population.

The Hon. Dr PETER PHELPS: Queensland should have an upper House, should they not?

CHAIR: Members, witnesses should be heard in silence whilst they are making their opening remarks. Questions will then be taken.

Mr MALTBY: I am delighted to talk to the member about the question of a Queensland upper House but perhaps not here. The other one that was a bugbear for us again, as it always is, and is in our submission, is the question of public servants and their ability to contest elections. It is just an administrative nightmare for them. As to the provisions, we understand there is a need to separate conflicts of interest there but if you are talking about teachers and the like those provisions are just unwieldy and they are just too difficult to comply with. It is also an impediment to people being able to represent themselves or the political parties in election

campaigns that they cannot afford to take off however long the campaign period is with leave without pay. That is not good.

We have a question for the electoral commissioner, which is why we cannot complete two-candidate-preferred results for all of the divisions. I see the EC basically stopped counting as soon as a candidate received a majority of the votes, and in some seats—in fact, pretty well all of the seats in which The Greens came in the top two as far as we can tell, that evidence is not available to the public on the EC website. Though Antony Green apparently was able to access it, so I am not quite sure on what basis he was able to get that information—he obviously intuited it from what is there in terms of primary votes. But it is a bit unfortunate that those seats were not completed in their count.

A new issue for us this time—and I will be interested in hearing what people on this Committee may say—is in relation to censorship at polling booths. We had a couple of incidents but particularly at [location suppressed] where there was an attempt by the landlord there to discriminate against particular candidates on the basis of political opinion apparently. That resulted in quite a distressing interchange between our booth workers there and that person and they were eventually required to move their signage, which was clearly unacceptable unless there is something wrong with the material on other grounds but just on the basis of political content it is quite unreasonable. I might say that there are plenty of members of the Catholic Church in The Greens so he was not even necessarily representing an official—

CHAIR: I do understand that issue but it would be appreciated if you would refrain from mentioning individual names.

Mr MALTBY: We were concerned that that was removed from the submission, and I understand you might have some guidelines on that, but we thought it was an important matter for the public record that that incident be documented.

The Hon. Dr PETER PHELPS: Was it reported to the State Electoral Commission because they did not seem to know about it when we asked them last time? They knew about the Sex Party problem but they did not seem to know anything about this.

Mr MALTBY: We may not have done that.

Ms DE LEAU: I am happy to take that on notice. We certainly reported it to the polling booth official at that particular booth but I will check that.

Mr MALTBY: In fact the official was actually involved in the mediation and it was his call to allow the leafletting to continue on the premises but that the material be removed on the basis that the fence or whatever was the property of the institution so therefore they could decide what materials were hung on it, which is a fairly academic distinction I would have thought. Anyway, we have a specific recommendation about that.

On the question of registered material, we also had an issue in a district to the south of the State where one of the other parties—I will not name them at the Chair's request—was distributing a leaflet that was registered and from having looked at that section of the Act in some detail I could understand one coming to a conclusion that it was within the bounds of the legislation. It was not in fact illegal, but it was quite clearly in breach of the spirit of that section because it did not really identify that this was a message on behalf of that particular party. It said, "If you are thinking of voting Greens then make sure you preference candidate X" and it did not really say that party X recommends that or whatever and it was, of course, printed in a green colour—not that we own that colour. But in the voters' mind there was clearly an intention to mislead that this was somehow or other a message that was associated with The Greens and was something they should give weight to on the basis that it was coming with that association. If we are going to have registration of materials it should really be to make sure that we are in fact not confusing voters about the origin of the content they are receiving.

On the topic of pre-poll, I see you have already discussed that this morning. We also support a shorter time for pre-poll; we are thinking perhaps from the Friday before. It is a fact that there has been an enormous growth in pre-poll voting. I am not sure that particularly regulating it and expanding the number of legitimate reasons or tightening up on the number of reasons you might have to give to pre-pollers is necessarily a necessary thing but now with the availability of options for online voting or postal, if you must, it is becoming quite a demand on parties to deal with the pre-poll vote. There is also the risk of inclement weather over that

period and all sorts of other things that make it quite challenging. Also the material that is handed out at pre-poll votes is not subject to registration requirements. It is now routinely the largest booth in each district so I think we need to look at that a little bit and reduce the time.

Finally—and this relates more to the other inquiry—I think it is a loophole in the electoral funding Act to do with party membership and small donations from people. Party membership is classified as a donation and thus you cannot take it from people under the age of 18 or people who maybe permanent residents but are not enrolled and it is a substantial burden on political parties to determine that or take responsibility for the fact that everyone who may profess to be a member or potentially come along to a fundraiser and buy a raffle ticket is someone on the electoral roll.

The Hon. ROBERT BORSAK: The Greens supported the Government in those amendments?

Mr MALTBY: I am aware of that.

The Hon. ROBERT BORSAK: And in a lot of things you also have in your submission. You are now asking for changes to be made to the very thing that they supported without amendment.

Mr MALTBY: I accept the criticism. Unfortunately, we are not omniscient and occasionally there are unforeseen consequences of otherwise quite valuable legislation. There are some things there that with the benefit of hindsight could be improved.

The Hon. ROBERT BORSAK: Are you saying that the legislation does not work in practice in large areas for you?

Mr MALTBY: No, just that the greater benefit, which is to limit the quite toxic effect of large political donations, is a valuable one but when it comes down to areas of minor import, and also the principle of being able to be involved in politics—I mean, if you look at the former Premiers of this State, many of them would have joined their parties well before they were able to vote and been active in politics long before their time—those people are now unable to join on that basis because of this law. We did not intend that as the outcome and seeing that is the outcome we think it needs to be modified.

CHAIR: Before any more questions are asked. Is that the conclusion of your opening statement?

Mr MALTBY: I would like it to be. We do have a number of technical matters relating to the operation of the funding legislation and it is probably best to refer to our submissions on those rather than to talk about it at length. But we are happy to take questions, maybe some of them on notice.

The Hon. ROBERT BORSAK: In recommendation No. 10 you talk about reducing the \$1.1 million cap. I guess you are talking about the cap on the Legislative Council to \$250,000. Do you want to explain your reasoning behind that?

Mr MALTBY: This is actually in relation to third-party expenditure. I should draw the attention of the Committee to the fact that we actually have changed our point of view on that between this submission and the one we made to be second inquiry. The reason for that is that not all third parties are equal in this discussion. You have the case of membership-based organisations and those who have a pecuniary interest by virtue of them being for profit. Actually what we would prefer as an outcome there would be to limit third parties, the control of the expenditure of for-profit third parties in election campaigns rather than the membership bodies.

The Hon. ROBERT BORSAK: In that sense you are talking about reducing the cap but in recommendation No. 14 you are talking about removing the cap on donations to members of the Legislative Assembly. Do you want to explain the reasoning around that?

Mr MALTBY: Again it is explicit there that we are talking about in the dealing of political parties supporting their individual candidates. One of the complexities in the current rules, which, as I have said, have many strengths, is that if a party wishes to fund its candidate's campaign in the way that the legislation appears to be set up and direct that money into the candidate's bank account and then have the candidate spend it and be transparent and above board, the party, of course, is prevented from donating more than the \$2,000 as indexed that is available to each candidate as a donation. So any other funds either have to be made as a loan and then repaid from whatever funding may come back, and if that money cannot be repaid then it has to be written off

and you get into the complexities of that loan being considered a donation and thus being illegal. It turns out that what many of the parties do to get around that is by having the candidate invoiced but the party pay the bill. So the candidate can still claim the electoral expenditure but the party has already paid the bill. So it seems like we are creating an unnecessary amount of complexity when what we really want to do is recognise that a political party's candidate is just an arm of the party and that if the party is directly funding that candidate's campaign it should be possible to put the party's money into the candidate's bank account.

The Hon. ROBERT BORSAK: Would it be right to therefore characterise your evidence as being that the recent changes have increased the level of complexity and compliance?

Mr MALTBY: I do not think anyone would disagree with that.

The Hon. ROBERT BORSAK: Is it costing your party more money to do all of that?

Mr MALTBY: It is.

The Hon. Dr PETER PHELPS: Are you getting more money?

Mr MALTBY: We are.

The Hon. ROBERT BORSAK: Are you getting sufficient money?

Mr MALTBY: I am not able to answer that question but I think the current amounts are welcome and they are sufficient to cover those compliance costs. Obviously we could do more if we had more money but I think it is a balance between what is reasonable for the taxpayer to fund in terms of a functioning party system as a necessary part of democracy without it being seen to be too extravagant.

Mr DARYL MAGUIRE: You mentioned compliance costs. As a percentage of your election expenditures what are your compliance costs in dollars or percentages?

Mr MALTBY: The main cost would have been the cost of doing the auditing. I think we worked that out as about \$400 or so per candidate, so we ran in all of the 93 seats and it was obviously more for the Legislative Council campaign as well—my mathematics has failed me at this moment, but it is quite a substantial amount of money. We do note that under the earlier funding system the cost of auditing was an expense that was claimable against the reimbursement but that has changed. One of the things we have recommended in our submissions has been the somewhat confusing definition between electoral communication expenditure and other electoral expenditure and the different funding entitlements that apply to those things is something that that could use some clarification and simplification work.

The Hon. TREVOR KHAN: Can we refer back to your earlier submission to the previous inquiry with regards to that? I think you addressed to those issues there, did you not?

Mr MALTBY: Yes. It has been further refined in our submission to the two Acts inquiry.

Mr DARYL MAGUIRE: I notice in your opening remarks you made mention of reducing the expenditure cap for third parties—you have put a figure of \$250,000—but in your remarks I think you excluded unions.

Mr MALTBY: Just to clarify: We no longer support that aspect of that submission. We wish to withdraw that section of our earlier submission and replace it with the one that we have made to the second inquiry. The reason for that is, indeed, to consider the case of membership organisations such as unions and environment groups and shooting associations and all the like, which may have a legitimate role as third parties in the political process as they represent members.

Mr DARYL MAGUIRE: You will have to forgive me, I am new to the committee—this is my first day; in plain, simple language, with regards to the membership-based organisations, you are still promoting the reduction to \$250,000 of third parties but excluding unions, allowing them to keep spending to the \$1.1 million cap?

Mr MALTBY: Indeed. For for-profit entities we are proposing that they should, in fact, be prohibited from being electoral third parties.

The Hon. TREVOR KHAN: And individuals?

Mr MALTBY: And individuals. That is a different case, I think.

The Hon. TREVOR KHAN: So where would you put an individual?

Mr MALTBY: Individuals in membership organisations with a membership of one, I guess. I think that is a good question; I am not sure we have completely thought it through. But that would be an instinctive response to that.

The Hon. TREVOR KHAN: It is not that hard to look at the American circumstance and see what wealthy individuals are capable of doing in terms of contributing funds to campaigns and running independent campaigns.

Mr MALTBY: We are not proposing that the cap be removed. I think a million dollar expenditure cap is still quite a lot of money, but the nature of certain types of campaigning is that it is quite expensive to run a statewide media campaign on a particular issue.

The Hon. TREVOR KHAN: It just seems to me that it creates an absurdity when you say that a mega wealthy individual—and we do not need to name one but we can think of a few that are popping up in the *Sydney Morning Herald* at the moment—if that person wished to contribute \$1.1 million to run a third-party campaign, that is fine, but if a different style of organisation, say a company, of which that person may be the head, wanted to run a third-party campaign you would limit them to \$250,000. Where is the rationale between creating these different caps when a wealthy individual can get around them?

Mr MALTBY: Wealthy individuals are citizens and they are entitled to vote, whereas corporations have a different purpose in society, and it can be argued—and we certainly support the view—that the corporation's interest is in their profitability and returning wealth to their shareholders. So, to the extent that they participate in political campaigns, they are always doing so with a pecuniary interest in mind, whereas an individual may have altruistic goals in their donation no matter how wealthy they may be. I understand where you are coming from and I have sympathy with it but I think it is reasonable to draw the line at corporations and if there is a problem with large numbers of entities spending significant amounts of money in the United States' style in a way that perverts the process, we should look at reducing caps and so forth.

The Hon. TREVOR KHAN: The Kochs, by way of example; they are throwing money around like it is confetti.

Mr MALTBY: It has not been helped by the United States Supreme Court allowing unlimited donations into their systems. Fortunately, we are not in that situation in New South Wales.

Mr DARYL MAGUIRE: With regards to expenditure caps, do you think those caps should be reduced? I think it is \$100,000 on a candidate's expenditure.

Mr MALTBY: We are on the record as supporting generally a less generous expenditure cap. If a party spends its entire allowance across the State you are still looking at many millions of dollars in electoral expenditure and that is at the level which is beyond the reach of a truly grassroots membership-based political party.

CHAIR: What figure would you put on that?

Mr MALTBY: Casting back, and maybe do not rely on it, but amounts that are about half that or something might be a good place to start. I think we argued for substantially lower amounts when the legislation was passed, but it was better to accept the levels that are in the current system than to allow unregulated expenditure as existed prior.

Mr DARYL MAGUIRE: How would you set a cap? Would you do it by some independent organisation? There must be some theory that you have got about how you would set a cap.

Mr MALTBY: I am not sure that it can be scientific. The whole purpose of electoral funding legislation is to deal with the perception that is in the community that the electoral system can be bought by large amounts of money and that political parties in the need to fund their increasingly expensive campaigns must seek funds from wherever they can get them. There is a political balance there that says the community will be satisfied that that is not going on when the expenditure on elections is moderate and at a sufficient level to ensure that the political messages are getting out but that we are not pursuing unreasonable sources of donations to perhaps saturate the media with negative campaigns.

Mr DARYL MAGUIRE: So should the caps be set by someone at arm's length?

Mr MALTBY: I think you could make a case that way. We would be open to proposals along those lines I think.

CHAIR: Out of the 93 seats what was the average spend that you spent in each electorate?

Mr MALTBY: I could take that on notice; I am not sure. In the vast bulk of them I think it would have been well below \$10,000, which was the 10 per cent full expenditure reclaimable amount. A handful of seats we would have spent more than that.

CHAIR: If you could take that on notice?

The Hon. PETER PRIMROSE: Going back to one of the first points you raised and going to page 11, do you have members now who are not on the electoral roll?

Mr MALTBY: We do. We have had members who are lower than the voting age.

The Hon. PETER PRIMROSE: Or people who are not citizens?

Mr MALTBY: I imagine so. We have not particularly audited it. We have not asked them so we do not know.

The Hon. PETER PRIMROSE: I was just wondering how you handle that in light of your comment on page 11.

Mr MALTBY: Our membership year commences on 1 July, so we are in the process of doing large numbers of renewals. Our renewal form for this year has that question on it: "I declare that I am enrolled to vote in New South Wales", so that they can be a member.

The Hon. PETER PRIMROSE: If they cannot answer that in a positive way what would be the outcome?

Mr MALTBY: We are still considering ways to allow them to be involved. It is unfortunate that the common understanding of membership is not an option that is available to them, we think. We would appreciate urgent attention to that because I am sure it is an unintended consequence of the definitions.

The Hon. Dr PETER PHELPS: Just on that point, Mr Maltby, have you received official advice from anyone to the effect that membership fees amounting to less than \$1,000 can only be provided by people who are on the electoral roll? Has the Electoral Commission or the Election Funding Authority advised you of that?

Mr MALTBY: Again, I might have to take that on notice. The wording in the legislation is quite clear; it says that for the purposes of a political donation it includes membership fees paid to a party, and then it goes on further to say—

The Hon. Dr PETER PHELPS: Only if it is greater than \$1,000.

Mr MALTBY: I believe all membership fees are considered to be donations.

The Hon. PETER PRIMROSE: Mr Chair, I think that may be my first question to the Electoral Commissioner this afternoon.

Mr MALTBY: I think that would be a worthwhile question. Because the party is registered both federally and in New South Wales you could create some artificial scheme which allowed people to be members of the federally registered body but not the State one.

The Hon. TREVOR KHAN: Good luck on that. Could I take you to recommendations 15 (a) and (b) and recommendation 16?

Mr MALTBY: This is in our second submission?

The Hon. TREVOR KHAN: It is your second submission. Would you like to explain how you are going with interacting with the Election Funding Authority in terms of getting your funding payments?

Mr MALTBY: I think part of it is teething troubles, the new system and so forth. Having been involved in getting funding claims audited over many years, or quite a long time, we were not anticipating that the kinds of auditing that would be done this time would be quite qualitatively different.

The Hon. TREVOR KHAN: Can you explain that? You are not the first and so I am inviting your comments.

Mr MALTBY: The kind of auditing that the Election Funding Authority appeared to be carrying out was much more compliance-oriented rather than financial. So we engage the usual financial auditors that we have had, they validated that the accounts represented a fair statement of the candidates' expenditures and so forth and the Election Funding Authority then said, "Yes, but in relation to this item you have to provide this supporting documentation because we have to be satisfied that it is, in fact, in this category of electoral expenditure or whatever". That entailed quite a lot of follow-up correspondence and then we still have a number of districts where we are still concluding discussions, and there are amounts that we have claimed that are yet to be paid because the documentation and other things have got to be sorted out or whatever.

It has been complicated, as we point out in the recommendations, by the fact that the governing board of the Election Funding Authority only meets once a month; so if you miss the deadline there is another month's turnaround; they come back and say, "That is terrific but you left this out—you did not cross that "t" or dot that "i", so you have got to go through and send it in again and another month goes by and so forth.

The Hon. TREVOR KHAN: Just so we get some idea in terms of precision, and you may not be able to do it now, are you able to indicate to us when you lodged your applications for payment?

Ms DE LEAU: It was prior to the deadline

The Hon. TREVOR KHAN: You will have to excuse me: what is prior to the deadline?

Ms DE LEAU: I am sorry. I would like to take that on notice to be accurate, but the election was in March and the deadline was possibly in late August. We prepared the returns in a similarly thorough manner that we have previous State election returns. Because the funding is based on a reimbursement you need to have accurate records of what has been expended and we had prepared all of that paperwork. As Chris has indicated, the questions coming back from the Election Funding Authority—

The Hon. TREVOR KHAN: Can I just stop you there? When you lodged did you lodge for individual electorates or was it the party—The Greens lodging an application on behalf of all 93 candidates?

Ms DE LEAU: It was both. We did an upper House return and then each of the 93—

Mr MALTBY: Some of the districts were lodged by The Greens in head office and some were not. But the bulk of them were done individually. It is part to do with our structure, I suppose. Most of our party agents appointed delegate agents to represent the candidates and so it was their obligation, with support from the party organisation, to get those returns in. So largely they were done by individual candidates and their agents.

The Hon. TREVOR KHAN: Do I assume in that regard that one of the lessons you have learnt out of the last election is that it is better to have one party agent than to have it all, in a sense, centralised through head office?

Mr MALTBY: I would not like to comment on that particularly; I think that is a matter for the party to think about. But part of it is also just unfamiliarity with the new requirements. It is a highly specialised job in its current form and there are probably ways that the complexity could be reduced that would make it more amenable. For a party like us who does have an organisation with substantial resources, or at least some resources, it is probably manageable, but if you are an independent candidate or a party that is running a handful of seats it might even be substantially more difficult to comply with that.

The Hon. TREVOR KHAN: In a sense you have brought the house down on yourselves by having individual party agents out there who have got no idea of the system as opposed to a system which is broken or unduly difficult because of the approach taken by the Election Funding Authority. There are two different issues.

Ms DE LEAU: We did provide quite significant training for our party agents all the way through the election in anticipation of ensuring that they were fully informed of what the requirements were going to be, the best that we knew. I would also like to note that we had numerous meetings with representatives of the Election Funding Authority in the lead-up to the lodgement of our claim. We had not just put it together based on our interpretation of the changes and past practice. We had had numerous meetings and adjusted our processes and provided a lot more of the information electronically in an endeavour to assist with the processing once it went to the Election Funding Authority [EFA]. I am quite confident that our party agents across the State were aware of what was required as we became aware of what was going to be required. But it seemed that it just kept shifting as the information was confirmed—getting across the changes in the legislation once they became practical examples. I think even the representatives of the Election Funding Authority, who were very helpful and certainly wanted to provide us with timely advice, were still having to get advice on exactly what we needed to provide.

The Hon. ROBERT BORSAK: As of today have you received all the electoral funding claim that you put in?

Mr MALTBY: We have received the vast bulk of it but there are probably a couple of minor amounts outstanding somewhere. I do not know the answer offhand.

The Hon. ROBERT BORSAK: And your administration claim?

Mr MALTBY: We are not having any particular difficulty with that.

The Hon. ROBERT BORSAK: Have you already received the money?

Mr MALTBY: For the 2011 year? I would have to take it on notice. I think we probably have.

The Hon. ROBERT BORSAK: It is a substantial amount of money for The Greens.

Mr MALTBY: It is. Of course, there was the transition of a year when the preliminary election funding [PEF] pre-payment was paid in advance, and the administration claim is paid in arrears. That was a challenging period for us for a little while.

The Hon. ROBERT BORSAK: What does your party do about funding those payments in arrears? Do you have sufficient working capital within the organisation on the administration side to be able to fund that or do you get money from other sources?

Mr MALTBY: The party has built up reserves which it uses to contest elections, as is obvious from our returns. We have donations but we are conservative in the use of our funding. We endeavour to keep financial over the course of each election and not end up in a position where we are not able to operate the party. We were able to get through the transition—

The Hon. ROBERT BORSAK: Do you use some of your donations to fund your administration?

Mr MALTBY: No, the bulk of our funds is in the form of electoral funding we have received at Federal and State levels over the years. We have campaigned conservatively so that we retain that money.

The Hon. ROBERT BORSAK: Are you saying you also get some administration money from the Federal party?

Mr MALTBY: There is no Federal administration funding.

The Hon. ROBERT BORSAK: Isn't there? So it is just electoral funding?

Mr MALTBY: Primarily, and obviously over the years membership money, donations and so forth accumulated. In our experience if you do not run extravagant campaigns you can survive on the funding that is available. We are very grateful for the electoral funding—it would be much harder for us to exist without it—and I am sure you are aware there are other parts of Australia that do not have any form of State electoral funding and it is much more difficult for The Greens in those States as it is for every party.

The Hon. ROBERT BORSAK: Do you find any difficulty discriminating in your accounting between administrative money and electoral funding donations under the current law?

Mr MALTBY: No, it is fairly straightforward. We have a reasonable source of financial advice and it is more or less within the capacity of off-the-shelf accounting packages, I understand, to keep that distinction.

Ms DE LEAU: It required quite a significant shift in the accounting processes when that change came in but once it was implemented it became part of the office practice to clearly define in which accounts the money needs to be accounted for.

The Hon. Dr PETER PHELPS: One of the other submissions queries the need for a 750-person membership list to be registered as a party and advocates a 500-person membership list. What is The Greens' view about that? Do you believe a 750-person list produces an unnecessary or unreasonable restriction on party registration?

Mr MALTBY: I do not think we have a formal position on that. All I can say is the compliance burden would be much the same with a 500-member requirement or a 750-member requirement. The intention was obviously to limit the explosion of parties that occurred in the 1999 election and there was a lot of disquiet about the bona fides of many of those parties.

The Hon. Dr PETER PHELPS: With good reason.

Mr MALTBY: Indeed. There is good reason to retain a certain threshold level. Whether it is unduly constraining people from forming political organisations is something to be considered more carefully, but I think it works reasonably well for us.

Ms DE LEAU: I might add an additional point having listened to the previous question. To be a member of The Greens it is a requirement that you are a member of only our political party so our processing may be somewhat easier because we know that someone we are putting on our party list is not a member of another political party.

The Hon. Dr PETER PHELPS: There goes my membership application!

CHAIR: You can try for membership and see how you go.

Mr MALTBY: You would be most welcome but you would have to resign your current membership and agreed to abide by our rules. We were also puzzled that on the online system a number of our members showed up as being relied on by other parties. We were in the process of inquiring with the Electoral Commission as to what that status meant. It was interesting to have it confirmed that that is what it means. We presume those people are just refugees from other parties who have switched to The Greens and have not yet been removed from those lists.

CHAIR: Thank you for appearing before the Committee. The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and may be made public. Would you be happy to provide a written reply to any further questions?

Mr MALTBY: Yes.

Ms DE LEAU: Yes.

(The witnesses withdrew)

(Short adjournment)

BENJAMIN CAMERON FRANKLIN, State Director, The Nationals, and

GREGORY BENJAMIN DEZMAN, Deputy State Director, The Nationals, sworn and examined:

CHAIR: In what capacity do appear before the committee?

Mr FRANKLIN: As State Director of The Nationals, New South Wales.

Mr DEZMAN: As Deputy State Director, The Nationals, New South Wales.

CHAIR: Do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

Mr DEZMAN: No.

Mr FRANKLIN: No.

CHAIR: Do you wish to have your submissions included as part of your sworn evidence?

Mr FRANKLIN: Yes.

CHAIR: Do you want to make an opening statement?

Mr FRANKLIN: Yes. The Nationals take these two inquiries very seriously. We believe that whilst on the whole the Electoral Commission and the Election Funding Authority do their jobs professionally and competently there are always areas in both the legislation and its execution that can be improved upon. We are very supportive of this committee's work to that end. Our submissions are both substantial and broad-ranging. We sourced feedback from all relevant parties across the State affected, or potentially affected by these inquiries, and we have included much of that feedback in our submissions. It is not my intention to go through each of the issues that I raised in the submissions but I would like to make some general points with the committee's indulgence.

Firstly, under the Parliamentary Electorates and Elections Act there are a number of specifically regional issues which are obviously of most interest to our party and which we would like this committee to focus on and consider. The first surrounds iVote which we believe to be a very good system, potentially an excellent tool in enfranchising more voters in New South Wales. We believe that iVote has been very successful so far but should continue to be promoted, particularly to remote electors. Although we would note that perhaps the Electoral Commission staff could have a look at some of the processes around iVote to ensure that regional people are treated appropriately. It was only through their misunderstanding that many of the staff on iVote, when asked to have their addresses registered, did not understand the convention in regional areas of naming a property, and having just a property name and a town, they were asked "What street number is that?" and so forth. We would ask for those types of things to be fixed.

We would also note with regard to regional electorates that the closing date for nominations to the Legislative Assembly and Legislative Council elections should be no less than three weeks before polling day. We think that it is extremely important to ensure that those very rural and far flung electorates have the opportunity to be able to vote. At the moment we have had a number of stories of concern from electors in both Murray-Darling and Barwon who only have a weekly delivery of mail. If they are taking a postal vote it is very difficult for them to apply for the postal vote, to receive it back and then to send it back in the appropriate time. That is why we would ask, although we still encourage that pre-polling only stay at two weeks; but the close of nominations is three weeks or more.

In regards to the results as produced by the Electoral Commissioner, we are concerned that firstly some of the selections made by the Electoral Commissioner about who was likely to be the final two candidates were incorrect and were clearly going to be incorrect. We obviously conduct research, as do all of the major political parties, as do the media, electoral analysts as well, and we would encourage the Electoral Commissioner to contact us and other parties and analysts to find out who are the most likely to be in the final two to ensure that on the evening the result is clear. For example, in 2007 the Electoral Commissioner decided that Kevin

Humphries and the Independent challenger, Tim Horan, were the likely last two candidates, as they were, and that was extremely good in ensuring that there was some clarity over the likely outcome at that point. This did not happen in numbers of seats and we would encourage the Electoral Commissioner to change that procedure. We would also encourage a full distribution of preferences for the 2011 State election. We note a number of seats where a candidate won on first preferences—they stopped at the first preferences, they have not done a full distribution, and when that is combined with the incorrect selection of who was the likely person coming second, this creates an unfortunate perception in the eyes of commentators over what will be the actual outcome and results. For historical accuracy and clarity and also for all parties benefit we believe that a full preference distribution should be done, as it is done by the Federal Electoral Commission.

I refer to breaches of the Act. Currently the Electoral Funding Authority has substantial power when they are able to prosecute over breaches of its Act but the same does not apply for the Electoral Commission. We believe that they should be given sufficient powers and resources to actually investigate alleged breaches and to commence prosecution. We also believe that the penalties imposed by the EFA should be in line with what is imposed under breaches of the electorates and elections Act as well. The final point I make on the electorates and elections Act is one that is not specifically relevant to this inquiry, but while making an appearance before it, it would be remiss not to say that although part 2 is specifically excluded from this inquiry, we do believe that there are significant reasons to warrant investigating part 2 of the Act particularly with regard to projected enrolments for redistributions and also potentially over extraordinary sizes of electorates.

With regard to the election funding and disclosures Act our first point is that the staff of the Electoral Funding Authority have been extremely good. They were given a massive challenge with the imposition of new, very complex legislation but they have been professional and helpful. We particularly want to commend the authority's compliance manager, Felicity Wright, who has been utterly outstanding in everything that she has done, and every interaction that we have had with her. However, there have been significant teething issues in enforcing the new legislation. From our perspective there have been substantial delays in the processing and payment of public funding. We are advised anecdotally this is the case from other parties as well.

We have been asked for material which we have already supplied. We have been asked for donor's addresses which had already been given. We have been asked for responses to inquiries which had already been sent. It may be that from our perspective, in the need to implement this legislation with speed, that silos of information have been established within the EFA and which are not being appropriately shared with each other. We would strongly recommend a full internal review of the processes of the Election Funding Authority to ensure that they are better prepared for future disclosure periods, especially for the next State election; that improved training be given to the staff of the Election Funding Authority, particularly those who are engaged just during the election period, and also that they be provided with increased resources, if necessary, to ensure that they are able to do what they need to do.

I now refer to the speed of payments of public funding. I think we received our most recent payment only this week which is well over a year since the last election. We would recommend that some alignment with the Federal sphere happen. Under the Federal Act you receive 90 per cent of the funding with 21 days of the election. We understand that this is slightly different because under the Federal system it is on the number of votes you get and here it is on the amount of expenditure, so clearly there are more complex bureaucratic issues to go through but we do believe that, for example, 90 days would be an appropriate time to receive back 95 per cent or 90 per cent of the funding with the caveat if parties are paid too much then, of course, they are required to repay it.

Finally, we believe there needs to be some clarity in part 6 of the Act. We believe that there is a problem with the wording of the Act, along with concerns about the rules surrounding income restrictions and disclosure requirements. We believe that part 6 needs to be redrafted to clarify the extent of its application. In the head office of The Nationals my deputy, Greg, has specific responsibility for the carriage of the election funding expenditure and disclosures Act and its implementation. With your permission, Mr Chair, he will make a few opening remarks and then we will throw to questions.

Mr DEZMAN: I want to make two points. Firstly, since our initial submission in February there has been a change to the regulations that gives effect to one of our recommendations which was that claims for funding in respect of election be vouched for with reference simply to invoices rather than with copies of the annual financial disclosure. That was put into effect and what that has meant is that in respect of the Clarence by-election we have already been able to submit our claim for funding. Under the previous system we would not have been able to do that until after 30 June when it was accompanied by that annual financial disclosure. It is a

commonsense change. We are glad that it has been implemented. It also does go some way to addressing the issue of the delay of payments. The first four-five months delay in terms of processing of payments from the State election came about because parties and candidates had not been able to submit their claims because we had to wait until obviously we had prepared and completed our annual financial disclosures before we could do so. In our experience in relation to the Clarence by-election is that the process worked well, and we believe, therefore, that there is considerable merit in the submission made by the Liberal Party to this inquiry that all vouching should be done by way of providing copies of invoices or receipts rather than copies of actual campaign materials.

Secondly I want to touch on one aspect of the EFED Act that ought to have been referred to in our submission but was not, that is, the restrictions on certain kinds of gifts-in-kind in section 96E. That section imposes a limit of \$1,000 for gifts in kind in relation to computer equipment, office accommodation, vehicles, advertising. When that section was first introduced there was no cap on donations. Since that time we do now have a cap on donations at a relatively modest level with \$2,100 now indexation for candidates, \$5,200 for parties. We consider that the introduction of those caps either significantly mitigates or eliminates entirely the justification that did exist at the time for the restriction on those particular types of in-kind donations. For that reason we would suggest that those restrictions be removed because, as it stands, they are really just adding an extra level of complication and complexity to the law that does not really serve any purpose.

Mr FRANKLIN: We are happy to answer any questions you may have.

CHAIR: You referred very positively to the iVote. How did The Nationals promote the iVote system? What are your experiences of where it worked effectively and where there might have been some issues for voters? What could the committee do by way of recommendations to fix that?

Mr FRANKLIN: We promoted it actively with our information that we provided during the election campaign both in terms of advertising and the material that was sent out by candidates and by members of Parliament to advise what was available. From memory we did on the PVAs as well. I am fairly sure on our postal vote applications we told people the iVote system existed and to get them to contact us if they wanted further information. Overwhelmingly the feedback was very positive. We were delighted in that. We noted it was not picked up by as many rural voters as we would have expected initially but we noted that the uptake in the Clarence by-election substantially rounded up on those who were over 20 kilometres away from a polling booth, and that worked very well.

The only fundamental point we would make about iVote is, apart from the by-elections point that we made where people who were outside the electorate in a by-election we believe should be able to vote by iVote rather than just being outside the State, we also felt the property issue I mentioned before needed to be addressed in training of volunteers on the phone. Another point I would make, related to but not specifically on iVote is that we also noted on a number of forms of the Electoral Commission that they had an automatic telephone area code put in of 02. Many of our constituents have a 03, 07 or a 08 area code. It got to the stage where the Electoral Funding Authority challenged us because of John Williams claiming for telephone calls that started with 03 and clearly were not related to New South Wales. So, perhaps a little more education would not go astray.

Mr DEZMAN: The issue with rural addressing is particularly frustrating for those people who try to register because the form in which the address is kept on the electoral roll is often not the way people refer to their address. That means when they go to register online they cannot, because it does not match. They then, having failed once, are calling the Electoral Commission in order to register and are then striking problems with the staff taking those calls to register. We accept there is not really anything we can do to streamline that online process. For security, if you do not have a match you cannot allow these variances and allow people to register anyway, so it makes that process of training of the people taking those calls more important.

The Hon. Dr PETER PHELPS: In relation to iVote we had some evidence at the previous hearing in relation to problems with the iVote, issues where numbers were not recorded correctly because the software company had not adequately made allowance for slow connections, especially in rural and regional New South Wales. Are you happy with the security of the iVote system or do you believe there should be greater scrutiny of it?

Mr FRANKLIN: From all we have seen we are happy with the scrutiny but we are not experts in this field. We did not have significant feedback of substantial concern on iVote or its security. But we are not experts and if this Committee finds there are security issues, the integrity of the vote is absolutely critical.

The Hon. Dr PETER PHELPS: It overwhelmingly affects your voters, I suggest?

Mr FRANKLIN: It does, absolutely. Although the majority of people voting under iVote were people who were away from their electorate and there were a substantial number of metropolitan voters. I think Sydney was the electorate with the highest iVote take up, I think. The point is well made.

The Hon. PETER PRIMROSE: Again in relation to iVoting, I wonder whether you had any feedback concerning the two ways you can iVote, one using a computer and the other using a phone. There is a suggestion from the commissioner, as happened in the Clarence by-election, that phones will no longer be available. Have you any comment on that or any feedback from people?

Mr FRANKLIN: Yes. I pick up my deputy's comments which are that it is difficult on the computer. Often the addresses are not the way people refer to their addresses. So, having been able to talk on the phone with somebody to explain where your address is is very important. Also, there are older people who may be infirm and unable to get to a polling booth. We would not recommend the abolition of a telephone line. Certainly the promotion of people doing it by computer we would support but we believe that option should be there for people to be able to phone in as well.

Mr DARYL MAGUIRE: Mr Franklin, in earlier evidence it was suggested that as the Electoral Commission reviewed the polling places that access for older people, particularly in rural areas, can be difficult. It was suggested that the times for pre-poll be restricted. The suggestion was about seven days before the polling day. I maintain that that could have a restrictive action on those people who are in remote rural areas to get to the polling booths. Is it feasible to establish electronic polling booths along the lines using mobile phone technology at a central point in small communities that would not normally host a polling booth?

Mr FRANKLIN: I will make a few points on that. The first is, in terms of the specific question I would need to be convinced by the technological integrity of doing that. At the moment with the postal vote and with the uptake on iVote, I suspect those communities are being served at the moment. The integrity of the vote at the moment is very strong and I think we need to continue that. But we would not necessarily be opposed. Point 2, with older people, potentially, or disabled people we made the point in one of our submissions on this exact issue but particularly in a small town where there is only one polling booth we would like the Electoral Commission to be mindful of the need for easy access, and ideally disabled access, for those people at the booth and to be very conscious of that. We got a few anecdotal comments that in some booths the access was not there and it was difficult. Obviously we believe in making the act of voting as easy as possible for all constituents, particularly those in regional New South Wales.

Mr DARYL MAGUIRE: I have to agree with you. I can give you an example of a polling booth that was located on the second floor with an ineffective hydraulic lift, and the need to establish then a temporary polling booth on the ground floor because of the number of people with severe disabilities and older people unable to access that lift. They were questioned as to why such an inappropriate location had been selected and the answer to me was money. It was all about money and it created havoc. So, I agree with what you are saying.

Mr FRANKLIN: In the city it does not really matter. You can just drive another kilometre and get to a different polling booth that does have disabled access. But in a country town, if you have only one polling booth and the next polling booth is 50 kilometres away, it is a very important issue.

CHAIR: I draw your mind to the Parliamentary Electorates and Elections Act. Your submission recommends that the commission lacks investigatory and prosecutorial powers when it comes to breaches of the Act. In its submission to the Act's reviews the commission makes the suggestion that it be restructured so it has the responsibility for enforcing electoral offences while delegating the Electoral Commissioner the task of administering elections, thereby removing concerns about possible bias. What are your thoughts on that approach?

Mr DEZMAN: I think that is a worthwhile approach. We have a situation at the moment where, in most cases, with breaches of the Parliamentary Electorates and Elections Act nothing much really happens unless it is a really significant breach that ends up in the Court of Disputed Returns. The Electoral Commission

does not have any power and, while, generally speaking, most participants acknowledge the law and go about their business in a way that complies with it, there is not a ready mechanism by which somebody who takes a different approach can be dealt with. The fact of having been able to commence an investigation, the fact that a candidate or party can be contacted by the Electoral Commission in some sort of official capacity as an investigator of itself would have a deterrent effect. So, being able to streamline the process rather than simply being referred off to the police and nothing much happening because in the scheme of things they generally have other matters to deal with. Bringing that within the Electoral Commission would be a good step.

CHAIR: Would you support a penalty notice regime in relation to minor breaches of the Act?

Mr DEZMAN: I think that is an appropriate way to go. Obviously it is a question of which offences you are applying it to and the quantum of the penalties. But, for minor breaches, I think it is probably appropriate.

The Hon. Dr PETER PHELPS: Some submissions have indicated they would prefer a truncated period of pre-polling but to get rid of a need to provide a genuine reason for pre-polling, in effect a move towards a polling period instead of a polling day. What is the view of The Nationals to a move such as that?

Mr FRANKLIN: We would not support a truncated period although we are sympathetic to our party workers who have to man the pre-poll booths. In regional areas there are often two or three centres set up. We understand that on one hand, but on the other hand I agree with Mr Maguire that some time people only come into town once a month and we need to give them the maximum flexibility possible in order for them to pre-poll. So, we would not support the truncating of it. As far as the relaxing of the requirements, we hear anecdotally that perhaps they are not enforced as strongly as they could be anyway. So, if it is about encouraging people to vote in the election and if they are not being observed as strongly as they could be anyway, I do not see the need to continue to maintain what in some cases is a bit of a charade.

The Hon. TREVOR KHAN: Is not one of the problems that arise—and I think it occurred in Clarence—that depending on the booth or depending on the electoral officer who is on duty at the time there is a different application of the stringency or otherwise of the rule as to whether you fall within a legitimate pre-poll?

Mr FRANKLIN: That is quite right. Obviously, I would have thought that the aim is to encourage as many people to cast their votes validly as possible. I do not see a reason why casting it three days before the election makes any difference to the validity of the vote. But you are quite right about the different interpretations of rules around the State. We have seen that. In our submission we have made a number of comments about that. One that springs to mind is in declared institutions. We have had anecdotal evidence from across the State that some returning officers in a declared institution will allow party workers to hand out how-to votes. Some will allow them to wear T-shirts promoting their candidates; some will not. Some will allow them to assist voters; some will not. Some will fill in ballot papers for voters even when there is a question mark over the intention of the voter in the first place. I would immediately clarify that we do not think there is any broad problem with declared institutions or that there is any conspiracy here. But we do think that having more rigorous training guidelines of the roles of the officers in individual electorates for all of these sorts of issues is important.

The Hon. ROBERT BORSAK: I notice in your recommendations, recommendation No. 20, division 4 to be repealed. Can you give us some understanding of your logic behind that?

Mr FRANKLIN: Certainly, and it surprises me that that has not come up a little earlier. Nonetheless, I am delighted to address it right now. The first point I would make is that this is the position of the organisational wing of the party and not of the parliamentary party. The parliamentary Nationals are separate from the organisational wing and it is the organisational wing that has put in this submission.

The Hon. ROBERT BORSAK: You do not do any work for people in the parliamentary party, is that what you are saying?

Mr FRANKLIN: No, that is not what I am saying at all. What I am saying is the parliamentary party makes its own determinations about policy and what it believes The Nationals policy should be and the organisational wing makes recommendations. It is entirely up to the parliamentary party whether it takes them up or not. That is point 1. Point 2, we believe the changes that have been made to the legislation over the last 18

months or so are firstly to impose a cap on donations that now sits at \$5,200 for parties and \$2,100 for candidates combined with abolishing the possibility of corporates or entities donating to parties will remove therefore any perceived corruption that could be perceived in donations from prohibited donors.

We believe that if somebody is entitled to vote then the making of a donation to a political party is part of that process as well and when the cap is now so low as to take away, we believe, any perceived possibility of corruption, we think therefore that it is appropriate to abolish division 4A. The other point that I would make on this issue is that it is incredibly onerous on all political parties when we are now down to the stage of only determining if individuals themselves fall foul of the prohibited donors legislation, then it is very difficult sometimes to determine that.

We have great sympathy in the prohibited donors part of the legislation being brought in in the first place. Clearly there was a problem over the last 16 years of the last Labor Government with some perceived corruption throughout New South Wales—obviously Wollongong is a prime case in point. However, we believe that these two specific parts of the legislation deal with that perception.

The final point that I would make is that in no way are we suggesting that this should not apply to local council. We are only talking about it applying to State elections because we think at a local council level obviously they make direct decisions on development applications and so we would support local council donations maintaining the prohibited donors. The Nationals come at that from a perspective of not running candidates for local council elections so that is something that the Committee might like to determine but that is our perspective. Greg, do you have anything to add to that?

Mr DEZMAN: I think the main point that has been made is we now have a system overall which purports to restrict donations to individuals who enrol to vote that aligns essentially the right to donate with the right to vote but for this particular anomaly. What we are proposing simply is to bring those two properly into line and to say that if a person is entitled to vote they are entitled to donate. If they are not entitled to vote they are not entitled to donate. It is really that simple when you come down to it.

The Hon. PETER PRIMROSE: You mention the same issue in your submission; you mention the issue of farmers who have a single account and run both their personal and business finances through that account and may fall foul of the current provisions of the legislation. Do you have any recommendations for the Committee that you believe may overcome that concern?

Mr DEZMAN: It is a difficult issue to overcome. Ultimately it is almost more about having a procedure in place from the point of view of the Election Funding Authority whereby donors are able to actually make some form of a declaration that indicates that it is in fact a personal donation, that they do not have any other way and that although the name on the bottom of the cheque might be a particular pastoral company, that that is in fact also the manner in which they run their personal finances; that it is a personal drawing. It is not a simple issue to overcome.

The Hon. Dr PETER PHELPS: Just on that point, Mr Dezman. That further complicates the matter when that individual farmer could withdraw the money and then get a bank cheque or money order and still be able to provide money to the party. I am loath to try to increase the complexity by having certain exceptions made to the prohibition on the receipt of funds from an entity when it could be accomplished by the farmer in question by getting a bank cheque or money order?

Mr DEZMAN: There are obviously other ways in which it can be worked around. One of the concerns that we have particularly is with some of our older members and supporters. The easiest thing with a lot of people is to say, "Well, what about a credit card? Is there a credit card that you hold in your name personally as an individual?" That is fine but particularly for older members and supporters who do not have credit cards, that is the challenge that we do have trouble overcoming where people feel that they are being put in a position where they are somehow being targeted because of the fact that their finances are arranged through a family partnership or whatever other structure it happens to be and who are much more accustomed to doing things by cheque.

CHAIR: I am conscious of the time. Do any members have final questions? No, then I will ask one last question. Later this afternoon we are hearing from the Electoral Commissioner. Are there any matters that you feel the Committee should raise with him that we have not discussed or that are not included in your submission so far?

Mr FRANKLIN: No, only those matters that are included in our submission, particularly with regard to which Act or how the system governing elections should be managed. We believe it should be under the Act rather than giving more power to an individual to make a discretionary decision.

CHAIR: I have heard that loud and clear in your submission. Thank you for appearing before the Committee today. The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

Mr FRANKLIN: Of course.

CHAIR: Thank you very much for appearing before us today.

Mr FRANKLIN: Thanks, Mr Chair.

(The witnesses withdrew)

ANDREW BRUCE PATTERSON, Internal Ombudsman, Registered Officer, Australian Sex Party,
affirmed and examined:

CHAIR: Thank you for attending the public hearing of the Joint Standing Committee on Electoral Matters, my first as the newly elected Chair of this Committee. The Committee is holding hearings in relation to its inquiry into the administration of the 2011 New South Wales election and its review of the Parliamentary Electorates and Elections Act 1912 and the Election Funding, Expenditure and Disclosures Act 1981. I welcome you here today. Before we proceed do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

Mr PATTERSON: No, it is all clear, Mr Chairman.

CHAIR: Do you wish to have your submission included as part of your sworn evidence?

Mr PATTERSON: Yes, please.

CHAIR: Would you like to make a short opening statement before the commencement of questions?

Mr PATTERSON: A very brief one, Mr Chairman.

CHAIR: Please proceed.

Mr PATTERSON: Firstly, I would like to say, Mr Chairman and members of the Committee, thank you very much for the invitation to participate in the proceedings today and to make our submission. By way of very brief opening comments, I just want to highlight a couple of aspects which we have put in our submission. The first is that we make our submission and give our evidence here today on the basis that we are obviously a small party and a new party and we believe that we have valid submissions to make in relation to the process. I would also state at the outset that the Australian Sex Party firmly believes that we need good governance around elections. However, we also believe that there needs to be a balance struck in order to maintain a healthy and vibrant democracy.

Too many rules, particularly if they are too draconian, in our view inhibit the growth of democracy and the growth of ideas across the political spectrum. Our view is that in New South Wales the current rules for registration and some other aspects of running a political party are too draconian and they are inhibiting the emergence and growth of small and new parties; in particular, the requirement for registration in terms of 750 party members and the requirement to be registered 15 months out from an election. In our view not only do they stand out as being out of line with the rest of Australia and the Commonwealth, but they are draconian.

Whilst we would certainly not want to see a repeat of the 1999 tablecloth ballot—I am sure nobody wants to see a repeat of that—our view is that the limit of 500 members, which is currently the Commonwealth requirement and also the requirement in Victoria, Queensland and Western Australia, should be equally applicable within New South Wales. We think that is certainly a figure which avoids the repetition of the 1999 issues. However, it makes it more realistic for a party to get registered. The other requirement is having to register 15 months out from an election. Again for parties which are developing, that is a very long time frame and clearly can be difficult.

The other aspects that we have difficulty with are some of the requirements in relation to funding and auditing of the process. Again, and certainly from my professional background, I am a very strong advocate of good governance, particularly around anything to do with money and potential corruption. However, I think we also need to be realistic that for small parties the requirements can in fact end up being quite ridiculous. In the last State election one of our Independent candidates actually spent more on his audit than he did on his campaign.

The Hon. TREVOR KHAN: He did not do very well, I take it?

Mr PATTERSON: Whilst certainly we would agree there need to be some very tight rules around it, there needs to be some realism around what small parties which are not very financial actually face in this area. Mr Chairman and members of the Committee, they would be my opening comments, thank you.

The Hon. Dr PETER PHELPS: The two smaller parties which appeared before us earlier, the Christian Democratic Party and The Greens, both seemed to think that 750 was a reasonable level. What in particular makes you believe that you would be able to make 500 but not 750?

Mr PATTERSON: I am not saying we could not make 750 potentially; our membership is growing and obviously if that requirement remains, that is what we would endeavour to achieve in time for the next State election. Our point is that it seems overly draconian to have that level when the Commonwealth only has 500 and the other States only have 500. I understand why it was brought in; it was obviously as a response to the 1999 ballot but in our view 500 would also amply get rid of that problem.

The Hon. Dr PETER PHELPS: Between the time for the cut-off and lodgement and the time of creation of your party, what sort of time period were we looking at? It is 15 months before March 2011?

Mr PATTERSON: Yes.

The Hon. Dr PETER PHELPS: It is basically December?

Mr PATTERSON: The Federal party existed. The Federal party is registered as a political party and the Victorian branch is also registered in that State as a political party. The New South Wales branch was not formed 15 months before the election and so clearly irrespective of the number of members—

The Hon. Dr PETER PHELPS: You missed the cut-off?

Mr PATTERSON: Yes. Even if we had had 750 members—

The Hon. Dr PETER PHELPS: So even if you had had a million members you missed the cut-off?

Mr PATTERSON: Exactly; that is right, yes.

The Hon. TREVOR KHAN: Paragraph 2.2 on page 3 outlines the incident at the undisclosed polling booth?

Mr PATTERSON: Yes.

The Hon. TREVOR KHAN: Firstly, can I ask: what was the nature of what I take to be the so-called offensive material that caused the ruckus?

CHAIR: Before you answer that question, I ask you not to name individuals?

Mr PATTERSON: No, understood, Mr Chairman, thank you. Firstly, I would say that the material was not offensive. It was an election poster which had Australian Sex Party written on it clearly and it was attached to the fence along with the other parties' posters.

The Hon. Dr PETER PHELPS: It just had the name of the party on it?

Mr PATTERSON: It had the name of the party and some of the issues we stand for. There was nothing I would view as offensive. All of our material that we used was vetted by the Electoral Commission before the election. My understanding is that it would remove anything which it found to be offensive and would not authorise us to use it.

The Hon. TREVOR KHAN: Who told your booth workers to remove the material?

Mr PATTERSON: The priest.

The Hon. TREVOR KHAN: Was there any involvement by officials from the Electoral Commission in this discussion?

Mr PATTERSON: Not that I am aware of. They were young volunteers there at the time and they clearly did what they were told. It is only when we got a phone call we were able to go down there. At that stage

it had already happened. Our point around that is everybody is entitled to their views—absolutely—but in an election, whatever the premises being used as a polling booth, it should be regarded as completely secular and not interfered with by anybody; whatever their particular views. I respect the right of that particular individual to hold his views and not agree with what our party stands for, that is part of democracy. At the same time, in the conduct of the polling booth nobody should be interfering with what the Electoral Commission has authorised as material which can be displayed.

The Hon. Dr PETER PHELPS: I do not think you will get any disagreement from anyone at the table on that point.

The Hon. PETER PRIMROSE: Apart from highlighting the issue, is there anything specific in relation to regulation, practice, legislation that you would recommend?

Mr PATTERSON: Part of the issue is that there did not seem to be any avenue for us to take issue with it. There was nothing we could do at the time at the polling booth and we did not wish to cause any disorderly behaviour or cause any problems at a polling booth. The issue was raised with the Electoral Commission. However, it was seemingly viewed as: it is not an issue we are going to take any notice of. In that regard, clearly if an issue like that occurs there is probably little point spending public money trying to investigate after the event. In the overall course of an election it is probably fairly trivial.

The Hon. Dr PETER PHELPS: I disagree; I do not think it is trivial at all.

Mr PATTERSON: Certainly not from our perspective.

The Hon. Dr PETER PHELPS: It is completely unjustified interference with political liberties.

Mr PATTERSON: We would agree. In terms of spending money after the event, what is potentially of benefit is more effort on training and education beforehand so the officials on the booths are clearly aware that this should not be allowed to occur. If there is an issue our party volunteers can go to the officials on the booths and the problem can be rectified there and then. That would have been the ideal solution in this situation. However, that avenue was not there for us.

The Hon. TREVOR KHAN: I can see with marriage equality becoming a reasonably hot issue—

Mr PATTERSON: Yes.

The Hon. TREVOR KHAN: —I hope it is becoming a hot issue—it could become a significant issue at some polling booths at the next election if individual parties press that button.

Mr PATTERSON: I would agree with that. Equality of marriage is something that our party is very strong on. It is an issue which will appear on our electoral material as it is one of the core policies on which we campaign. It is likely to become more and more of an issue, I think.

CHAIR: In your previous comments you said you spent more money on auditing than on campaigning which leads me to the question; what percentage was that? How much did you spend on auditing and how much on campaigns and why were the audit costs so high? Surely there is flexibility in getting those audit costs down if you spent very little money?

Mr PATTERSON: Part of the problem is that there is a requirement that it has to be a certain type of auditor and we have yet to find one that will do it pro bono for us. The issue with the State campaign was that we had two independent candidates; I ran for the City of Sydney as an independent candidate endorsed by the party.

The Hon. TREVOR KHAN: Are you running again?

The Hon. Dr PETER PHELPS: Here is your opportunity to make your speech—breaking news.

CHAIR: Order!

Mr PATTERSON: We had Mr Huw Campbell running as an independent for the Legislative Council. Effectively Mr Campbell spent only his registration fee. There was no money spent on his campaign and yet he still had to have an audit which cost in the region of \$400 to \$500. For larger political parties that may not seem a lot of money but for small parties like us that is significant. That was an issue. My total campaign costs were in the region of \$10,000. Again, spending \$500, or thereabouts, for an audit is a significant percentage when you only spend a small amount on the campaign.

CHAIR: What is the cost involved with the administration of your party now it is registered?

Mr PATTERSON: We have registered for local government elections. In terms of the cost of the administration it is done on a voluntary basis by members and the branch executive in this State.

CHAIR: I thank you for your participation today and appearing before the Committee. The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

Mr PATTERSON: Yes, absolutely.

(The witness withdrew)

(Luncheon adjournment)

BRETT HOWARD HOLMES, General Secretary, NSW Nurses' Association, and

ANTHONY JOHN O'GRADY, Manager, Projects and Compliance, NSW Nurses' Association affirmed and examined:

CHAIR: Gentlemen, thank you for attending the public hearing of the John Standing Committee on Electoral Matters to give evidence. The Committee is holding hearings in relation to its inquiry into the administration of the 2011 New South Wales election and its review of the Parliamentary Electorates and Elections Act 1912 and the Election Funding, Expenditure and Disclosures Act 1981. Before we proceed do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

Mr HOLMES: No.

CHAIR: Do you wish to have your submission included as part of your sworn statement?

Mr HOLMES: Yes.

CHAIR: Would you like to make a short opening statement before the commencement of questions?

Mr HOLMES: Yes. Thank you for the opportunity to submit yet again to these issues around election funding and the Parliamentary Electorates and Elections Act. The NSW Nurses' Association is, as everyone would know, a campaigning union, representing more than 55,000 nurses and midwives here in New South Wales. We believe that the Election Funding, Expenditure and Disclosures Act requires careful review to ensure that there are no restrictions that would impede organisations such as the NSW Nurses' Association from participating in and responding to public debate at any time, including during elections or election periods, as they have been described in the Act.

The issue of expenditure and donations is best dealt with through provisions that provide a full and timely disclosure, rather than restricting the rights of membership-based organisations by mechanisms such as expenditure caps. In previous submissions to the inquiry into the provisions of the Election Funding, Expenditure and Disclosures Amendment Bill 2011 the NSW Nurses' Association made more detailed submissions and I hope the Committee has the opportunity to review those comments, particularly the third-party section of that document. The definition of "political expenditure" and the interplay with the new provisions of the Act restricting donations to individuals, results in major impediments to any organisation, including media groups, we believe, in disseminating information relating to the policy or statements of political parties, groups and candidates. I table to the Committee an example where the NSW Nurses' Association published information for candidates during the March 2011 election.

Document tabled.

We believe that the legislation has gone to such a point that it makes the provision of information to our members a problem. I have been economical with the pages I have provided, but this information would appear in *The Lamp* as a foldout so that the major parties can be seen across the page. That is information supplied to us by candidates. Under your new laws I am prohibited from doing that without charging each political party to put that in *The Lamp*. The legislation has gone to a ridiculous level when an organisation such as ours wants to make available to its members the actual words of politicians, which are unique to their particular roles and interests, and we would obviously have to charge political parties at the commercial rate in order to avoid making an illegal donation to a party. I think that is an example of a bad law.

The law also prevents contributions to groups such as Unions NSW or possibly the Sydney Alliance where there is an issue that may be campaigned upon that is deemed to be a political issue. We believe there are major difficulties with the provisions that say we can do single-issue campaigning as long as the main aim is not a political purpose or getting people to vote. Frankly, when bad laws are made, such as we have seen recently here in relation to WorkCover, you can campaign about an issue but at some point the people who made the laws have either got to address it or there is going to be another political party who will oppose it. Whether we say to vote for them or not, it becomes a political issue. I think that will be very difficult and will be the subject of tests, and possibly tests all the way to the High Court.

We believe that the Act should be restructured so that the provisions for political parties, groups and candidates are clearly separated from provisions related to third parties. I think we are supported by the Electoral Commission's proposal on that issue. In its report on page 71 at point 273 it states that "the major amendment has created problems in clarity and interpretation and that the unnecessary complexity of the EFDA has rendered it unclear and therefore makes it bad law." We agree. We also believe an additional matter with regard to campaign accounts for third parties is problematic as well. With your agreement, I invite Mr O'Grady to address that particular issue as it is his responsibility.

CHAIR: Please proceed.

Mr O'GRADY: Thank you. Given that another major part of the Act is the fact that there is public funding for political parties, groups and candidates et cetera, one can understand why there would be legislation providing for a campaign account where public moneys are actually given to a political party or group or whatever because that needs to be clearly accounted for. As I understand it, the premise of the Act basically is if you have got public moneys in there to be used for electioneering then it needs to be clearly accounted and it goes out. For an organisation such as ours the issue is an accounting issue but it becomes rather problematic when you might move from an area which might be a single-issue campaign that might at some stage convert to a campaign involving political expenditure or might be deemed at some stage or subsequently argued that it is political expenditure.

From a practical day-to-day point of view, that really means putting money into one account and taking it out and at the end of the day if you have got money left over in the campaign account because you allocated a certain budget and you did not need it goes back. So it is really an artificial and quite ridiculous thing from our point of view. Similarly, with the provision in the Act for an official agent, a registered agent, in our organisation, for example, it is the General Secretary who has to account and approve everything. It is quite clear that in most third-party organisations that there is a chief executive officer or the equivalent. I see no need to set up and to nominate someone separate to that.

Mr HOLMES: We request that the Committee carefully review our submission to the inquiry into the provisions of the Election Funding, Expenditure and Disclosures Amendment Bill 2011, particularly with respect to the issue of restrictions placed on expenditure and the impact on freedom of speech and the ability to fully engage in political discourse as these concerns do not seem to have been taken on board to date. As I commenced my introduction, the NSW Nurses' Association is a campaigning union. We are in a unique position as a third party to have opinions and to have a need to respond on behalf of our members. Our members do not take industrial action lightly. Therefore in changing policy where the majority of our members are engaged it often relies on politicians making decisions. So inevitably we are in the business of changing politicians' minds or if the worst-case scenario arises then one has to look for politicians who recognise the issues one is trying to address. That is the consequence of politics.

We have even unique situation here in New South Wales where there is an attempt to lockout third parties or severely restrict third parties during a six-month period on the premise that the only people who can have a voice in that six-month period are political parties and the media. There needs to be a clear examination of campaigning media, which clearly is what the Australian commercial media is, and if you regulate us then how do you regulate the media? How do you manage the freedom of speech issues with regard to media? There were lots of submissions in the previous inquiry about media. We were not alone in identifying that you only have to read the *Daily Telegraph* to see a full page Pierce Akerman pro-Liberal, pro-Conservative Government advertisement just about every time it is published. That would cost us \$40,000 a page at the minimum to have such an article published. Yet there is no question in my mind that this legislation seems to skate above that. So there is an unfair advantage for those organisations that have links to major media or that are seen by major media as being in favour. Whilst I am sure that not everyone reads that sort of article, it no doubt—

CHAIR: Equally you would suggest that there are other journalists that maybe favour other political parties. But I do get your point.

Mr HOLMES: It is hard to find them in Fairfax. It depends upon where you think the line is drawn on political comment. The other point that we make, to finalise what I am saying, is that the New South Wales Nurses Association, as an organisation regulated under the State Industrial Relations Act, is required and does have rules that require the election of the General Secretary, the Assistant General Secretary and 21 members of

council, which are the committee of management, on a four-yearly basis—I might add: unfortunately, in the same year that your elections are held.

But the association has had a long tradition of using the New South Wales Electoral Commission, and we believe that there should be no changes which would remove the ability to use such an independent body to carry out our own elections. Whilst the association has dutifully paid its fees to the Electoral Commission, we believe that it provides necessary independence and it goes without question about the proprietary action of carrying out our elections and we seek that that be retained.

Mr DARYL MAGUIRE: Mr Holmes, is your campaigning unit, the Nurses Association, affiliated with the Australian Labor Party?

Mr HOLMES: No.

Mr DARYL MAGUIRE: Has it ever been affiliated?

Mr HOLMES: No. Our rules do not allow us to affiliate to political parties, but they do not prevent us from acting politically for the benefit of our members.

The Hon. Dr PETER PHELPS: Mr Holmes, you say you are a campaigning union. Do you know any unions which are not campaigning unions?

Mr HOLMES: I would say that unions do see themselves differently, but we are recognised as a campaigning union with capacity to campaign at the highest levels due to strong membership and good management of the organisation to allow us to do so.

The Hon. Dr PETER PHELPS: Every union is a campaigning union, effectively, in New South Wales.

Mr HOLMES: I am sure that other unions would call themselves campaigning unions as well.

The Hon. Dr PETER PHELPS: And each of those can spend over a million dollars on a political campaign in those final six months before an election?

Mr HOLMES: If those unions have that capacity. Not every union has that capacity to do so.

The Hon. Dr PETER PHELPS: And outside that six-month period of time you are free to run campaigns which are only limited by the financial resources of your individual union?

Mr HOLMES: That is correct, and you will have seen recent TV advertisements promoting the improvements in our public health system as a result of recent wins.

The Hon. Dr PETER PHELPS: So for seven-eighths of the parliamentary term any union in New South Wales is effectively unrestricted in what it can do and say in terms of political issues?

Mr HOLMES: That is a statement.

The Hon. Dr PETER PHELPS: Is it incorrect to say that for seven-eighths of a typical parliamentary term you can expend as much money as you like on any campaigns that you or your members choose to run?

Mr O'GRADY: I think that is another grey issue because the definition of political expenditure, or political communications expenditure specifically, is not limited to those six months. It is not when the expenditure occurs; it is when a campaign, a TV ad for example, is run. So it is quite possible that you could spend money outside of that six-month period, which could be caught within that cap under the definitions and that—

The Hon. Dr PETER PHELPS: Did you seek advice from the—

The Hon. PETER PRIMROSE: Let him finish the answer.

CHAIR: Mr O'Grady, could you continue?

Mr O'GRADY: I might just add, to short-circuit this, that that was the advice. From a briefing of the Election Funding Authority in December 2010 that was the case. If you look at the Act I believe the Act is quite clear in relation to the definition of when that expenditure occurs. Also, the question that arises is you might be running a campaign on one theme, which during the course of the campaign may present a situation whereby one party says this and one party says another, therefore, by pushing that, it certainly could be viewed as being political communications expenditure, in which case there is the open question of alright, we ran ads about this expenditure prior to the capped period but this is a continuation of it, where does that sit?

I think that is one of the other confusing issues within the whole issue of capping and that is one of the reasons, from our point of view, apart from the issues of political freedom, that it is really a matter of accountability and disclosure, not so much the capping which is the key thing; it is the disclosure which is the real important factor, and we have never been backwards in disclosing our expenditure.

The Hon. Dr PETER PHELPS: Have you had any discussions with nurses unions, nurses associations, in Canada or the United Kingdom or New Zealand, which jurisdictions have caps on expenditure during the campaign period and, if so, what have those discussions adduced to you in relation to how they see the restrictions placed on them?

Mr HOLMES: I am afraid my discussions with my Canadian colleagues focused on improving patient care through nurse-to-patient ratios and we have not delved into the intricacies of their campaigning restrictions.

The Hon. Dr PETER PHELPS: So they have not raised with you the significantly lower caps which are placed upon them as third party entities during Canadian election campaigns? They have not spontaneously raised that with you and said there is a matter of concern with them about that?

Mr HOLMES: No. I have had discussions with their national president about how they do a large amount of lobbying and have access to Ministers and leaders in order to be able to lobby, but I have not discussed what they do during election campaigns.

The Hon. PETER PRIMROSE: Could I ask how you would like to see the Act amended so that it provides third party campaigners with greater clarity with respect to things such as political donations? Do you have any proposals you would like to put to us?

Mr HOLMES: Our proposal would fall along the lines that have been suggested by others: to create a separate part for third parties so that it is not mixed up with the requirements for politicians or political parties, so that it is clear what parts we as third party campaigners would be required to adhere to, because at the moment it is, in our opinion, spread a little throughout the legislation and is not clear to us. We believe that there needs to be a separation of it, and upon reading the Electoral Commissioner's submission we believe that there are some good ideas about the whole Act needing to be redrafted so that it is easily understood by everyone.

The Hon. TREVOR KHAN: With regards to the 2011 election, did the provisions that applied at that stage impact upon how you dealt with campaigning at that stage?

Mr HOLMES: Yes. We tried to make sure that we were adhering to the legislation and did everything we could to do that. I suppose it is the subsequent changes that have resulted in what we believe is a fairly unfortunate but somewhat ridiculous situation where you can be caught for being seen to give a donation by actually giving information.

The Hon. TREVOR KHAN: I get your point. If we could go back to 2011: How did it impact upon you administratively in terms of how you did things?

Mr O'GRADY: It was a period of great uncertainty. Everything that we did had to be looked at in terms of what we did. It was an approach that we took whereby we viewed everything as being potentially covered by the Act and then, ultimately, as is set out in a previous submission to the inquiry earlier, we sought legal and audit advice in relation to the declaration which we put in. The other interesting point of that, which is again alluded to in that advice, is that on the understanding that with the last drinks alliance, for example, some parties did make a declaration in relation to that, whether or not it was just on the just-in-case sort of scenario,

our legal and audit advice indicated to us that it was not covered by the Act so therefore we did not. There was a lot of confusion about it.

The Hon. TREVOR KHAN: Was there any follow-up with you because you did not make that declaration?

Mr O'GRADY: No.

Mr HOLMES: I think we were asked to make sure that we have put our submission in, but subsequent to that we have not had further follow-up.

Mr O'GRADY: The only thing which has come back was a request to return a campaign receipt book, which, ironically, we had not actually received.

Mr HOLMES: I would add to that that I think it restricted free speech. I believe that the umming and aching about whether you could or could not express an opinion restricted the free speech and the proper representation of the views that would be in favour of our members. We were in the situation prior to the election of being in dispute with the current government, fighting a campaign for improved staffing levels through nurse-to-patient ratios, and a great deal of time and angst was spent upon whether we were caught within the legislation or not caught, and of course in the end you just have to proceed. But it was a good example of where you are not sure, not clear, whether you are subject to the law or not. I think that the idea that it is a single issue campaign may well in that situation be clear enough. But it is very easy to wander into jeopardy when you have got politicians weighing into a campaign that you might be running. If they express an opinion unions say, "We like that opinion". So that is where it becomes a bit ridiculous, where you can all of a sudden fall into a trap because somebody has stepped alongside you and you acknowledge them.

The Hon. TREVOR KHAN: In terms of the campaign that you ran before the last election, are you able to tell us how much you spent in the six months prior to the election on running the campaign?

Mr HOLMES: In the nurse-to-patient ratio campaign?

The Hon. TREVOR KHAN: Yes.

Mr HOLMES: I would have to take it on notice. But we did run TV advertising.

The Hon. TREVOR KHAN: An extensive campaign.

Mr HOLMES: Yes.

The Hon. TREVOR KHAN: I take it not only did it involve TV it involved direct mail and radio and, I think, newspaper ads as well?

Mr HOLMES: Yes.

The Hon. TREVOR KHAN: And I take it that it was a campaign that you felt, in a sense, was as effective as it could be with the amount of money that you were expending?

Mr HOLMES: Yes, and, frankly, we were not wanting to keep within that cap because it was a campaign we believed was industrial, but, nevertheless, we were constrained and had to spend an excessive amount of time working out whether we were caught or not caught, particularly after the Election Funding Authority made contact with us and asked us about our campaign—warned us.

The Hon. TREVOR KHAN: Can you tell us about that? In the context of the time line of the campaign, when did the contact with the Election Funding Authority occur? Was it towards the start, the middle or the end?

Mr O'GRADY: I referred earlier to a briefing in December by the Election Funding Authority on the new laws which were due to be introduced and during that briefing there was broad discussion about what was or was not electoral communication expenditure including references to the media. One example they cited was the nurse-to-patient ratios campaign.

The Hon. TREVOR KHAN: And alarm bells went off.

Mr O'GRADY: I was quite surprised, to be frank, because from our point of view it was clearly an industrial campaign about an industrial issue. I had subsequent discussions with representatives of the Election Funding Authority in relation to that. I should add that the advice was tempered by the fact that we needed to seek our own legal advice.

The Hon. TREVOR KHAN: Always.

Mr O'GRADY: Certainly they expressed the view that the fact that an element within that campaign had been for people to contact their local politician actually put it into the area of electoral expenditure. It became much more evident during the earlier inquiry that there was a large body of thought among the members of the committee that if you said, "This candidate supports us and this candidate does not support us" it was fine but if you said, "Vote for that candidate", that seemed to tip it over.

The Hon. TREVOR KHAN: I do not know that that is my view—

Mr O'GRADY: That is what I drew from many of the comments and from the amendment. That is still a point of confusion.

The Hon. TREVOR KHAN: When you lodged your return did you disclose that the nurse-to-patient ratio campaign was a political campaign?

Mr O'GRADY: No.

The Hon. TREVOR KHAN: It was never disclosed in that context?

Mr O'GRADY: No. That is right, because that was our advice.

Mr HOLMES: We are still waiting for the Election Funding Authority to come to us.

The Hon. TREVOR KHAN: Well, you have given evidence now so we will see what happens.

The Hon. Dr PETER PHELPS: Can I follow up that point? It was always going to be the case, was it not Mr O'Grady, that with the new laws coming in there would have to be an accretion of precedent. In other words you have to create precedent, so there will naturally be some uncertainty. Flowing out of 2011 you now have a whole series of precedents in relation to what is and what is not within the definition of political expenditure. Now that we have gone through that once, we have a much better understanding for future election campaigns.

Mr HOLMES: I can draw the same conclusion. Subsequent to 2011 there have been further changes to the legislation, as you know, so the legislation has become more onerous to the extent that an organisation is not allowed to donate at all and what is seen as a donation is now anything and everything.

The Hon. TREVOR KHAN: The electoral expenditure definitions did not change, did they?

The Hon. Dr PETER PHELPS: There was no change to that.

Mr O'GRADY: As a result of the amendment it did change in relation to third parties.

The Hon. TREVOR KHAN: The definition?

Mr O'GRADY: Yes.

Mr HOLMES: Third party did.

Mr O'GRADY: Because it is now defined as not being electoral expenditure if the dominant purpose is not to—

The Hon. TREVOR KHAN: Right.

Mr HOLMES: That was of some assistance to us in terms of being able to decide that you were okay if you made sure your campaign did not go near recommendations about political parties.

The Hon. ROBERT BORSAK: You made submissions to the select committee that Dr Kaye chaired. In those submissions did you foresee the level of complication that you are now outlining in this submission?

Mr HOLMES: No, in terms of the final law and the complication of whether you can or cannot donate. The fact is clear: you have excluded us from donations or anything that could be seen as donations. We foresaw a problem with both the law we were looking at and the previous law under which the caps were put in place. I suppose experience showed us that the law was ignorant of the real costs of campaigning across New South Wales if you want to run a significant campaign that has any impact at all.

The Hon. ROBERT BORSAK: I would agree with you and probably a few other people in this place that unions by their very nature have to campaign and that from time to time drawing the line between what is a political campaign and what is a general industrial campaign is very difficult and complicated. In one of the conclusions in your submission you talk about wanting to have third-party campaigners carved out and separated from politicians and parties in the way they are treated. How do you see that working when it is almost a continuum for organisations such as yours, putting aside the fact you may still have a restriction on being able to donate money to the Labor Party or anyone else from time to time? I know you are not affiliated and probably never have donated but I am thinking of the wider spectrum of all potential third-party campaigners, which may be unions, sporting organisations, fishing clubs and all those sorts of things. They are all stuck with the same restrictions you have.

Mr HOLMES: Just to be clear, the Nurses Association has been a donor in the past. We have attended fundraising events. A single raffle ticket is enough to get you caught. Of course we have used those opportunities to lobby politicians. It is often a good opportunity to do so. You get right in their faces when they know you are important to them. We do not deny that in the past we have participated in what would be seen as political donations, in our opinion always for a purpose.

The Hon. ROBERT BORSAK: I really would like you to tell me how you think you are going to do it. In my view I do not think you can do it. How do you think you are going to do it? With a scalpel?

Mr HOLMES: We will have great difficulties. We are not allowed to donate; that is fine. The association will have to continue to campaign on behalf of our members.

Mr O'GRADY: A good example would be our relationship with Unions NSW over the years.

The Hon. ROBERT BORSAK: Be careful, they are sitting right behind you.

Mr HOLMES: A very good relationship.

Mr O'GRADY: Unions NSW may on behalf of all its affiliates take the lead in a campaign and there have been a number of examples. Under the legislation prior to the 2012 amendments if expenditure on a campaign was deemed to be electoral expenditure at any time we were limited to donating an amount of \$2,000 to Unions NSW for that. Now we can donate nothing as Unions NSW is a third party. That removes not only us but any third parties such as fishing clubs, community sports clubs and what have you from banding together to run a campaign. That is outside the cap period as well.

Mr DARYL MAGUIRE: How much does it cost on average to be a member of your association?

Mr O'GRADY: Our registered nurse fee is \$660 per annum; our enrolled nurse fee is 80 per cent of that; and our assistant in nursing and trainee enrolled nurse fee is 75 per cent of that amount.

Mr DARYL MAGUIRE: If we said an average of \$500—

Mr HOLMES: It is a bit more than that.

Mr O'GRADY: Our average member fee is probably around \$540 when you take into account the mix of membership because it is predominantly registered nurses.

Mr DARYL MAGUIRE: You have 55,000 members?

Mr O'GRADY: Yes.

Mr DARYL MAGUIRE: So that is about \$29 million to \$30 million?

Mr O'GRADY: That is right. That is about how much income—

Mr DARYL MAGUIRE: Of that how much do you expend on campaigning on particular issues?

Mr HOLMES: It depends upon the issue. We have been running a national campaign around aged care for three years and I envisage that over that time we have spent more than \$2.5 million on that. In a State-based campaign we would probably need to expend \$1.5 million to \$2 million. Our current campaign around nurse-to-patient ratios has a spend of over \$1 million. It does not take many television ads across New South Wales to burn up money. Our members voted in favour of creating a nurse power fund in 2005 so that we could campaign around the issues that were critical to our membership. Fortunately our members voted to have that as part of their membership fee. Obviously, we have allocated that amount from our members to an internal account.

Mr DARYL MAGUIRE: That is quarantined out of the \$540 average contribution per member?

Mr HOLMES: That is right.

Mr DARYL MAGUIRE: Is it reasonable to expect, with a cap on your campaign activities, that we will see more issue-based campaigns during the non-election period? Otherwise I assume with capping on election campaigning and with \$30 million in contributions less running costs you will be acquiring quite an amount of funds that are unexpended.

Mr HOLMES: I do not think you could make that conclusion. We campaign on the issues no matter what time it is and we have not had a practice of saying we are going to need \$1 million for an election campaign because we do not know whether there is an issue that is relevant to our members at every election campaign. We do not say, "There is going to be an election in 2015 so we need to save up a couple of million dollars for that."

Mr DARYL MAGUIRE: So you make no provision whatsoever?

Mr HOLMES: Every year we make provision to be able to run campaigns and we have a plan in our head as to what the campaigns might be about but we have the flexibility to determine that in relation to issues that are unknown. We did not know this Parliament would do such a terrible job on workers compensation. You will not be surprised to know we are well and truly prepared to campaign around that issue. Our members have been badly hurt.

Mr DARYL MAGUIRE: I think Mr O'Grady mentioned political freedoms. Do you agree with any other organisations being excluded from contributing to the political system?

Mr O'GRADY: Being a registered nurse I would have to say I could understand that one might restrict tobacco companies as part of a public health measure, but in essence, no, I do not. Everyone has the right to express their view. Much of it might be repugnant to me as it may be to many people, but that is democracy; that is what we live in. It is very important that people have the freedom to do that. Whilst I recognise the general concerns expressed by many in a large number of inquiries in relation to these matters that parliamentarians are concerned that they not be heard during an election campaign or that they be over-ridden, I see it principally as the job of parliamentarians and political parties and what have you to get their message out there. They should be able to do that and address issues as they are raised. That is part of their job; that is what they should be organised to do. I do not see that restricting other people is the answer to it. I think it is abhorrent to our society, to be frank, even though I understand it. I can rationalise some of those issues.

The Hon. TREVOR KHAN: Are you able to provide the committee with details of the amount of expended each year on campaigning since the establishment of Nurse Power in 2005? You

Mr HOLMES: We have records of that information.

The Hon. TREVOR KHAN: Is that a "yes"?

Mr HOLMES: My preference would be that that is business of the association but the association's audited accounts are available. Nurse Power is included within our general accounts though.

The Hon. TREVOR KHAN: Is that "go and find it yourself"?

Mr DARYL MAGUIRE: You are saying it is publicly available on the Internet?

Mr HOLMES: Our audited accounts certainly are, yes.

CHAIR: Are you able to provide that information to this committee?

Mr HOLMES: If this committee feels that is of real benefit and not just having a cheap shot.

The Hon. TREVOR KHAN: You have talked about how much you have been expending and you might be restricted, it is useful if the committee actually has some indication as to what your expenditure rates have been over recent years. I am not trying to have a cheap shot—that is the basis upon which I ask.

Mr HOLMES: Certainly I have to take that on notice.

Mr O'GRADY: There are some details in the submission earlier this year in relation to examples of expenditure.

The Hon. TREVOR KHAN: I remember that. It was again the sort of area the committee got into and never really quite got to the bottom of.

CHAIR: The committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be made public. Are you happy to provide a written reply to any further questions?

Mr HOLMES: Yes.

Mr O'GRADY: Yes.

(The witnesses withdrew)

MARK ROY ROBERT LENNON, Secretary, Unions NSW, and

PAUL DOUGHTY, Industrial and Campaigns Officer, Unions NSW, sworn and examined:

CHAIR: Do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

Mr LENNON: No.

Mr DOUGHTY: No.

CHAIR: In what capacity do you appear before the committee?

Mr LENNON: As secretary of Unions NSW.

Mr DOUGHTY: As industrial and campaigns officer at Unions NSW.

CHAIR: Do you wish to have your submission included as part of your sworn evidence?

Mr LENNON: Yes.

CHAIR: Do you want to make a short opening statement?

Mr LENNON: Yes. I thank the committee for allowing us to make written and oral submissions. Clearly most of our remarks, you will have seen from our submission, go to the issue of the electoral funding legislation. We probably would have, had time permitted, made a more substantial submission on a couple of issues that go to, particularly, electoral funding but given other events with other matters that have been before the Parliament here, clearly time has been somewhat restricted. As I say, we welcome the opportunity to be here and to make a few comments at the outset. Clearly I do not want to go over old ground that we debated last January about the issue of the 2012 legislation, and the nature of how undemocratic we see are the questions of affiliation.

CHAIR: We will get right to the point then, will we not?

Mr LENNON: That is right. I know it is no secret we commenced what we believe as appropriate action to seek to have that challenged in the High Court and we will leave that to that debate at this present time. The questions of sub judice took so long to be debated in the Federal Parliament recently, I do not think we will go down that path today. In relation to the Electoral Funding Act I think from having a look at the other submissions, the clear theme that is running through is whatever else happens, the number of amendments since 1981, amendment upon amendment, and particularly in the past few years, the complexity of the Act cries out for a rewrite, a redraft. It does not necessarily mean—we would like to see obviously some provisions changed as well, but the primary cause for a rewrite would be for the essence of simplicity. Clearly, if we say, as we said when we appeared last January before the select committee, and I think it has been said in the public domain by various groups, we want to make sure that our democratic process is as open and as participatory as possible, then we have got to allow everyone to be able to understand how to participate and what are the rules in relation to electoral funding and disclosure.

The committee heard from my union colleagues from the NSW Nurses Federation—can I say those particular colleagues are the most professional I know—trying to deal with this complex and confusing legislation is difficult for us as the insiders, let alone those who may simply want to be ordinary people participating in the electoral process. Fundamentally that has to be addressed and we believe by this committee. In keeping with what has been said already, if we get to the issue of a redraft, then I think if we are now accepting that third party campaigners, putting aside the nature of the provisions for third party campaigners, it is clear on both sides of politics that third party campaigners are captured by this legislation, but there has to be a separate section of provisions that relate directly to them to overcome this issue of confusion and go down the path of clarity.

As it stands at the present time, and as third party campaigners we are thrown into the legislation, together with political parties, it just serves to add to the confusion, and the inability for third parties to effectively campaign, no matter what actual provisions are applied to them. That is clearly another area of emphasis that we would stress to this committee in the context of this particular review. We only made one comment in regard to the issue of the Parliamentary Electorate and Elections Act and it simply goes to the issue, and it is not an area that Unions NSW is an expert. We are an expert in some other types of elections but not parliamentary elections and it is not area that it goes to but clearly whatever proposals are there should be aimed at maximising the meaningful participation in elections by the greatest number of citizens in this State. I know that is a general statement, particularly in this day and age where it seems that, for whatever reason—I saw the figures on the ABC last week about the number of people who are not actually enrolling—we have to make sure as the process is as easy as possible so we can maximum the number of people who are able to participate in the election process.

CHAIR: You said the primary objective is voter participation. How would you achieve that? I take your comment that you are not necessarily experts in elections but how do you see that working?

Mr LENNON: Some of the other submissions have suggestions, without going into the detail, but people have to enrol and sign up. I am not sure we are going down the path of the ability to sign up on line, or things of that nature, but I would say ease and convenience—and I do not know if that is an effective tool—of signing up on line but also understanding how they can do it is where the emphasis should be, I think.

The Hon. Dr PETER PHELPS: You spoke about the complexity of the State Act. The Federal Act is no less complex. Has the ACTU made representations in relation to the complexity of the Federal electoral Act?

Mr LENNON: Not to my knowledge. That is not to say we have not made submissions to the various inquiries, and the ACTU has made submission to various inquiries regarding the Federal electoral Act. I am not sure, Dr Phelps, if it is to that extra question of complexity but the same problem applies. I think the Federal Act is complex and that should be rectified as well.

Mr DOUGHTY: In our submission we note a recent inquiry about the Federal electoral law wherein we noted the ACTU submission observed a similar problem in the Federal jurisdiction to here, as to the clarity as to what is and what is not regarded as campaign expenses. The Federal provisions have a term if it is relating to an issue in an election. That brings in a question of what is and what is not an issue in an election. I know the issue in one of the submission was referring to one of the elections where campaigning about public education it was widely observed that it was not part of an issue in the particular election. Those sort of highly subjective definitions are fairly unhelpful for organisations that are seeking to comply with the legislation. We are aware of similar problems in the Federal jurisdiction.

The Hon. Dr PETER PHELPS: In both instances you have essentially 30-year-old legislation which has been patch worked over that period of time.

Mr LENNON: That is right.

The Hon. Dr PETER PHELPS: Are you aware of any moves by the Federal Labor Government, Special Minister of State, Gary Gray, to look at a comprehensive rewrite of that Act?

Mr LENNON: I am not, and I do not think Paul is but it does not mean that two wrongs make a right. Let us have a look at the situation in New South Wales, that is what we are considering.

The Hon. Dr PETER PHELPS: I am suggesting that Unions NSW may have a fraction more influence with the Federal Labor Government if they were looking for a rewrite of an Act which then, perhaps, we could model ours on.

Mr LENNON: I am disappointed to hear that Dr Phelps.

The Hon. ROBERT BORSAK: You say that the primary objective should be one of maximising voter participation. What are your views about how you might achieve that objective?

Mr LENNON: I am not sure if that was the same question asked by the chair.

CHAIR: It is the same question. It was a very important question.

Mr LENNON: We have made a broad point and we have not gone to the detail ourselves. A personal view, as I said, is clearly that the use of information technology surely it has got to be easier for people to be able to enrol.

The Hon. Dr PETER PHELPS: Given the changes that have taken place, have you advised your constituent unions about changes, and advised them if they want to conduct campaigns they will have to do it themselves, as entities themselves, not through the process of Unions NSW?

Mr LENNON: Are you talking about the electoral funding legislation now?

The Hon. Dr PETER PHELPS: Yes.

Mr LENNON: We are having constant information sessions with our affiliates about the legislation and its impact, suffice to say, where we are in the electoral cycle we probably have not been doing a lot of that recently. Everyone is conscious of the nature of the change. It is probably fair to say, you might find this very pleasing, the fact is that at the moment everyone is saying "I am not sure what it all means."

The Hon. Dr PETER PHELPS: Is Unions NSW conducting campaigns at the moment?

Mr LENNON: Yes.

The Hon. Dr PETER PHELPS: Do you feel constrained by the laws in any way?

Mr LENNON: Not at the present time, as we understand it, but of course we have to remain constantly vigilant that we are not encroaching on the laws.

The Hon. Dr PETER PHELPS: Which really only come into effect six months out from an election?

Mr LENNON: That is right.

The Hon. Dr PETER PHELPS: For the rest of the time it is full steam ahead for Unions NSW and its campaigns?

Mr LENNON: Yes, but the issue is what are we going to be doing in those six months leading up to the election campaign? There will be some key issues of concern to the union memberships on which we will have campaigned over the electoral cycle, so therefore, are they issues that we are campaigning on as issues, and the dominate purpose is the issue—correct me if I am wrong the nature of the legislation that amendment went through—or are they party political? Have they become party political? That will be the difficulty for us in that time.

The Hon. Dr PETER PHELPS: But if they are issues that affect members, would it not be the role of the individual unions themselves to raise those matters?

Mr LENNON: But there are some common issues that affect all members regardless of which unions they are members of, workers compensation obviously being one example. It is our obligation, as you heard from our colleagues previously, for Unions NSW to run those particular issues that affect all workers.

Mr PAUL LYNCH: Except for police and firefighters.

The Hon. Dr PETER PHELPS: I acknowledge that interjection from Mr Lynch.

Mr LENNON: No, because in regard to that issue, Mr Lynch, to be quite frank, who knows what might be on the agenda when it comes to workers compensation in the next electoral period.

The Hon. ROBERT BORSAK: Did the requirements of the Act place any additional administrative burdens on Unions NSW during the 2011 election?

Mr LENNON: Yes.

The Hon. ROBERT BORSAK: Would you like to elucidate a bit?

Mr LENNON: I am happy to take that on notice because our financial controller would be the one who could give you the detail. I am not trying to be evasive but I think in fairness to him he could outline the additional responsibilities he took on. I can say, one of them is, of course, going back to Dr Phelps' question, understanding the legislation, not just for his sake but also to inform our affiliates, and meetings we had with affiliates and meetings we had with lawyers et cetera. So he has had to take on an increasing role in that area in terms of the documentation and meeting the requirements of the funding authority, but I would be happy to provide that to you.

The Hon. ROBERT BORSAK: Thank you, that would be good. It is a consistent theme coming out of this and it was mentioned by one of the other witnesses that at the moment we are going through a process of suck it and see. It is a real burden on everybody and that reflects itself in time and obviously money.

Mr LENNON: No doubt. The lawyers have done well out of this.

The Hon. ROBERT BORSAK: The commissioners argued in their report on the 2011 election that ideally primary legislation should set out the essential electoral principles leaving the more detailed operational matters to the Electoral Commission and, as necessary, subordinate legislation. What are your thoughts on this?

Mr LENNON: If the thrust of that is that the legislation is too prescriptive, I would say the answer is yes. It is the same principle as set out in the legislation. We have to be careful about who is setting regulations and who has the power and whether it is the role of Parliament and how far the role of Parliament goes. We would argue probably the complexity of issues around electoral communication expenditure and we have said in our submission, as I recall, it goes too far in what it defines as electoral communication expenditure. Paid advertising clearly is the big spend by everyone and that should probably be it. We support any views that, when it comes to outlining what is appropriate expenditure, less is better rather than being too prescriptive.

Mr DARYL MAGUIRE: In your opening submission you said you are a peak body and you have 64 affiliated unions and 10 affiliated regional trade unions and labour councils, approximately 600,000 union members. Each of those affiliated unions makes a contribution to the peak body. How do you levy those and, as a percentage to income, what is the cost of your compliance with the legislation?

Mr LENNON: Each union pays us an affiliation fee of approximately \$3.20 per member per year. Having just heard the fees for the Nurses Association that might go up, but \$3.20 per person per year, and that is essentially how we run the organisation. We also have income from our property holdings, to be frank, which is essentially the Sussex Street building—which you may have heard of—and the Trades Hall building.

Mr DARYL MAGUIRE: The question I have now is do you levy, when you are campaigning during that three-quarters of the time or more, special levies to assist you in an issues-based campaign such as WorkCover?

Mr LENNON: It depends on the circumstances. Sometimes yes and sometimes no. It depends on our resources. For instance, with the recent campaign about workers compensation, it was not my proposal to levy for the campaign but the decision amongst affiliates was the campaign should be broad so we did levy so we could undertake, in particular, paid advertising.

Mr DARYL MAGUIRE: Previous witnesses made the comment that they have some contingencies but they do not have set funding put aside. I was wondering how you manage that and, in managing that, what the complications are because of this legislation? Is that more of a burden to you?

Mr LENNON: The legislation itself, yes. We have about 20 per cent of our budget set aside generally for organising a campaign. That is a broad thing, organising members, campaigning around issues and helping to recruit members as well. That is essentially the limit of what we can spend without having to levy on campaigns.

Mr DARYL MAGUIRE: And the administration of the union, the administration of your organisation as a percentage of total funds that you generate per annum?

Mr LENNON: The other 80 per cent is administration, our general expenses.

Mr DARYL MAGUIRE: That is 600,000 members at \$3.20?

Mr LENNON: But our income, as I say, is also supplemented by property holdings as well.

CHAIR: How many staff does Unions NSW have?

Mr LENNON: We have 24 staff but about five of our staff are part-time. So probably 21 full-time equivalents.

CHAIR: We are hearing from the Electoral Commissioner straight after this. Are there any other issues that have not been raised today or that you have not put in your submission that you feel we should speak to him about?

Mr LENNON: Not particularly, but I want to reiterate the point that you asked what has been the impact of the legislation. The impact of the legislation is to make people err on the side of caution because everyone is quite concerned about the nature of the legislation, the consequences of it and whether they may be in breach. Has it impacted on our ability to campaign? The answer is yes. People are very uncertain about what we can and cannot do. The way the legislation is structured, putting aside the actual provisions themselves, and I will come back to that point, makes it very difficult to get a real handle on what we can and cannot do. We can get legal opinions about what our obligations are but they can be in conflict, with different views. I reiterate, whatever else comes out of a review of the legislation, a redraft and clarity would be a major step forward for everyone.

CHAIR: Thank you for appearing before the Committee today. The Committee may wish to send you additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

Mr LENNON: Yes.

(The witnesses withdrew)

COLIN BARRY, Electoral Commissioner, and

BRIAN DECELIS, Director Funding and Disclosure, Electoral Commission of New South Wales, on former oath:

CHAIR: Is there any opening statement you would like to provide to the Committee?

Mr BARRY: I would. I wanted to come back to the Committee on two matters that were raised when I gave evidence on the 19th. One was to do with the informal vote in the upper House and what it was in 2011. I said I would report back on that. It was 5.4 per cent in the upper House. It fell from 6.1 per cent in 2007 to 5.4 per cent in 2011. The other thing was I made an error when I said Professor Orr's report was attached to our submission. It was not. I have arranged for a copy to be brought here today. I submit to you it is important in my view that you consider Professor Orr's report on the modern piece of electoral legislation. I make no secret of the fact that there are some things he said in there that I do not agree with. But, by and large, in the spirit of my respect for Professor Orr, I want to table it.

The other thing I wanted to say is that previously I had commented on the funding and disclosure legislation prior to the penultimate round of amendments. At that point I outlined to the Committee that I thought the funding and disclosure legislation should be based around four principles, and I just wanted to repeat that for the Committee's attention, and that was to protect the integrity of representative government; to promote fairness in politics; to support parties to perform their functions and to respect political freedoms. They are the fundamental pillars upon which funding and disclosure legislation should be rooted. I hope the Committee would endorse the previous Committee's report in supporting those principles.

As you can see, taking that approach with funding and disclosure legislation, leads me on to the Parliamentary Electorates and Elections Act and I have in the submission made quite a bit about the fact that this legislation is rooted in the nineteenth century and, as the Premier acknowledged, it has not been fundamentally reviewed since that time. My legal researchers tell me that even in 1912 it was basically cobbled together from legislation back in the 1800s. So, the time is really right for this Committee to consider where does it want electoral legislation to go in the twenty-first century and, considering the fact that it has taken 100 years to do this review, maybe even the twenty-second century. However, I hope that is not the case.

My having said some things about principles, I think the Committee would be well served to consider that a new piece of electoral legislation should be rooted in the universal franchise exercised by the secret vote, overseen by an independent electoral authority, operating within a participatory democracy based on a principle of political equality. Those are also principles I would submit to the Committee that it should endorse. Having said that, I have also made a point in the submission that I think the time is ripe for a complete restructuring of the legislation and the concept of the Electoral Commission. I want to walk you through this, and I asked your support staff to provide you with a diagram of a copy of what I have talked about here because I make the point this is not a grab for power by Colin Barry. What I want to talk to you about in making this opening statement is devolving some of the powers the Electoral Commission currently has.

Document tabled.

I think that the new Electoral Act should be principle based and I think a lot of the administration of the conduct of elections should be devolved to the Electoral Commission. I also see an enhanced role for this electoral matters Committee as I think it should be given statutory underpinning. There should be a role for this Committee to have oversight, endorsement if that is the appropriate word, of a proposed appointment as Electoral Commissioner. At the moment the Electoral Commissioner is appointed by Executive Government, as you are probably aware.

I also see that if the Act is more principle based I do not support a lot of devolving of administration of the Act to regulation. In fact, when there was a review of the Act in Victoria one of the things that was put into the Act was that regulations could only be made on the recommendation of the Electoral Commissioner as a safeguard to a Minister simply going on a frolic of his or her own and wanting to make regulations. Yes, they could be overruled by the Parliament but of course that can often not be done in time when there is an election imminent.

I do see that there is an important role for the joint standing committee. I also see that the Electoral Commission should be broadened. At the moment I am the commissioner and I am the commission and I do not think that that is appropriate in the future. I think that the Electoral Commission should be composed of a retired Supreme Court judge, the Electoral Commissioner, the Auditor-General or his or her nominee, and augmented by the Surveyor General at the time when the commission is undertaking a redistribution. I have given you a diagram of how I see that unfolding. Thank you, Mr Chair.

The Hon. Dr PETER PHELPS: Commissioner, some things were raised earlier which I hope you or Mr DeCecelis will be able to clarify. The Greens raised the issue of membership fees for political parties, and we are only talking about below \$1,000 membership fees here. They seem to be of the opinion that a 16- or 17-year-old could not become a member of the party because that would in some way violate the Act. My understanding is that membership fees below \$1,000 are not considered to be political donations, are they?

Mr DECECELIS: My recollection of the legislation is that all membership fees are political donations.

The Hon. Dr PETER PHELPS: That is not the information on the website, which only speaks about political donations aggregating to more than \$1,000, including membership fees over \$1,000.

Mr DECECELIS: Over \$1,000 would become reportable.

The Hon. Dr PETER PHELPS: Yes.

Mr DECECELIS: Yes.

The Hon. Dr PETER PHELPS: Can a 16- or 17-year-old pay a membership fee to a political party to become a member?

The Hon. PETER PRIMROSE: Given that they are not on the electoral roll?

Mr DECECELIS: My recollection is that this question has been with the office. The question does not in itself revolve around whether a 16- or 17-year-old can pay membership fees. The recent amendments to the legislation in March were that political donations can only be made by a person on the electoral roll so the question really is: is a 16- or 17-year-old who is on the roll as a provisional elector, enrolled or not enrolled, therefore entitled under current legislation to pay membership fees? We are not suggesting that a 16- or 17-year-old cannot pay membership fees to a party per se. The question really is: are they on the electoral roll and therefore entitled to make a donation under the current law? We have not yet resolved—

The Hon. TREVOR KHAN: I do not think that is the question because they may not provisionally be on the electoral roll?

Mr DECECELIS: No, that is right.

The Hon. PETER PRIMROSE: So the question is: can a 15-year-old who is not entitled to be provisionally enrolled, so that question is mute, are they entitled and can they pay a membership fee at all?

Mr DECECELIS: If I am right in my recollection that any membership fee is a donation—

The Hon. TREVOR KHAN: Then the answer is no.

Mr DECECELIS: My answer would be no. The only question that has been raised with us and you have raised again indirectly is as a 16- or 17-year-old—and I think it is only 17-year-olds that can be provisionally enrolled—if I sit here now and say, "Look, 16-year-olds cannot even be provisionally enrolled so they cannot make membership fees either, so it really only comes down to 17-year-olds, so the question we are examining and I understand we have not yet got an answer to it; we are dealing with it in the office is: if they are provisionally enrolled, are they enrolled and therefore able to make a donation? We still do not, I believe, in the office have an answer to that ourselves but we are examining it.

The Hon. TREVOR KHAN: But the general answer is a 16-year-old who seeks to be a member of a political party cannot be, if it requires that they pay a membership fee?

Mr DECELIS: If it requires a membership fee.

The Hon. Dr PETER PHELPS: In relation to two-party preferred counts, what advice do you obtain beforehand to work out which two candidates you believe will be in that final count?

Mr BARRY: That is a very good question and it is one that troubles me every time the State election comes around. What I have done in the past is I have consulted with Antony Green on who he thinks might be the two leading candidates. I have consulted with the three main parties, the ALP, the Liberal Party and the National Party. That is basically the approach that I have taken.

The Hon. Dr PETER PHELPS: You have not sought Antony Green or someone like that because I am sure every political party is going to say, "Oh yes, we are definitely going to be in the top two".

Mr BARRY: I have sought Antony Green's advice, yes.

The Hon. Dr PETER PHELPS: Some concerns were raised earlier by The Nationals about the process of selection. I am wondering how it is overcome and if you just ask political parties because they are always going to say, "Yes, not only are we going to come in the top two, we are going to win it."

Mr BARRY: Actually I do not agree with that because, to be truthful, sometimes the political parties do say, "Look, no, I don't think we are going to be in the two." In fact, I had that at the last election. There is no science in this. Asking me who I think is going to be the last two candidates standing—I do not have any greater wisdom than you could go out into Macquarie Street and ask somebody out there. It is not a science.

The Hon. Dr PETER PHELPS: I am just pleased that you do go and seek external advice.

Mr BARRY: Yes, I do.

The Hon. Dr PETER PHELPS: Mr DeCecelis, there were a lot of complaints with uncertainty about the 2010 changes to the donation and expenditure rules. Do you believe that you have now built up a body of precedent and practice to the point where you could answer most questions with a fairly high degree of surety yourself?

The Hon. PETER PRIMROSE: Such as membership of political parties?

Mr DECELIS: My focus at the moment is on local government elections so that if you ask me a question on local government elections and matters that relate specifically to a State election, I would have a fairly good recollection but my shift moves from disclosures because we are going into a disclosure period; it moves to local government elections, it moves to State elections. The focus in my work moves all the time. It has moved from the State election to local government. I would have a fairly good recollection going back to the State election but I cannot sit here and say I could answer all questions.

The Hon. Dr PETER PHELPS: Presumably as you have gone through 2010 and the 2011 elections there has been some sort of record kept of Decisions, with a capital "D" and decisions with a little "d" made within the Election Funding Authority about what is in, what is out, what is okay, what is not okay, that sort of thing, so that you are building up a corpus of precedent and practice which you can bring out come 2015 and say, "This is what was done. We are not purporting to be a judicial authority; however, we believe this to be the appropriate way. This is in or this is out, as far as we are concerned"?

Mr DECELIS: Yes, our compliance audit team audits every claim, if claims are where we are focusing as opposed to expenditure, not that they are different because you can only claim on electoral communication expenditure; but yes, they are. There are peculiar things that people claim. The Act is in some ways particular about what you can claim and in other ways a little more broad so there is some discretion, if that is the right word, trying to determine if a matter is acceptable or not acceptable, so yes, we do build up and keep a record of things that we will keep as a record for the next one for the purposes of consistency, yes, our compliance team—our audit team, sorry.

The Hon. ROBERT BORSAK: Regarding parliamentary oversight, your submission recommends that the Electoral Commissioner be accountable to a statutory committee on electoral matters and that is the paper you tabled, the diagrammatic representation of it. Given the extraordinary investigatory and coercive

powers of other officers of the Parliament subject to oversight committees, such as the Independent Commission Against Corruption Commissioner and the Police Integrity Commissioner why do you think this level of oversight is appropriate to the commission and in following up from that would you be thinking that there would be similar coercive powers included for the new New South Wales Electoral Commission?

Mr BARRY: No. The commission does not need coercive powers. It is very unclear at the moment who the commissioner reports to. When I first came to this job on 1 July 2004 the Government agreed to a review of the office, which was like a health check, and the organisation, the Costs and Quality of Government, did the review. One of the first things that Professor Percy Allan asked me was, "Well, who do you report to, Colin?" I said, "Well, that's very unclear. Generally you report to whoever pays you, whoever can sack you." He said, "Well, who can sack you?" The only person who can sack me is the Governor on the vote of both Houses of Parliament, but yet I comply with all the government rules and regulations. It is not appropriate that the Electoral Commissioner reports to a Minister. It is unclear who you actually do report to. I have often explained to visitors and so forth, "Look I generally report to the Parliament" but that very vague. I report to the Parliament? How do I report to the Parliament? I cannot even table a report in the Parliament.

The Hon. ROBERT BORSAK: We have seen the example of it last year, in a sense you are almost at the same level as a judge then. Maybe you are not meant to report to anyone directly?

Mr BARRY: I do not think that is good. I think that you should report. You have to be accountable to somebody and in my view I think that I should be accountable to this Committee if it is a statutory committee. Whilst of course the Committee cannot sack me there has to be a transparent level of accountability for the conduct of elections, particularly if you adopt my submission that the legislation should be more principle based and less detailed in terms of administration. In my view the commissioner needs to be accountable to somebody.

The Hon. ROBERT BORSAK: Do you know what the oversight arrangements at the Federal level are?

Mr BARRY: At the Federal level, whilst there is an Electoral Commission, which has a retired Federal Court judge I think, the Electoral Commissioner and I think it is the statistician—

The Hon. Dr PETER PHELPS: That is correct.

Mr BARRY: The commission and the commissioner are not accountable—the commissioner is in exactly the same position that I am here in New South Wales. It is probably unclear but again you probably report to the person that can dismiss you and that is probably in that case the Governor-General on a vote of the Parliament.

CHAIR: You have argued in your submission and in the hearing two weeks ago that the Electoral Act should be replaced with a streamlined principles-based approach and you have suggested that again today. Your submission suggests that Tasmania and Victoria have adopted a principles-based approach to their electoral laws. How has that worked in practice?

Mr BARRY: I can say in Victoria it has worked very well because the new Act was written when I was electoral commissioner there. It is not as principle based as I would have liked it. Nevertheless, it is better than the Parliamentary Electorates and Elections Act. The Tasmanian Act is newer than the Victorian Act. From discussions with my colleague down there it works very well; whatever that means in his view.

CHAIR: We have heard from one of the State directors of a party that he did not support a principles-based approach. He said they would like to see in black and white the legislation for the rules by which they operate. As the making of regulations is a matter for executive government and the power of the legislature is limited to motions of disallowance there might be a view that the delegation of a detail to regulation undermines the traditional power of Parliament as a whole to determine the manner in which members come to be there. Do you have a view on that?

Mr BARRY: There is a misunderstanding about what I submitted in terms of principle-based legislation. That is why I gave you that diagram. I said from the beginning when I read that submission, "I think somebody has misconstrued what I am proposing." I am not proposing that the electoral commissioner will be inventing law or that the Electoral Commission would be inventing law; that is clearly the role of the Parliament. The New South Wales Electoral Commission and commissioner would be explaining how they

think the principles apply. I do think there needs to be transparency from a political party's point of view. We have made a great effort since I have been electoral commissioner in New South Wales to brief the political parties well and truly before the election on exactly how we propose to run the election.

With principle-based legislation I would see that we would do that at least nine months out from a State election. One of the things that would be appropriate, if this was a statutory Committee, is to brief the Committee on how we propose to run the election. What we do not want, from my point of view and the political parties' point of view, are any surprises. There needs to be flexibility around how you can tweak the system and make it better without having to bring every minor piece of procedure back through the Parliament to get changes. Typically what happens is that electoral law is always changed during the very last sitting of Parliament. It does not do me or the political parties any good. You have heard today the changes to the funding and disclosure legislation have created problems for political parties, third parties, and the public and for us to administer it.

The Hon. Dr PETER PHELPS: One of the submissions suggested that the electoral Act be frozen a year out from the election, would that get around the problem?

Mr BARRY: My submission is that you would not need that. What should be frozen are the procedures in how the election is going to be run.

CHAIR: How do you inject issues of scrutiny, given that we are not a statutory body, which you are advocating today, how do you deal with those issues?

Mr BARRY: You cannot, unless you are a statutory Committee. That is why I submitted that I think this Committee needs to have that power.

The Hon. Dr PETER PHELPS: Can you give examples where you feel your freedom for administrative action has been stifled by the Act, where you think you could have done it better?

Mr BARRY: We had some amendments made prior to the last election to do with how-to-vote card registration which nobody disagreed with. Everybody thought it makes it simpler, but it took a long time because it had to come through the Parliament. At the end of the day you are running right up until the last months of when the Parliament is sitting to know whether you are going to be able to implement it. A lot of it is procedural processes that do not need the imprimatur of Parliament in order to give effect to it—in my view.

The Hon. PETER PRIMROSE: Thinking about the Election Funding Authority, in terms of administration and audit processes, can you tell me what the budget allocation was for 2011-12 was?

Mr BARRY: Bearing in mind that the Election Funding Authority has no funding. I do not want to be pedantic. I think I understand what you are asking. It is the New South Wales Electoral Commission that has all the money. The Election Funding Authority is three people who have no money and no staff.

The Hon. PETER PRIMROSE: I will rephrase it. Thinking about the Electoral Commission can you tell me what your budget allocation was for 2011-12?

Mr BARRY: I have to take that on notice.

The Hon. PETER PRIMROSE: Also for 2012-13?

Mr BARRY: I can take that on notice.

The Hon. PETER PRIMROSE: In terms of a complaint, we have heard issues about auditing and complaints. Hypothetically in a mythical electorate with a mythical party you uncover or a member of the public uncovers a complaint—you may wish to take it on notice and produce a flow chart—but what are the decision points? I am interested in the process you go through. For instance, you mention you do not seek coercive powers but presumably to investigate a matter you may seek information relating to documents to seek advice from witnesses which would enable you to properly audit that to come to a decision. What I am interested in finding out is that process as a whole and what powers you have so we know what we are talking about when you say, "We are investigating and auditing." At the moment I do not know what that involves.

Mr BARRY: I interpret it in two parts. If the question is about the auditing process maybe Mr DeCelis can comment on the auditing process and I will talk about complaints or where we say we are making enquiries; is that okay?

The Hon. PETER PRIMROSE: Yes.

Mr DECELIS: What I might reference here is when I came into the job the first thing I did was to go to the authority because I also wanted to know what the role was that they wanted me to play for them. This was not my job. I was trying to put in place what the authority wanted to put in place. I took to them three policies: an audit policy, a compliance policy and an enforcement policy. They are on our website, they are public documents. In a fairly detailed way they explain to people what you can expect to happen in the audit process, in the compliance process, which is an investigation, and if you fall foul of the compliance, there is an apparent breach, you can have a look at our enforcement policy as to how we deal with enforcement.

It was important to me to know what the work was that the authority wanted me to do. It sets out fairly plainly the authority's views on all those things and how you can expect the authority to deal with any apparent breach of the legislation. They may be brought to our attention by a complaint, an advice, or a letter and some evolve out of our audit process. We have an audit policy to describe to people what all these things are. I can provide copies but they are freely available on our website. We often refer people to the website. People write to us and say, "What is your audit process?" Or, "If I fall foul what do you do?" We send them copies of the policies. I find in most cases it satisfies their questions.

The Hon. PETER PRIMROSE: Within that process do you have powers to call for witnesses or papers?

Mr BARRY: That is the second part.

The Hon. PETER PRIMROSE: In relation to those three parts you mentioned an enforcement process; do you have that coercive power?

Mr BARRY: No, we do not. We cannot compel people to give evidence.

The Hon. Dr PETER PHELPS: You can compel documents?

Mr BARRY: In limited instances we can require people to provide documents. It is a challenging area to deal with.

The Hon. PETER PRIMROSE: The second limb?

Mr DECELIS: I was talking to one of our legal people.

The Hon. PETER PRIMROSE: That is fine.

Mr DECELIS: There are powers. We have inspectors under our legislation. My recollection is under section 110 or 110A of the Act there are powers to produce documents in some circumstances and there are powers to require individuals to give evidence. I am advised by my legal people that notice comes with a warning about not having to give evidence in the instance of any self-incrimination. There are some powers to require evidence or seek evidence, if that is a better way of putting it. There are powers to require documentation but they are limited, they do have constraints.

Mr PAUL LYNCH: Have you ever utilised those powers?

Mr DECELIS: Yes, we have. The last time I was here we talked about the last iteration of the joint standing committee. Out of that review the authority received a significant increase in funding, fundamentally for audit and compliance. We have been implementing since then the audit and compliance policies and we have used those powers on a number of occasions. We continue to use them. We have four positions of inspector under section 110 or 110A of the Act.

Mr PAUL LYNCH: Those powers include the power to compel someone to come and give evidence?

Mr DECELIS: It is a notice to attend. It is only for an individual. I do not believe we can compel a corporation. It comes with the warning of not having to give evidence if it is self-incriminating.

Mr BARRY: I was going to make a comment about dealing with complaints and allegations of breaches of the Act. We do get from time to time complaints and allegations about breaches of the funding and disclosure legislation. There are a number of those that we are dealing with at the moment that are quite significant and they do take some time. There are limited things that you can say to people. They make a complaint and they then want to know where it is at and how it is going. It is a difficult thing because on the one hand you do not want to give them the impression that you are doing nothing but on the other hand you cannot say too much about it.

What I can say to this Committee is that we take every complaint very seriously and as Mr DeCecelis said we do investigate it. We do not fob people off and any suggestion that we are not acting as quickly as people would like you can probably read in it is because we are taking it very seriously. There are matters currently on foot that are being taken seriously but they are going to take time to work themselves through.

The Hon. Dr PETER PHELPS: So long as you are quicker than Fair Work Australia.

Mr BARRY: I think we will be quicker than Fair Work Australia.

The Hon. TREVOR KHAN: We have received evidence from The Greens and the Australian Sex Party with regard to incidents outside polling booths. We partly addressed this on the last occasion.

Mr BARRY: Yes.

The Hon. TREVOR KHAN: What is the nature of the lease or agreement that you enter into with landholders with regard to what is to become a polling booth?

Mr BARRY: As you know something like 80 per cent of the polling places are schools. Probably another 10 per cent of them are church-owned buildings. There would be another 10 per cent of them that are badged. There are very few what you would call strictly private buildings. In some way they have an element of community ownership. You might recall that I recommended to this Committee that you seriously consider those very nice provisions that were in the Victorian Act that require these people to make their facility available and that they only get recompensed for heating, lighting, cooling and so forth, because we were being—

The Hon. Dr PETER PHELPS: Let us not mince words about it: gouged.

Mr BARRY: "Gouged" I think was the word I did use. Once we take lease of the building in our view the building is ours to use for the purposes for which the people have leased it. However, elections are a completely different environment. It is not a wedding, it is not a dance; it is a politically charged, emotionally charged event in some cases. I must say in the 25 years I have been involved in this we do not want to make a mountain out of this whole issue that happened at Surrey Hills. In my time that is the only instance where an owner of the building, a reverend gent has tried to interfere with the political process. We do not want to sort of become lost in the sight of how significant this was.

The Hon. TREVOR KHAN: Can I say we have two incidents, not one. I have to honestly disclose that my concern is that at the next election or in coming elections issues such as marriage equality may be very significant and some church groups have very strong views on that issue alone.

Mr BARRY: That is why I think if we had this legislation that gave us the right, the demand power to use the building it would probably need some other provision in there to make sure that the owner of the building cannot interfere with the political and the democratic process.

The Hon. TREVOR KHAN: I turn now to page 94 of your submission that deals with division 4A. I take it that what you are essentially saying is that the 2009 and 2010 restrictions upon the receipt of donations really is now a redundant mechanism for controlling political donations? Is that the general drift?

Mr BARRY: I made the observation that those provisions were inserted—do you remember at the beginning I explained the history of it? The history of the amendments to this Act were inevitably to deal with

political problems that existed at the time so you saw this wave of changes—I think these were the Rees amendments to deal with certain categories of donors. I think I made the observation in here, bearing in mind now that it is only individuals who can donate, the question is right to ask: Do we still need these?

The Hon. TREVOR KHAN: It is an essential absurdity, is it not, that you are restricted at the moment from taking monies from a vigneron, for instance, yet a political party could accept—at least in theory—a political donation from the head of the Comancheros or the Hells Angels?

Mr BARRY: Very rarely do I say to this Committee: "That is clearly a political policy question and I do not feel comfortable answering it." On this occasion I am going to say that, because I think it is a political policy question.

The Hon. TREVOR KHAN: But do I take it that what you can say is that the definitions currently existing—

Mr BARRY: Are difficult to administer.

The Hon. TREVOR KHAN: Ambiguous, to say the least?

Mr BARRY: They are difficult to administer.

Mr DARYL MAGUIRE: Earlier today some submissions were made with regards to pre-poll and the length of time that pre-polls are open. The suggestion was made that the numbers at pre-polls have increased dramatically because of a loosening of the criteria depending on the returning officer at each pre-poll allowing people to vote, perhaps, when they did not have a legitimate excuse or were fabricating. The suggestions were: that, first, the rules be tightened at pre-poll; second, the amount of time that pre-poll is open by compacted; and, three, to have pre-poll open, dispense with the criteria and allow people to vote at will. Do you have a view about that?

Mr BARRY: I do. My view is that the latter is what ought to apply. By and large when people are going along to pre-poll what they are saying is that for a variety of reasons they cannot get to a polling place on election day, it is jolly inconvenient for them or they are working or it could be a case that they will be interstate. There will be a whole raft of reasons. What we do not want to do, in my view, is establish pre-poll officers as—

The Hon. TREVOR KHAN: Thought police, essentially?

Mr BARRY: This just becomes argumentative. I am not going to guild the lily here; people are going and getting pre-polls because their lifestyle has changed from the nineteenth century. People do not want to be locked into going to vote on one day. They want choice, and the pre-poll gives them choice. It is, in my view, somewhat cute to be asking people: "Of these seven criteria, which one do you fit into? Oh, it's that one." You people know; it is just silly.

The Hon. Dr PETER PHELPS: The Christian Democratic Party raised the issue of the training and education of polling officials. There were some complaints that some officials do not understand the rules. From my own experience, I have always found the officials where I have been at polling places to be very well informed. What is the sort of process you would give not only to the person in charge of a particular polling booth but also the workers who might not be au fait with—

Mr BARRY: I think we have actually made quantum leaps in this area. The information technology revolution has really helped this part of the process. All the returning officers and all the polling place managers have to do an online training program and they have to do a quiz and a test on it, whereas in the past we would give them a manual. I mean how many of the people ever read it? At one stage I remember back in the 1990s we introduced an idea of giving them a manual and a little book of questions and they had to answer them. Then they sent them back to us and we had to correct them—that was not such a great idea. I actually think we have now got a pretty robust system and a very good system for training these people on the procedures but as you know we employ something like 20,000 people to work—

The Hon. Dr PETER PHELPS: For one day?

Mr BARRY: For one day. There will always be some people who do not get good service, and that is regrettable. We are slowly weeding out those polling place managers who used to say, "I have been doing this for 20 years and I don't need to read that because I know it all." They are going. I think we have made a lot of improvements but out of the 2,600 polling places we are still going to have a few bad eggs.

The Hon. Dr PETER PHELPS: I agree. I think the polling place officials over the last few elections have been faultless as far as I am concerned, but it was raised so I wanted to give you the opportunity to respond.

Mr BARRY: Yes.

The Hon. Dr PETER PHELPS: In relation to the funding of the EFA, do I understand it that the funding nominally goes to you as commissioner and then you allocate an amount of funding to the EFA?

Mr BARRY: I have got to keep repeating it; the EFA does not get any funding as such. There is a branch, a division of the Electoral Commission—which Brian is the director of—that I allocate money to. Let me say it is quite substantial. Brian has over 20 staff—

Mr DECELIS: 21 including myself, permanent positions.

Mr BARRY: So he would have half the staff of the commission. So it is not inconsiderable. We do not have any complaints about the funding that was granted to us in the 2010 amendments.

The Hon. Dr PETER PHELPS: With the provision of regular advised administrative funding, have you noticed an improvement in the quality of record keeping amongst the parties?

Mr BARRY: I will give Brian a little opportunity to think, but I want to say something in defence of the political parties a little bit. Those amendments in 2010 were quite substantial and had a major impact on the political parties in terms of their record keeping. From my observation the smaller parties have managed this better than the big parties, which did surprise me. I do not know why but the smaller parties have tended to manage it better than the larger parties. The two main political parties are fundamentally different in how they are organised and they each have challenges in terms of implementing these new provisions within their own structure, and that is not easy for them. Their record keeping I think has improved but they still have some way to go. In reading some of the submissions, the complaints about how they see the EFA having performed, whilst I would not want to come here and be so defensive, we always say: "Our door is open, come down and talk to us. If you have a problem, come and speak to us and we will help you through the process."

If they do not take the opportunity up there is not much we can do about it other than keep reminding them, for example, "You have not claimed your full entitlements. You need to produce the necessary documentation, the vouching or the evidence." As we discussed last time, this is not an entitlement system like the Federal system; it is a reimbursement. I think I made a comment here in giving evidence, that the political parties can actually take comfort from the fact that we do put them through the mill and make sure they have all the documentation so they will never end up on the front of the *Telegraph* or the *Herald*. So we are doing them a service. But sometimes they get a bit mixed up with the Federal system, which is an entitlement system.

CHAIR: Today a common theme from a number of parties was that the public funding may be coming year or a year and a half after the election. Some parties were advocating a percentage of that money should come forward, which I guess is similar to the Federal system. Would you prefer to go down that path or leave it as it is?

Mr BARRY: Can I let Brian answer that because he has a much more detailed knowledge about the level of their record keeping?

Mr DECELIS: This is good because I was saying to Colin earlier that I got asked a question in my last appearance here and I do not think I answered it particularly well. You asked me about audit certificates that we receive and do we rely on them. My concern is that where the audit certificate can serve a purpose to the authority is to look at the record keeping of the parties, what they are doing internally to comply with the legislation for record keeping. I do not get to see that; I have no access to it. That is the role that the audit certificate can play. I think the current structure of what an audit certificate is and what we do as a compliance audit needs to be sorted because it is essentially the same and it is not serving a purpose for it to be the same. It

is hard for me to comment on whether the parties' records are adequate and kept appropriately; I do not have that access but that is where an auditor can play a role. I think the current legislation that requires an audit certificate needs to be readdressed to cause them to audit that as opposed to auditing what is coming to us. I think Colin indirectly has answered your question.

There is a fairly fundamental difference between the larger parties and the smaller parties. My perception is that the cause of the difference is that the larger parties have local branches, they are decentralised; we are getting a lot of feedback from the parties at a local level, funnily enough, more so than at the central level, although the parties do say they have problems in getting the information from the local level to the central level to get to the authority. I do not mind saying here—Colin is right, and I can provide evidence to this effect—the reason there are delays in public funding is because we are not getting the material that the law requires to enable us to make a payment. Most of the feedback I am getting is because the information, the documentation, is not getting from the local level to the head office level. Whether that is coupled with some problems at the central level I am not to know.

CHAIR: Are there ways we could look at that the system will be able to help that? I just wonder, and it is not an opinion at this point in time, the major parties potentially have an easier way of operating outside of not having that funding being deposited in their accounts compared to some of the minor parties, does that potentially create an unlevel playing field, particularly for the smaller parties? I do not know, and that is something I would be interested in having a look at and getting your opinion on.

Mr DECELIS: You raised the question firstly about the administration fund, but I would see—and I think Colin would too—that is the very purpose of the administration funding: so you can take that money away and use it for your administration, particularly in complying with the Election Funding Authority requirements. That is fundamentally one of the purposes of the legislation. I know that at least one of the major parties—and I would like to think the others, and I believe they are—are putting a lot of effort and time into dealing with the issue. I am not sure if they are really fighting a losing battle because, again, you get feedback. We do not really know how parties work. We are flying a little bit blind here.

The Hon. Dr PETER PHELPS: We do not know either.

Mr DECELIS: I am happy to give you what feedback I get. But we get a sense of communication problems, is probably the best way to deal with it—maybe, if I can be so blunt as to say, power problems: who is in control here? I get a lot of sense at the branch level or the conference level or the local level, whatever your party might call it, that it is our money, that is our account, we own it, we will do what we like with it. At the head office level that is what we see getting said back to us.

The Hon. TREVOR KHAN: Is not the problem that whilst at a local branch level there is that great enthusiasm leading up to the election, post the election, once the blood has cooled getting those former volunteers to do the paperwork becomes part of the difficulty that you are now confronted with?

Mr DECELIS: You are sort of cutting across the election and the funding here, but I think that is right. I did work in elections branches for some years as well so I am familiar with the electoral side as well and I did get a sense that at least, again at the branch level, they do have a sense that they are more familiar with what is needed and what is required and what is best done at the local level, and I can understand that is why they decentralised that way. So I can understand from the parties that they must be grappling with a real dilemma here. Yes, at the local level they have a better sense of what the issues are, how to deal with them and how to campaign and, therefore, I assume that is why they have the funding at that level. Someone said, "How do you deal with all this?" I know at least one party is trying to do some positive things about that.

I have a fundamental view, and I tend to think it would work, but I may be naive about trying to put that into a party structure, that the system allows for candidates to spend money and to claim money. I tend to think that maybe that would work better if only the party could spend money; the party had control of all expenditure. That is where the problem seems to lie. We know there are problems with donations—they are probably different types of problems—but maybe they would be addressed too if everything was done by the party for its candidates. Whether they are endorsed or not, that seems to me to take away this local handling of money, both income and expenditure, to centralise and say only the party can receive money, only the party can spend money. It would be difficult then for the party agent to say, "I do not know and I have no control and I cannot get information from the local level". That is my perception of it—the only answer I can throw—because for the moment the funding and disclosure legislation does not seem to fit the way parties operate. There seems

to be disjoint. That is why we find the smaller parties work better. We find the smaller parties are less likely to decentralise and it is all done centrally.

Mr BARRY: My observation would be that, bearing in mind that legislation was passed late in 2010 and the election was in March, the parties have done a reasonably good job. I would not want to give the committee the impression that this is a mess. When I read through the submissions there are some things in there that are just wrong. But, by and large, they have done a reasonably good job, and we always said that one of our roles we saw in this was to help the parties through the process, to hold their hand, but we have not quite got to the end of the full auditing process, and our intention is to sit down with each of the parties to give them like an audit letter and say, "In the future this is where you need to improve". That has always been our intention. It is just that we have not got to the end of the process yet.

Report of Dr Graeme Orr tabled.

CHAIR: Thank you for appearing before the committee today. The committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

Mr BARRY: Yes, we will.

(The Committee adjourned at 3.52 p.m.)